

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 14, 2017

INPIXON

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction
of incorporation)

001-36404
(Commission File Number)

88-0434915
(I.R.S. Employer
Identification No.)

2479 E. Bayshore Road, Suite 195
Palo Alto, CA
(Address of principal executive offices)

94303
(Zip Code)

Registrant's telephone number, including area code: **(408) 702-2167**

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Loan and Security Agreement

Pursuant to the terms of a Commercial Loan Purchase Agreement, dated as of August 14, 2017 (the "Purchase Agreement"), Gemcap Lending I, LLC ("GemCap") sold and assigned to Payplant LLC, as agent for Payplant Alternatives Fund LLC ("Payplant" or "Lender"), all of its right, title and interest to that certain revolving Secured Promissory Note in an aggregate principal amount of up to \$10,000,000 (the "GemCap Note") issued in accordance with that certain Loan and Security Agreement, dated as of November 14, 2016 (the "GemCap Loan"), by and among Gemcap and Impixon ("INPX") and its wholly-owned subsidiaries, Impixon USA ("INPXUSA") and Impixon Federal, Inc. ("INPXF," and together with INPX and INPXUSA, the "Company") for an aggregate purchase price of \$1,402,770.16.

In connection with the purchase and assignment of the Gemcap Loan in accordance with the Purchase Agreement, the GemCap Loan was amended and restated in accordance with the terms and conditions of the Amended and Restated GemCap Loan and Security Agreement: Payplant Loan and Security Agreement, dated as of August 14, 2017, between the Company and Payplant (the "Loan Agreement"). The Loan Agreement allows the Company to request loans (each a "Loan" and collectively the "Loans") from the Lender (in the manner provided therein) with a term of no greater than 360 days in amounts that are equivalent to 80% of the face value of purchase orders received ("Aggregate Loan Amount"). The Lender is not obligated to make the requested loan, however, if the Lender agrees to make the requested loan, before the loan is made, the Company must provide Lender with (i) one or more promissory notes ("Notes") for the amount being loaned in favor of Lender, (ii) one or more guaranties executed in favor of Lender and (iii) other documents and evidence of the completion of such other matters as Lender may request. The principal amount of each Loan shall accrue interest at a 30 day rate of 2% (the "Interest Rate"), calculated per day on the basis of a year of 360 days and, when combined with all fees that may be characterized as interest will not exceed the maximum rate allowed by law. Upon the occurrence and during the continuance of any event of default, interest shall accrue at a rate equal to the Interest Rate plus 0.42% per 30 days. All computations of interest shall be made on the basis of a year of 360 days.

The occurrence of the following events (among other events as set forth in the Loan Agreement) will constitute an "Event of Default": (a) the Company shall fail to pay when due any amounts payable under the Loan Agreement (b) any representation or warranty by the Company under or in connection with the Loan Agreement or any other agreement or document delivered to Lender by the Company shall prove to have been incorrect in any material respect when made or deemed made; (c) the Company Borrower shall fail to perform or observe any term, covenant or agreement contained in the Loan Agreement of which Lender determines is not capable of being remedied; (d) the Company shall fail to perform or observe any other obligation of the Company contained in the Loan Agreement or any other related documents and any such failure shall remain un-remedied for a period of 10 days from the occurrence thereof (unless Lender determines that such failure is not capable of remedy); (e) the Company shall (i) liquidate, wind up or dissolve (or suffer any liquidation, wind-up or dissolution), (ii) suspend its operations other than in the ordinary course of business, or (iii) take any action to authorize any of the foregoing actions or events; (g) the Company shall fail (i) to make any payment of any principal of, or interest or premium on, any indebtedness for borrowed money (other than the Loan), in an aggregate amount (including undrawn committed or available amounts), when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness as of the date of such failure, or (ii) to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, and such failure shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure. Upon the occurrence and during the continuance of any Event of Default, Lender may without notice or demand declare the entire unpaid principal amount of any loans made to the Company, all interest accrued and unpaid thereon and all other amounts payable to be due and payable; (h) there is a change in the record or direct or indirect beneficial ownership or control of more than 30% of the voting capital stock of and other voting ownership interests in Borrower compared to such ownership as of the date of this Agreement without the prior written consent of Lender.

The Loans may be prepaid from time to time in immediately available funds with a prepayment premium of at least 30 days of interest. As security for the payment and performance of all indebtedness, liabilities and other obligations to Lender under the Loan Agreement, any Note, or any of the other Loan Documents (as defined in the Loan Agreement), the Company granted Lender a security interest in all of the Company's right, title and interest in, to all of its personal property, wherever located and whether now existing or owned or hereafter acquired or arising.

Payplant Client Agreement

The Company also entered into a Payplant Client Agreement (the "Client Agreement"), pursuant to which the Company will offer to Payplant for purchase those receivables payable to the Company in connection with the purchase orders under which advances have been made pursuant to the Loan Agreement for the purposes of paying off any Notes issued pursuant to the Loan Agreement. Under the Client Agreement, the Company cannot raise additional financings, without Payplant's approval, which will not be unreasonably withheld by Payplant unless it is an equity financing or a convertible equity financing, where the Company can force conversion, while Payplant's advances are outstanding.

Promissory Note

On August 14, 2017, in accordance with the terms of the Loan Agreement, Inpixon Federal, Inc. issued a Note to the Lender with a term of 30 days in an aggregate principal amount of \$995,472.61. (the "Initial Note") in connection with a purchase order received. The Note is subject to the interest rates described in the Loan Agreement and is secured by the assets of the Company pursuant to the Loan Agreement and shall be satisfied in accordance with the terms of the Client Agreement.

The descriptions of the Loan Agreement, the Client Agreement and the Initial Note are not complete and are qualified by the full text of such agreements, each of which are attached hereto as Exhibit 10.1, Exhibit 10.2 and Exhibit 4.1.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained above in Item 1.01 related to the GemCap Loan, Loan Agreement and Client Agreement is hereby incorporated by reference into this Item 2.03.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

On August 14, 2017, INPX received a deficiency letter from The NASDAQ Stock Market LLC ("NASDAQ") indicating that, based on INPX's closing bid price for the last 30 consecutive business days, INPX does not comply with the minimum bid price requirement of \$1.00 per share, as set forth in NASDAQ Listing Rule 5550(a)(2). The notification has no immediate effect on the listing of INPX's common stock on The NASDAQ Capital Market.

