



NET PAYING

# MUTUAL NON-DISCLOSURE AGREEMENT



This Agreement (hereinafter referred to as the ("Agreement")), is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2010 (the "Effective Date") between Netpaying Solutions Limited, (hereinafter referred to as "Netpaying") a company incorporated in the Isle of Man with registered offices at 49 Victoria Street, Douglas, Isle of Man IM1 2LD and \_\_\_\_\_(hereinafter referred to as "Recipient") a company incorporated in United States with registered offices at \_\_\_\_\_.

**Background:** Netpaying and the Recipient are discussing proposals for payment services and Netpaying and Recipient wish to ensure that Confidential Information (as defined below) revealed to either the Recipient and Netpaying prior to or in the course of the discussions remains confidential and is not used by the Recipient for any other purpose

*WHEREAS*, the parties in the course of their dealings may furnish each other "Confidential Information" as defined in Paragraph 1 and do not wish to convey any interest or copyright therein to the other, or make such Confidential Information public or common knowledge or to have it disclosed to any Recipient, or permit any use thereof except to engage in such discussions,

*NOW THEREFORE*, in consideration of the business discussions, disclosure of Confidential Information and any potential future business relationship between Recipient and Netpaying, it is hereby agreed as follows:

**1. Confidential Information.** For purposes of this Agreement, the term "Confidential Information" shall mean the following:

Any information, business plan, concept, idea, know-how, process, technique, program, design, formula, algorithm or work-in-process, and any engineering, marketing, technical, patent filings or proposed patent applications, financial, data, or sales information, as well as any information regarding suppliers, customers, employees, brokers, consultants, investors, software products or software product development, or business operations, and any other information or materials, whether in written, graphic, or any other form, that is disclosed orally, electronically, or otherwise and which is learned or disclosed in the course of discussions, studies, or other work discussed between the parties.

**2. Joint Undertaking.** Netpaying and Recipient (on behalf of themselves, subsidiaries, parent company and or their respective employees) agree that they will not at any time disclose, give, or transmit in any manner or form, for

any purpose, the Confidential Information received from the other party to any person, party, firm or other such entity, or use Confidential Information for their own benefit or the benefit of anyone else, or for any purpose other than in connection with the Services to be provided by Recipient and Netpaying. Without limitation of the generality of the foregoing, neither party may use, refer to or otherwise benefit from the Confidential Information of the other party in connection with such party's market research, competitive analysis, development, planning, marketing or other business activities.

Netpaying and Recipient shall take all reasonable measures to preserve the confidentiality, and avoid the disclosure, of the other party's Confidential Information, including but not limited to those steps taken with respect to the party's own confidential information of like importance.

**3. Return Of Confidential Information.** Upon request of any party that has provided Confidential Information to any other party hereto or upon termination of discussions regarding the proposed business relationship, each party shall promptly deliver to such other party or parties any and all documents, notes, or other physical embodiments of or reflecting the Confidential Information (including any copies thereof) that are in its or their possession or control.

At the request of any other party, a responsible officer of each party shall verify, and provide the appropriate other party with written certification of, the completeness of the delivery of such materials.

**4. Nonconveyance.** Nothing in this Agreement shall be construed as conveying to any party any right, title, interests or copyright in or to any Confidential Information of the other, or conveying any license to use, sell, exploit, copy or further develop any such Confidential Information.

**5. Nondisclosure of Discussions.** Each party agrees that, in addition to the other confidentiality obligations hereunder, it will not disclose to any Recipient that it is having any discussions with any other party with respect to the proposed business relationship.

**6. Excluded Information.** The parties agree that their mutual covenant not to disclose or use Confidential Information of any other party shall not apply to any information to the extent that the information:

a) is, or at any time becomes, available to the public, other than through an act or omission of the receiving party,



b) is independently discovered or developed by employees or contractors who have had no access to the Confidential Information of such other party or parties, or

c) is rightfully obtained from a Company without any known obligation of confidentiality.

**7. Court-Ordered Disclosure.** Each party shall be liable for disclosure of Confidential information if made in response to a valid order of a court or authorized agency of government; provided that, if legally permissible, ten (10) days reasonable notice shall first be given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and/or engage in other efforts to minimize the required disclosures. The parties shall make reasonable efforts to cooperate in seeking the protective order and engaging in such other efforts.

**8. No Commitment.** This Agreement does not in any way bind the parties to enter into a business relationship of any nature with the other. Nothing herein or any verbal representations made by either party shall be construed as a binding commitment to establish a business relationship. Neither party shall have any liability to the other, except for the breach of this Agreement, if the proposed business relationship is not established and expressed in writing and expressly stated to be legally binding.

**9. Standstill.** Each party hereby acknowledges that the Confidential Information is being furnished to either party in consideration of agreement that neither party nor any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled or under common control of either party, acting alone or as part of any group, in each case who have received the Confidential Information, will, for a period of two (2) years from the date of this Agreement, directly or indirectly, unless specifically requested to do so in writing in advance by the other party, acquire or agree, offer, seek, quote or propose services to customer and or leads, as well as opportunity relating to the Confidential Information.

**10. Non-Solicit.** Each party and its affiliates shall not, during the term of this Agreement and for a period of two (2) years immediately following the termination of this Agreement, either directly or indirectly, on its own behalf or in the service or on behalf of others, solicit, recruit or attempt to persuade any customers, partners, leads, consultants, introductions or person working for Netpaying or introduced by Netpaying. During the term of this Agreement, and for a period of two (2) years after the termination of this Agreement, Recipient will not directly or indirectly, either for himself or for any other person or

entity, own, invest in, organize, become employed by, consult for or with or otherwise provide services to or be associated with, any person or entity (and their respective affiliates), within the territory, in which (i) Netpaying has assisted, been engaged by, consulted for, diligenced in connection with or otherwise been associated with, and (ii) Netpaying has performed services to either on behalf of or directly for such person or entity, and (iii) Recipient has been provided Confidential Information about under this Agreement.

**11. Remedies.** If there is a breach of this Agreement by a party hereto, the other parties shall have all remedies in law and/or equity including, but not limited to, the right to apply for appropriate injunctive relief or specific performance as may be granted by a court of competent jurisdiction.

**12. Attorney's Fees.** In the event any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing party or parties, in addition to all other amounts such party or parties shall be entitled to receive from any other party, shall be paid reasonable attorney's fees and court costs.

**13. Nonassignment.** No party hereto shall have the right to assign or transfer this Agreement or any rights hereunder to any Recipient without the prior written consent of the other parties.

**14. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter addressed herein. This Agreement may not be amended or modified except in writing signed by both parties. The undertakings of this Agreement, including but not limited to those relating to the confidentiality and non-use of Confidential Information, shall continue after termination of the Agreement or any discussions between the parties. Each party waives the benefit of any statute of limitations affecting its liability under this Agreement, to the full extent permitted by applicable law.

**15. Severability.** In the event that any provision in this Agreement is unenforceable, in whole or in part, the remaining provisions set forth herein shall be enforceable notwithstanding the invalidity of any other provision. Any provision that is unenforceable in part shall be enforced to the extent that it is valid and enforceable.

**16. Governing Law.** This agreement and any disputes or claims arising out of, or in connection with, its subject matter are governed by and construed in accordance with the law of England



IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the latest date set forth below:

**Netpaying Solutions Limited**

By: \_\_\_\_\_  
Authorized Signature Title

By: \_\_\_\_\_  
Name Printed Date

**(Company)**

By: \_\_\_\_\_  
Authorized Signature Title

By: \_\_\_\_\_  
Name Printed Date