In accordance with NASDAQ Listing Rule 5810(c)(3)(A), INPX has a grace period of 180 calendar days, or until February 12, 2018, to regain compliance with the minimum closing bid price requirement for continued listing. In order to regain compliance, the minimum closing bid price per share of INPX's common stock must be at least \$1.00 for a minimum of ten consecutive business days. In the event INPX does not regain compliance by February 12, 2018, INPX may be afforded an additional 180-day compliance period, provided it demonstrates that it meets all other applicable standards for initial listing on The NASDAQ Capital Market (except the bid price requirement), and provides written notice of its intention to cure the minimum bid price deficiency during the second grace period, by effecting a reverse stock split, if necessary. If INPX fails to regain compliance after the second grace period, INPX's stock will be subject to delisting by NASDAQ.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
4.1*	Promissory Note issued by Inpixon Federal to Payplant Alternatives Fund, LLC on August 14, 2017
10.1*	Amended and Restated GemCap Loan and Security Agreement: Payplant Loan and Security Agreement, by and among GemCap Lending I, LLC, Inpixon, Inpixon USA, Inpixon Federal, Inc., and Payplant LLC, as agent for Payplant Alternatives Fund LLC.
10.2*	Payplant Client Agreement by and among Inpixon, Inpixon USA, Inpixon Federal, Inc., and Payplant LLC.

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 18, 2017

INPIXON

By: /s/ Nadir Ali

Name: Nadir Ali

Title: Chief Executive Officer

Exhibit Index

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10.2*	<u>Payplant Client Agreement by and among Inpixon, Inpixon USA, Inpixon Federal, Inc., and Payplant LLC.</u>

* Filed herewith.

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, Inpixon Federal, a Virginia Corporation ("**Borrower**"), HEREBY UNCONDITIONALLY PROMISES TO PAY to the order of Payplant Alternatives Fund, LLC, a Delaware limited liability company ("**Lender**"), or its successors or permitted assigns, the principal sum of Nine Hundred and Fifty Five Thousand Four Hundred and Seventy Two Dollars and Sixty One cents dollars (\$ 995,472.61) plus a Due Diligence fee of N/A (\$0.00), or, if less, the aggregate unpaid principal amount of the Loan outstanding under the Loan and Security Agreement referred to below, which sum shall be due and payable in such amounts and on such dates as are set forth in the Loan and Security Agreement via ACH or Wire. Borrower further promises to pay interest on the outstanding principal amount hereof from the Funding Date at the rates, and on the dates, specified in such Loan and Security Agreement.

This Note is referred to in the Loan and Security Agreement, effective as of 8/14/17(as amended, restated, supplemented or otherwise modified from time to time, the **Loan and Security Agreement**"), between Borrower and Lender. Capitalized terms used but not otherwise defined herein have the meanings given to them in the Loan and Security Agreement.

This Note is secured and guaranteed as and to the extent provided in the Loan and Security Agreement and the other Loan Documents. Reference is hereby made to the Loan and Security Agreement and the other Collateral Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more Events of Default specified in the Loan and Security Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided therein.

All parties now or hereafter liable with respect to this Note, whether maker, principal, surety, endorser or otherwise, hereby waive diligence, presentment, demand, protest, notice of protest, notice of acceleration, notice of intent to accelerate, and all other notices of any kind.

Borrower agrees to make all payments under this Note without setoff or deduction and regardless of any counterclaim or defense.

No single or partial exercise of any power under this Note shall preclude any other or further exercise of such power or exercise of any other power. No delay or omission on the part of the holder hereof in exercising any right under this Note shall operate as a waiver of such right or any other right hereunder.

This Note shall be binding on Borrower and its successors and assigns, and shall be binding upon and inure to the benefit of Lender, any future holder of this Note and their respective successors and assigns. THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AND SECURITY AGREEMENT.

The following sections of the Loan and Security Agreement, are adopted and incorporated by reference as though fully set forth herein:

- a. Governing Law: section 13 (k)
 - b. Forum Selection: section 13 (l)
 - c. Waiver of Jury Trial: section 13 (m)
 - d. Arbitration: section 13 (n)
 - e. No Punitive or Exemplary Damages: section 15
-

IN WITNESS WHEREOF, Borrower has duly executed this Note, as of the date written below.

Inpixon, formerly known as Sysorex Global:

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon USA, formerly known as Sysorex USA

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon Federal, Inc., formerly known as Sysorex Government Services, Inc.

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

**AMMENDED AND RESTATED
GEMCAP LOAN AND SECURITY AGREEMENT: PAYPLANT
LOAN AND SECURITY AGREEMENT**

The Loan and Security Agreement dated as of November 14, 2016 between Gemcap Lending I LLC, a Delaware limited liability company with an address of 24955 Pacific Coast Highway, Suite A202, Malibu, CA 90265 (“Gemcap”) and Inpixon, previously known as Sysorex Global, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISG”), Inpixon USA, previously known as Sysorex USA, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISUSA”) and Inpixon Federal, Inc., previously known as Sysorex Government Services, Inc., a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISGS” and together with ISUSA and ISG, jointly and severally the “Client” or “Borrower”) (“Loan and Security Agreement”), which was purchased by Payplant LLC, a Delaware limited liability company with an address of 2625 Middlefield Road #595, Palo Alto, CA 94306, as an agent of Payplant Alternative Fund LLC, with an address of 2625 Middlefield Road #595, Palo Alto, CA 94306 (collectively “Payplant”) on August 14, 2017 per the Commercial Loan Purchase between Gemcap and Payplant (“Loan Purchase Agreement”) is amended with the addition of the following.

THIS LOAN AND SECURITY AGREEMENT (this “*Agreement*”), is entered into between Payplant LLC (“Payplant”), a Delaware limited liability company, as agent for Payplant Alternatives Fund LLC, a Delaware limited liability company (“*Lender*”), and Inpixon, previously known as Sysorex Global, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISG”), Inpixon USA, previously known as Sysorex USA, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISUSA”) and Inpixon Federal, Inc., previously known as Sysorex Government Services, Inc., a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISGS” and together with ISUSA and ISG, jointly and severally the “Borrower”), effective upon the date of signature by Borrower to this Agreement.

Borrower and Lender hereby agree as follows:

SECTION 1 Definitions; Interpretation.

(a) As used in this Agreement, the following terms shall have the following meanings:

“*ACH*” has the meaning specified in **Section 2(e)**.

“*Debtor*” means, with respect to any Receivable, any Person obligated to pay such Receivable.

“*Agreement*” has the meaning specified in the preamble.

“**Associated Rights**” means any and all of the Borrower’s right, title and interest in relation to any Purchased Receivable including, in each case, to the extent related to such Receivable:

- (a) all Security Interests in the relevant goods arising by law or by agreement with the related Debtor for the purpose of securing payment of the related Invoice Face Amount, including retention of title rights, if applicable;
- (b) all rights, remedies and privileges under the related contract;
- (c) all documents of title to goods, warehouse keepers’ receipts, bills of lading, shipping documents, airway bills or similar documents, if applicable;
- (d) all Collection Proceeds and other remittances and payments of or on account of Collections of such Receivable, and any related securities, bonds, guarantees, indemnities and letters of credit, including direct debit rights if applicable; and
- (e) all of the Borrower’s interest in any returned goods related to any sale giving rise to such Receivable and any proceeds of sale thereof.

“**Borrower**” has the meaning specified in the preamble.

“**Borrower Agreement**” means that certain Borrower Agreement between Borrower and Lender, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“**Cash Flow Plan**” means a plan approved by the Borrower’s Board, showing that the Borrower will be solvent through the end of April 30, 2016, assuming no other capital injections other than the capital provided by Payplant.

“**Collateral**” has the meaning specified in **Section 3**.

“**Collateral Documents**” means all agreements, instruments or documents that create or purport to create a Lien or guaranty in favor of Lender and all filings, documents, instruments and agreements made or delivered pursuant thereto (including, without limitation, any Guarantor Security Agreement).

“**Collection Expenses**” means Lender’s out-of-pocket costs and expenses in pursuing collection from Borrowers, Debtors, including Lender’s reasonable outside counsel fees, collection agency fees, court costs, and other third-party expenditures.

“**Collection Proceeds**” means all funds and money collected from the Debtor, the Borrower or from any other obligated Person, or from the exercise of Enforcement Rights with respect to or in any way accruing from a Purchased Receivable.

“**Consummate**” or “**Consummation**” means the completed purchase and True Sale of a Receivable to Lender.

“**Loan Amount**” has the meaning specified in **Section 2(b)**.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Designated Accounts**” has the meaning specified in **Section 2(f)**.

“**Disclosures**” means the Privacy Policy, Terms of Use and Borrower Agreement.

“**Divert**” or “**Diversion**” means any action or inaction on the part of a Borrower which results in all or any portion of the Collection Proceeds of any Purchased Receivable, or in all or any portion of Other Proceeds of Other Receivables that the Registered Debtor is instructed to pay into the Lender controlled Lockbox Account, being used by the Borrower or any Affiliate of Borrower for any purpose other than payment and transmittal to Lender. Divert or Diversion additionally includes (i) any action or inaction on the part of a Borrower which results in a setoff of the Registered Debtor’s Invoice Payment Obligation against any obligation that the Borrower may owe to the Debtor, (ii) any Borrower instruction to a Registered Debtor not to make Invoice payments into the Lockbox Account, or (iii) the Borrower’s reissuance of an Invoice evidencing a Purchased Receivable without notifying Lender and without making immediate payment as required under **Section 18(B)** of this Agreement.

“**Enforcement Rights**” mean and include all available enforcement rights and remedies following an Event of Default, Enforcement rights further include default rights and remedies that may be asserted against the property of a third Person to satisfy an indebtedness.

“**Event of Default**” has the meaning specified in **Section 8**.

“**Face Value**” means the principal amount of the Purchased Receivable that is billed to or that is otherwise owed by the Debtor.

“**Funding Date**” means the date that net Loan proceeds are received by Borrower, after a Loan is funded under **Section 2(c)** subject to the terms and conditions of this Agreement.

“**GAAP**” means generally accepted accounting principles in the United States as in effect from time to time.

“**Good Funds**” means funds that (i) have been collected by means of the drawee bank’s full, final and irrevocable payment of one or more checks, drafts or monetary instruments, and (ii) are immediately available to be electronically transferred from the depositor’s account to a third party.

“**Indemnitees**” has the meaning specified in **Section 12**.

“**Invoice**” means a legal debt instrument which indicates the Face Value due from an Debtor to pay the Borrower for delivered goods or services.

“**Insolvency**” means with respect to any Person on a particular date, that

- (a) such Person is unable to realize upon its property and assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, or
- (b) such Person has made a transfer or incurred an obligation with the intent to hinder, delay or defraud any of its present or future creditors.

The amount of contingent liabilities (such as litigation, guarantees and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably expected to become an actual or matured liability.

“**Insolvent**” means, with respect to a Person, the fact that such Person is in Insolvency.

“**Loan Request**” means a loan request submitted by Borrower to Lender, substantially in form and substance satisfactory to Lender.

“**Interest Rate**” has the meaning specified in **Section 2(e)**.

“**Invoice**” means a legal debt instrument which indicates the Face Value due from an Debtor to pay the Borrower for delivered goods or services.

“**Invoice Payment**” means any payment made by an Debtor under an Invoice.

“**Invoice Payment Obligation**” means an Debtor’s obligation to pay the Invoice Face Value under a Receivable sold to Lender.

“**Client Key Principal**” means an owner or executive officer (i.e., president, manager, chief executive officer, chief financial officer, or officer performing executive management functions) of the Borrower as specified in *Exhibit B*.

“**Lender**” has the meaning specified in the preamble.

“**Lien**” means any mortgage, deed of trust, pledge, security interest, assignment, deposit arrangement, charge or encumbrance, lien (statutory or other), or other preferential arrangement (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing or any agreement to give any security interest).

“**Loan**” has the meaning specified in **Section 2(b)**.

“**Loan Documents**” means, collectively, this Agreement, all Notes, all Guaranties, the Loan Requests, the Borrower Agreement, the Collateral Documents and all other agreements, instruments and documents now or hereafter executed and delivered to Lender with respect to this Agreement, the transactions contemplated hereby or any other Loan Document, in each case as amended, restated, supplemented or otherwise modified from time to time.

“**Lockbox Account**” means the depository account maintained by Lender into which Collection Proceeds and other sums shall be deposited.

“**Manager**” means Payplant LLC, a Delaware limited liability company.

“**Material Adverse Effect**” on any Person means a material adverse effect on the operations, properties, business, condition (financial or otherwise) or prospects of such Person.

“**Material Litigation**” means any action, claim, lawsuit, demand, inquiry, investigation or proceeding that is brought against the Borrower or its Affiliate, in which the amount in controversy exceeds 25% of Borrower’s, or its Affiliate’s then net worth.

“**Material Obligation**” means a payment or performance obligation of a Borrower, which in the event of the Borrower’s default, would likely jeopardize Borrower’s ability to continue to conduct its business as previously conducted.

“**Maturity Date**” has the meaning specified in **Section 2(a)**.

“**Maximum Rate**” means the maximum interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged, or received on the Loan under the laws which are presently in effect of the United States and any jurisdiction thereof applicable to Lender and such indebtedness or, to the extent permitted by law, under such applicable laws of the United States and any jurisdiction thereof which may hereafter be in effect and which allow a higher maximum interest rate than applicable laws now allow. To the extent federal law (including, without limitation, 12 U.S.C. Section 85, as now enacted or hereafter amended) permits Lender to contract for, charge or receive a higher rate of interest or permits Lender to contract for, charge or receive interest at a higher rate permitted by the laws of another jurisdiction, such federal law (and, if appropriate, the law of such other jurisdiction) will be applicable in determining the Maximum Rate, instead of the laws of any other jurisdiction.

“**Note**” means the promissory note in *Exhibit A* attached hereto made by Borrower in favor of Lender, as amended, restated, supplemented or otherwise modified from time to time.

“**Obligations**” means all indebtedness, liabilities and other obligations of Borrower to each of Lender and Manager, whether created under, arising out of or in connection with this Agreement, any Note, any of the other Loan Documents or otherwise, including, without limitation, all unpaid principal of the Loan, all interest accrued thereon, all fees and all other amounts payable by Borrower to Lender under or in connection with any Loan Agreement, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and including interest that accrues after the commencement by or against Borrower of any bankruptcy or insolvency proceeding naming such Person as the debtor in such proceeding.

“**Other Proceeds**” means and includes Invoice Payments received from Registered Debtors that are attributable to the Borrower’s Other Receivables not sold to Lender.

“**Other Receivables**” means and includes Borrower Receivables that are not sold on the Platform.

“**Payplant**” means Payplant LLC. Payplant LLC is the Managing Member of Payplant Alternatives Fund LLC. Payplant Alternatives Fund LLC is the Lender. To the extent necessary for any reason, including enforcement of any obligation in this agreement, Borrower acknowledges and agrees that Payplant Alternatives Fund LLC may enforce any provisions in this agreement directly or through Payplant LLC as its Agent and/or representative.

“Permitted Lien” means: (i) any Lien in favor of Lender to secure the Obligations of Borrower to Lender under the Loan Documents; (ii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and which are adequately reserved for in accordance with GAAP; (iii) Liens of material men, mechanics, warehousemen, carriers or employees or other like Liens arising in the ordinary course of business and securing obligations either not delinquent or being contested in good faith by appropriate proceedings which are adequately reserved for in accordance with GAAP and which do not in the aggregate materially impair the use or value of the property or risk the loss or forfeiture of title thereto; (iv) Liens consisting of deposits or pledges to secure the payment of worker’s compensation, unemployment insurance or other social security benefits or obligations, or to secure the performance of bids, trade contracts, leases, public or statutory obligations, surety or appeal bonds or other obligations of a like nature, in each case incurred in the ordinary course of business; (v) statutory landlord’s Liens under leases to which Borrower is a party; (vi) Liens (A) upon or in any equipment, computers or software acquired or held by Borrower or any of its Subsidiaries or tenant improvements implemented by Borrower or any of its Subsidiaries to secure the purchase price of such equipment, computers or software or Indebtedness incurred solely for the purpose of financing the acquisition of such equipment, computers or software or the implementation of such tenant improvements, or (B) existing on such equipment, computers or software at the time of its acquisition; *provided* that, the Lien is confined solely to the property so acquired and improvements thereon, or the proceeds of such equipment, computers, software or tenant improvements; and (vii) Liens on deposit accounts or securities accounts (and the contents thereof), in favor of the financial institution at which such account is located, arising in the ordinary course of business and pursuant to such financial institution’s standard terms and conditions governing such account.

“Person” means any individual, sole proprietorship, partnership, joint venture, unincorporated organization or association, trust, corporation (including a business or statutory trust), limited liability company, institution, public benefit corporation, joint stock company, firm, body corporate, authority, Governmental Authority, or any other entity of whatever nature.

“Platform” means all related Payplant internet and electronic products including the Payplant website, Payplant Receivables purchase application and Payplant code.

“Privacy Policy” means the privacy policy delivered and/or made available to Borrower, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“Purchased Receivable” means any Receivable that has been sold to Payplant on the Platform.

“Receivable” means and includes the Borrower’s accounts, contract rights, general intangibles, payment intangibles and all other forms of payment obligations owing to Borrower, and further includes the Borrower’s Associated Rights.

“Registered Debtor” means a Debtor that is registered by the Borrower on the Platform.

“Security Interest” means a consensual Lien in the Borrower’s Purchased Receivables and other Borrower Collateral granted under the UCC.

“Subsidiary” of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock or other equity interest is beneficially owned, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof. Unless otherwise specified, all references herein to a “Subsidiary” or “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Borrower.

“Terms of Use” means the terms of use delivered and/or made available to Borrower, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“True Sale” means the sale for all purposes of absolute ownership of a Receivable, with the Borrower retaining no residual rights, title, interest or control (whether legal, equitable or beneficial) therein, and with all of the Borrower’s rights, title and ownership interests being fully transferred to and vesting in Lender.

“UCC” means the Uniform Commercial Code as in effect in California and other applicable jurisdictions.

SECTION 2 Loan.

(a) *Loan Request.* To request a Loan, Borrower shall submit an Initial Loan Request to Lender, which Initial Loan Request shall include, among other items, the requested term of the Loan, which shall be no longer than 360 days (the date that is the last day of the period beginning on the date on which a Loan is funded (if funded) and ending on the last day of such requested term, the **“Maturity Date”** of such Loan), and Loan Amount. Borrower acknowledges that Lender reserves the right to review and verify all information in the Initial Loan Request and such other information as Lender may request in connection with such Initial Loan Request. Borrower hereby authorizes Lender to request and obtain data from third parties to verify any information provided to Lender, including in the Initial Loan Request. Borrower acknowledges that Lender may approve or terminate the Initial Loan Request in its sole discretion. **BORROWER ACKNOWLEDGES AND AGREES THAT NEITHER LENDER NOR ANY OTHER PERSON WARRANTS OR GUARANTEES THAT ANY LOAN REQUEST OF BORROWER WILL BE FUNDED.**

(b) *Loan Funding.* Lender in its sole discretion may decide to make or not make a loan (the **“Loan”**) to Borrower with a principal balance, the **“Loan Amount”**. If a loan is made, Borrower promises to pay to Lender the Loan Amount and all other Obligations now or hereafter owing to Lender under the Loan Documents.

(c) *Notes; Guaranty.* In addition to and subject to the foregoing, prior to making the Loan, Lender shall have received, in each case in form and substance satisfactory to Lender:

(i) One or more Notes executed by Borrower or by Borrower's attorney-in-fact in favor of Lender, the amount of which shall equal the total Loan amount;

(ii) One or more Guaranties executed in favor of Lender, as required by Lender or Manager; and

(iii) Such other documents and evidence of the completion of such other matters as Lender may request.

(d) Fees:

(i) *Wire Fee:* \$12

(ii) *UCC Termination Fee:* \$150

(iii) *Due Diligence Fee.* Fee paid by the Borrower to the Lender in order to perform business and officer background checks, with applicable authorizations, including but not limited to credit, criminal history, lien searches and filings, bankruptcy and court filings, and other 3rd party verifications deemed necessary by Lender. The Due Diligence fee must be paid by borrower prior to initial funding and is not refundable.

(e) *Interest.* The principal amount of the Loan shall accrue interest at a 30 day rate of 2% (the "*Interest Rate*"), calculated per day and, when combined with all fees that may be characterized as interest will not exceed the Maximum Rate; *provided further*, that upon the occurrence and during the continuance of an Event of Default, such interest shall accrue at a rate equal to the Interest Rate plus 0.42% per 30 days *provided* that such default rate of interest, when combined with all fees that may be characterized as interest, will not exceed the Maximum Rate. All computations of interest shall be made on the basis of a year of 360 days.

(f) *Repayment.* Borrower hereby agrees to pay to Lender combined principal and interest, in an amount that will fully pay the Loan in full on or before the Maturity Date. Borrower hereby authorizes Lender, its agents and affiliates and their respective successors and assigns to debit the Designated Accounts specified in Exhibit D, by ACH transfer for the amount of such loan payment if the payment is not received within 5 (five) days of the Maturity Date. The foregoing authorization is in addition to, and not in limitation of, any rights of setoff that Lender or its agents, affiliates and their respective successors and assigns may have. Borrower shall have the right to terminate such ACH authorization or to change its Designated Accounts for such ACH transfers by notifying Lender at least ten (10) business days prior to such termination or change in Designated Accounts. All payments received by Lender shall be applied to principal and interest as set forth above; *provided* that, upon the occurrence and during the continuance of an Event of Default, payments shall be applied to the Obligations in Lender's sole discretion. Borrower shall pay in full in immediately available funds the aggregate amount of the Obligations on the earlier of (i) the Maturity Date and (ii) any date on which the Obligations are accelerated in accordance with the terms hereof.

(h) *Fee Payment.* Borrower agrees to pay the Due Diligence Fee as set forth in **Section 2(d)** in accordance with the terms of such Section. Borrower agrees to pay a fee of \$20 if any ACH transfers or checks are returned or fail due to insufficient funds or for any other reason. If any payment is more than ten (10) days late, Lender may charge, and if any payment is more than fifteen (15) days late, Lender shall charge, and in each case Borrower agrees to pay, a fee in the amount equal to five percent (5%) of the total amount of such late payment. Borrower agrees that any of the foregoing fees may be collected using ACH transfers initiated by Lender from the Designated Accounts.

(i) *Prepayment; Premium.* Borrower shall have the right to prepay the Loan from time to time; *provided* that the amount of such prepayment and the applicable premium is at least 30 days of interest and prepayment shall be paid to Lender in immediately available funds.

(j) *Maximum Interest.* Borrower and Lender intend to strictly comply with all applicable laws, including applicable usury laws. Accordingly, the provisions of this **Section 2(j)** shall govern and control over every other provision of this Agreement or any other Loan Document which conflicts or is inconsistent with this **Section 2(j)**, even if such provision declares that it controls. As used in this **Section 2(j)**, the term “interest” includes the aggregate of all charges, fees, benefits or other compensation which constitute interest under applicable law, *provided* that, to the maximum extent permitted by applicable law, (i) any non-principal payment shall be characterized as an expense or as compensation for something other than the use, forbearance or detention of money and not as interest, and (ii) all interest at any time contracted for, reserved, charged or received shall be amortized, prorated, allocated and spread, in equal parts, during the full term of the Obligations. In no event shall Borrower or any other Person be obligated to pay, or Lender have any right or privilege to reserve, receive or retain, (i) any interest in excess of the maximum amount of non-usurious interest permitted under the laws of the State of California or the applicable laws (if any) of the U.S. or of any other applicable state, or (ii) total interest in excess of the amount which Lender could lawfully have contracted for, reserved, received, retained or charged had the interest been calculated for the full term of the Obligations at the Maximum Rate. On each day, if any, that the interest rate (the “*Stated Rate*”) stipulated by this Agreement or any other Loan Document exceeds the Maximum Rate, the rate at which interest shall accrue shall automatically be fixed by operation of this sentence at the Maximum Rate for that day, and shall remain fixed at the Maximum Rate for each day thereafter until the total amount of interest accrued equals the total amount of interest which would have accrued if there were no such ceiling rate as is imposed by this sentence. Thereafter, interest shall accrue at the Stated Rate unless and until the Stated Rate again exceeds the Maximum Rate when the provisions of the immediately preceding sentence shall again automatically operate to limit the interest accrual rate. None of the terms and provisions contained in this Agreement or in any other Loan Document which directly or indirectly relate to interest shall ever be construed without reference to this **Section 2(j)**, or be construed to create a contract to pay for the use, forbearance or detention of money at an interest rate in excess of the Maximum Rate. If the term of any Obligation is shortened by reason of acceleration of maturity as a result of any Event of Default or by any other cause, or by reason of any required or permitted prepayment, and if for that (or any other) reason Lender at any time, including but not limited to, the stated maturity, is owed or receives (and/or has received) interest in excess of interest calculated at the Maximum Rate, then and in any such event all of any such excess interest shall be canceled automatically as of the date of such acceleration, prepayment or other event which produces the excess, and, if such excess interest has been paid to Lender, it shall be credited pro tanto against the outstanding principal balance of Borrower’s obligations to Lender, effective as of the date or dates when the event occurs which causes it to be excess interest, until such excess is exhausted or all of such principal has been fully paid and satisfied, whichever occurs first, and any remaining balance of such excess shall be promptly refunded to its payor.

SECTION 3 Security Interest. As security for the payment and performance of the Obligations (whether now existing or hereafter arising), Borrower hereby grants to Lender a security interest in all of Borrower's right, title and interest in, to and under all of its personal property, wherever located and whether now existing or owned or hereafter acquired or arising, including the following (collectively, the "*Collateral*"):

1. All of Borrower's present and future accounts, payment intangibles, chattel, paper, instruments, commercial tort claims identified in writing to Payplant, contracts, letter-of-credit rights, and other receivables, of all types and descriptions (individually and collectively, "Additional Receivables"); and
2. All of Borrower's present and future inventory, equipment of all types and descriptions and property including investment property; and
3. All of Borrower's present and future general intangibles of all types and descriptions, including all intellectual property, books, records, files, computer programs, etc. relating to the foregoing; and
4. All of Borrower's cash and cash equivalents, deposit accounts, securities accounts; and
5. All proceeds (including, without limitation, proceeds of insurance covering any of the foregoing or other property resulting from the sale, exchange, collection, or other disposition of any of the foregoing) and supporting obligations of any and all of the foregoing.

This Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with **Section 14**.

SECTION 4 Financing Statements; Rights of Lender; Authorization and Appointment.

(a) Borrower hereby authorizes Lender to file at any time and from time to time any financing statements and other applicable documents and instruments (including, without limitation, with respect to intellectual property) describing the Collateral, and Borrower shall execute and deliver to Lender, and Borrower hereby authorizes Lender to file (with or without Borrower's signature), at any time and from time to time, all amendments to financing statements, assignments, continuation financing statements, termination statements and other documents and instruments, in form reasonably satisfactory to Lender, as Lender may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the security interest of Lender in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, Borrower ratifies and authorizes the filing by Lender of any financing statements and any other applicable documents or instruments filed prior to the date hereof.

(b) Lender shall have the right to, in the name of Borrower, or in the name of Lender or otherwise, and Borrower hereby constitutes and appoints Lender (and any of Lender's officers, employees or agents designated by Lender) as Borrower's true and lawful attorney-in-fact, with full power and authority to execute any and all such documents and instruments (including without limitation any endorsement to any certificate of title or ownership or other document), make such filings, and do any and all acts and things for and on behalf of Borrower, which Lender may deem reasonably necessary or advisable to maintain, protect, perfect, realize upon and preserve the Collateral and Lender's security interest therein and to accomplish the purposes of this Agreement. Lender agrees that, except upon the occurrence and during the continuance of an Event of Default, it shall not exercise the power of attorney, or any rights granted to Lender, pursuant to this Section. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Obligations have not been paid and performed in full. Borrower hereby ratifies, to the extent permitted by law, all that Lender shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section.

SECTION 5 Representations and Warranties. Borrower represents and warrants to Lender that:

- (a) *Existence, Qualification and Power.* Borrower is duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the other Loan Documents to which it is a party. Borrower is qualified and licensed to do business and is in good standing in each jurisdiction in which the failure so to qualify or be in good standing could reasonably be expected to have a Material Adverse Effect on Borrower, and has all requisite power and authority to own its assets and carry on its business.
- (b) *Authorization; No Contravention.* The execution, delivery and performance by Borrower of this Agreement and each other Loan Document to which Borrower is a party have been duly authorized by all necessary action of Borrower and do not and will not: (i) contravene the terms of the articles or certificate of incorporation, or bylaws, or other applicable organizational documents, of Borrower, or result in a breach of or constitute a default under any material lease, instrument, contract or other agreement to which Borrower is a party or by which it or its properties may be bound or affected; or (ii) violate any provision of any law, rule, regulation, order, judgment, decree or the like binding on or affecting Borrower.
- (c) *Enforceability.* This Agreement and each other Loan Document to which Borrower is a party constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms.
- (d) *Governmental; Other Authorization.* No authorization, consent, approval, license, exemption of, or filing or registration with, any governmental agency or authority, or approval or consent of any other person or entity, is required for the due execution, delivery or performance by Borrower of this Agreement or any other Loan Document to which Borrower is a party, except for recordings or filings in connection with the perfection of the Liens on the Collateral in favor of Lender.
- (e) *No Breach.* Borrower is not in breach of any obligation with respect to borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation.
- (f) *Material Litigation.* Except as previously disclosed to Lender in writing, there is no Material Litigation pending or threatened against or affecting Borrower or its properties, and neither Borrower nor any Affiliate of Borrower is in default under any Material Obligation. Specifically, Borrower is not in material default under any loan or credit agreement, and is not subject to, or has not been requested or required to enter into any type of forbearance or similar agreement with any creditor.

(g) *Taxes.* Borrower has duly filed all tax and information returns required to be filed, and has paid all taxes, fees, assessments and other governmental charges or levies that have become due and payable, except to the extent such taxes or other charges are being contested in good faith and are adequately reserved against in accordance with GAAP.

(h) *Permits.* Borrower possesses all material permits, franchises, licenses, patents, trademarks, trade names, service marks, copyrights and all rights with respect thereto, free from burdensome restrictions that are necessary for the ownership, maintenance and operation of its business and Borrower is not in material violation of any rights of others with respect to the foregoing.

(i) *Insurance.* The properties of Borrower are insured, with financially sound and reputable insurance companies, in such amounts, with such deductibles and covering such risks as is customarily carried by companies engaged in similar businesses and owning similar properties in the localities where Borrower operates.

(j) *Ownership of Property.* Borrower has good and marketable title to, or valid and subsisting leasehold interests in, its properties and assets, including all property forming a part of the Collateral, and there is no Lien upon or with respect to any of such properties or assets, including any of the Collateral, except for Permitted Liens.

(k) *Solvency; Bankruptcy*

(i) .. Borrower is not Insolvent at the time of, and will not be rendered Insolvent after giving effect to this Agreement.

(ii). Borrower is not in bankruptcy, and Client Key Principals do not contemplate placing Borrower in bankruptcy or seeking protection under any bankruptcy, insolvency or orderly liquidation law.

(l) *Compliance with Laws.* Borrower is in compliance with all material laws, rules, regulations, orders and decrees which are applicable to it or its properties.

(m) *Location.* Borrower's (i) chief executive office and principal place of business (as of the date of this Agreement), (ii) jurisdiction of organization and organizational identification number and (iii) other locations where Borrower conducts any material business or keeps any material portion of the Collateral (as of the date of this Agreement), are each as previously disclosed to Lender in the Final Loan Request as specified in Exhibit C. Borrower's exact legal name is as set forth in its signature to this Agreement.

(n) *Collateral.* Borrower has rights in or the power to transfer the Collateral, and Borrower is the sole and complete owner of the Collateral, free from any Lien other than Permitted Liens. Lender has a first priority (subject to Permitted Liens) security interest in the Collateral and such first priority security interest is perfected, in the case of any Collateral in which a security interest may be perfected by filing a UCC-1 financing statement under Article 9 of the UCC.

(o) *Financial Statements and Projections.* All financial statements of Borrower (including, without limitation, any balance sheets, income statements and statements of shareholders' equity and cash flows) delivered to Lender on or prior to the date hereof are complete and correct and fairly present the financial condition of Borrower as of the dates thereof and the results of operations of Borrower for the periods covered by such statements, subject to normal year-end adjustments and the absence of notes. Any and all financial projections and forecasts delivered to Lender on or prior to the date hereof represent Borrower's best estimates and assumptions as to future performance, which Borrower believes in good faith to be fair and reasonable as of the time made in light of current and reasonable foreseeable business conditions.

(p) *Disclosure.* None of the representations or warranties made by Borrower in this Agreement or any other Loan Document or other item of information with respect to Borrower (including each exhibit or report furnished by or on behalf of Borrower to Lender in connection with this Agreement or any other Loan Document) contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they are made, not misleading.

(q) *Set-off; Counterclaim.* To the best of Borrower's knowledge, there is no claim, defense, counterclaim or set-off which could be asserted by or is available to Borrower against Lender.

(r) *No Event of Default* - no Event of Default has occurred and is continuing.

SECTION 6 Affirmative Covenants. So long as any of the Obligations remain unsatisfied (other than contingent indemnification Obligations for which no claim has been made), Borrower agrees that:

(a) *Preservation of Existence, Etc.* Borrower shall maintain and preserve its legal existence, its rights to transact business and all other rights, franchises and privileges necessary or desirable in the normal course of its business and operations and the ownership of its properties.

(b) *Taxes.* Borrower shall pay and discharge all taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of Borrower, except to the extent such taxes, fees, assessments or governmental charges or levies, or such claims, are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP.

(c) *Insurance.* Borrower shall carry and maintain in full force and effect, at its own expense and with financially sound and reputable insurance companies, fire and other risk insurance, liability insurance, in each case, in such amounts, with such deductibles and covering such risks as is customarily carried by companies engaged in the same or similar businesses and owning similar properties in the localities where Borrower operates. All insurance policies required under this section shall name Lender as an additional named insured and as a lender loss payee. Any proceeds of insurance referred to in this section which are paid to Lender shall be, at the option of Lender in its sole and absolute discretion, either (i) applied to rebuild, restore or replace the damaged or destroyed property, or (ii) applied to the payment or prepayment of the Obligations.

(d) *Legal Compliance.* Borrower shall comply in all material respects with the requirements of all applicable laws, rules, regulations and orders of any court or governmental department, commission, board, bureau, agency, or other instrumentality, domestic or foreign, and the terms of any indenture, contract or other instrument to which it may be a party or under which it or its properties may be bound.

(e) *Maintenance of Properties.* Borrower shall maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other entities of similar character and size, ordinary wear and tear excepted.

(f) *Preservation of Collateral.* Borrower shall do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

(g) *Lender's Interest in Collateral.* Borrower shall not remove any Collateral from any location previously disclosed to Lender in the Final Loan Request or any other location without Lender's prior written consent, except for relocations (i) for maintenance and repair or transportation to another permitted location or (ii) of vehicles. Borrower shall maintain Lender's first priority (subject to Permitted Liens) security interest in the Collateral and ensure that Lender's first priority security interest remains perfected, in the case of any Collateral in which a security interest may be perfected by filing a UCC-1 financing statement under Article 9 of the UCC.

(h) *Inspection Rights.* Borrower shall at any reasonable time with reasonable notice permit Lender or its agents or representatives to visit and inspect any of Borrower's property and to examine and make copies of and abstracts from the books and records of Borrower and to discuss the business affairs, finances and accounts of Borrower.

(i) *Notices.* Borrower shall provide Lender with prior written notice of: (A) any change in its name or any name under which Borrower does business; (B) any change in its registration as an organization (or any new such registration); (C) any change in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading; (D) any change in its jurisdiction of organization.

Borrower shall promptly, upon acquiring or giving notice, or obtaining knowledge thereof, as the case may be, provide Lender with notice of:

- (i) the filing of a petition for bankruptcy relief by or against Borrower or any affiliate of Borrower, or by or against any Debtor;
- (ii) any Debtor assertion of a claim or defense to payment of a Purchased Receivable;
- (iii) the issuance of any credit adjustment or the reissuance of an Invoice with respect to a Purchased Receivable;
- (iv) the occurrence of any Event of Default, specifically stating that an Event of Default has occurred and describing such default in reasonable detail, the circumstances giving rise thereto and any action that Borrower is taking or proposes to take to remedy the same;

- (v) the filing or threatened filing of Material Litigation involving or affecting Borrower or any Affiliate of Borrower or any of their respective properties;
- (vi) Borrower's default under a Material Obligation, or if Borrower or any affiliate of Borrower is requested or otherwise enters into a credit related forbearance or similar agreement with any creditor;
- (vii) the existence or purported existence of any Lien over any part of the Borrower Collateral other than Permitted Liens, specifying any action Borrower is taking or proposes to take in respect of or to release such Lien;
- (viii) any circumstance those results in Borrower becoming a "restricted person" under the Anti-Terrorism Laws;
- (ix) Borrower's receipt of a notice from the IRS or another tax authority regarding a threat to levy or file a lien.

(j) *Reporting.* Borrower shall furnish to Lender:

(i) within one hundred twenty (120) days after the end of each fiscal year, the previous year-end unaudited financial statements of Borrower and its subsidiaries, if any, on a consolidated basis, consisting of balance sheets and statements of income and cash flow, which financial statements (if required by Payplant) shall be prepared in accordance with the accounting standards in the Borrower's country. E.g. GAAP in US; and

(ii) within forty five (45) days after the end of each quarter, the year-to- date unaudited financial statements of Borrower and its subsidiaries, if any, containing the Borrower's balance sheet, income statement, statement of cash flows, accounts receivable aging, accounts payable aging and such information as Payplant may reasonably request.

The financial statements referred to in paragraphs (i) and (ii) above shall be accompanied by a Certificate from a Client Key Principal certifying that (i) such financial statements present fairly (if required by Payplant, in accordance with GAAP on an accrual basis subject to normal adjustments) the financial position, results of operations and statements of cash flow of Borrower on a consolidated basis, as of the dates thereof, (ii) any other information presented is true, correct and complete in all material respect, and (iii) there are no Events of Default or other events that, with notice, the passage of time and failure to cure, may result in an Event of Default.

(iii) such other statements, lists of property and accounts, budgets, forecasts, projections, reports, or other information respecting the operations, properties, business or condition (financial or otherwise) of Borrower (including with respect to the Collateral) as Lender may from time to time reasonably request.

(k) *Commercial Tort Claims.* If Borrower acquires any commercial tort claim, Borrower shall promptly deliver to Lender a written description of such commercial tort claim and shall deliver a written agreement, granting to Lender a perfected security interest in all of its right, title and interest in and to such commercial tort claim, as security for the Obligations.

(l) *Bank Account Monitoring*: Borrower shall provide online *read-only* access to Borrower's Designated Bank Accounts to Lender.

(m) *Existing loans* - all existing lenders to the Borrower will be junior to Payplant.

(n) *Receivables Financing Obligation* – unless paid earlier, Borrower shall pay off this Loan by selling future Receivables to Lender under the Payplant Client Agreement signed between the parties on [•] (“Payplant Client Agreement”).

(o) Disputes, Chargebacks and Credit Adjustments

(i). Borrower shall notify Lender in writing within three (3) Business Day (x) should an Debtor subsequently return purchased goods to Borrower for credit, or (y) should an Debtor become entitled to or claim a credit adjustment against any obligation to Borrower, or (z) should an Debtor dispute any amount owed to Borrower or attempt to set off any other amount that Borrower may owe to Borrower against the Debtor's payment obligations to Borrower.

(ii). Any failure on the part of Seller to comply with the requirements of **Sections 6 (o) (i)** above shall give rise to an Event of Default under **Section 8** of this Agreement.

(p) For any invoices and purchase orders financed by Payplant, Borrower shall pay third-party vendors immediately on receipt of funds from Payplant. For other accounts payable, Borrower shall make best effort to make timely payments.

SECTION 7 Negative Covenants. So long as any of the Obligations remain unsatisfied (other than contingent indemnification Obligations for which no claim has been made), Borrower agrees that:

(a) *Indebtedness.* Borrower shall not create, incur, assume or otherwise become liable for or suffer to exist any indebtedness for borrowed money without prior written consent, other than: (i) the Obligations; (ii) Indebtedness of the Borrower existing on the date hereof and disclosed to the Lender in writing or extensions, renewals and refinancings of such indebtedness (provided that the principal amount of such Indebtedness being extended, renewed or refinanced does not increase and the terms thereof are not modified to impose more burdensome terms upon Borrower); and (iii) capital leases or other Indebtedness incurred solely to acquire equipment, computers, software or implement tenant improvements without the prior written permission of Lender.

(b) *Liens.* Borrower shall not create, incur, assume or suffer to exist any Lien upon or with respect to any of its properties, revenues or assets, whether now owned or hereafter acquired, other than Permitted Liens.

(c) *Investments.* Without prior written consent, Borrower shall not directly or indirectly purchase or otherwise acquire the capital stock or other equity interests, assets (constituting a business unit), obligations or other securities of or any interest in any Person, or extend any credit to, guarantee the obligations of or make any additional investments in any Person, or make or hold any other loan to or other investment in any Person, other than (i) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business and (ii) short term, investment grade money market instruments, in accordance with Borrower's usual and customary treasury management policies.

(d) *Restricted Payments.* Borrower shall not declare or pay any dividends in respect of Borrower's capital stock or other equity interest, or purchase, redeem, retire or otherwise acquire for value any of its capital stock or other equity interests now or hereafter outstanding, return any capital to its shareholders as such, or make any distribution of assets to its shareholders as such, or permit any of its Subsidiaries to purchase, redeem, retire, or otherwise acquire for value any stock of Borrower.

(e) *Burdensome Agreements.* Borrower shall not enter into or cause, suffer or permit to exist any agreement with any Person which prohibits or limits the ability of Borrower to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired.

(f) *Nature of Business.* Borrower shall not engage in any material line of business substantially different from those lines of business carried on by it and previously disclosed to Lender prior to the date hereof.

(g) *Fundamental Changes.* Borrower shall not merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets without the Lender's consent which shall not be unreasonably withheld unless the Lender will be paid off as part of the change.

(h) *Asset Dispositions.* Borrower shall not sell, transfer, lease, or otherwise dispose of, or part with control of (whether in one transaction or a series of transactions) any assets (including any shares of stock in any Person) without the Lender's consent which shall not be unreasonably withheld, except (i) sales or other dispositions of inventory, and the license, sublicense and grant of distribution and similar rights, in the ordinary course of business; (ii) sales or other dispositions of assets which have become worn out or obsolete or which are promptly being replaced; and (iii) liquidation or dissolution of any dormant or shell Subsidiary, notice of which will be provided to Lender by Borrower.

(i) *Affiliate Transactions.* Borrower shall not, directly or indirectly, enter into any transaction with any affiliate that is on terms less favorable to the Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

(j) *Use of Funds.* Borrower shall not use any of the proceeds of the Loan directly or indirectly (i) to pay any post-secondary educational expenses, including, without limitation, any tuition, fees, books, supplies, room and board, transportation or similar or related expenses, (ii) to purchase or carry any securities, (iii) to fund or otherwise support any illegal activities, (iv) for personal, family, household, or agricultural purposes, or (v) for any other Person or purpose or otherwise inconsistent with the purpose(s) set forth in the Loan Request corresponding to such Loan.

(k) *USA Patriot Act*. Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower or (b) fail to provide documentary and other evidence of Borrower's or its corporate officers' identities as may be requested by Lender at any time to enable Lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. §5318.

(l) *Diversion of Funds* - Borrower shall not Divert all or any portion of funds to be paid into the Lender controlled Lockbox Account or otherwise due to Lender. Consistent with the stated intent of the Parties that all purchases and sales of Purchased Receivables on the Platform result in True Sales for all purposes, Borrower recognizes and agrees that, following Consummation, Borrower shall have no rights to or interests whatsoever in Collection Proceeds of Purchased Receivables and no right to possess or to use such collected funds for any purpose.

(m) *Additional Financing* - Borrower shall notify Payplant within five (5) business days of raising additional financing, while Payplant's advances are outstanding.

SECTION 8 Events of Default. Any of the following events which shall occur shall constitute an "*Event of Default*":

(a) Borrower shall fail to pay when due any amount of principal, interest or the Origination Fee hereunder or other amount payable hereunder.

(b) Any representation or warranty by Borrower under or in connection with any Loan Document or any other agreement or document delivered to Lender shall prove to have been incorrect in any material respect when made or deemed made.

(c) Borrower shall fail to perform or observe any term, covenant or agreement contained in **Section 6(a), (c) or (g)**, or **Section 7** or any other term, covenant, or agreement the breach of which Lender determines is not capable of being remedied.

(d) Borrower shall fail to perform or observe any other obligation of Borrower contained in any Loan Document and any such failure shall remain un-remedied for a period of 10 days from the occurrence thereof (unless Lender determines that such failure is not capable of remedy).

(e) (i) Borrower shall admit in writing its inability to, or shall fail generally or be generally unable to, pay its debts (including its payrolls) as such debts become due, or shall make a general assignment for the benefit of creditors, (ii) Borrower consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property, or (iii) any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed for Borrower without the application or consent of such Person and the appointment continues un-discharged or un-stayed for thirty (30) calendar days, or any proceeding under any Debtor Relief Law relating to any such person or to all or any material part of its property is instituted without the consent of such Person and continues un-dismissed or un-stayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding;

(f) Borrower shall (i) liquidate, wind up or dissolve (or suffer any liquidation, wind-up or dissolution), (ii) suspend its operations other than in the ordinary course of business, or (iii) take any action to authorize any of the foregoing actions or events.

(g) Borrower shall fail (i) to make any payment of any principal of, or interest or premium on, any indebtedness for borrowed money (other than the Loan), in an aggregate amount (including undrawn committed or available amounts), when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness as of the date of such failure, or (ii) to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, and such failure shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, the maturity of such indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

(h) (i) A final judgment or order for the payment of money (including from the IRS or other tax authorities) which is not fully covered by third-party insurance shall be rendered against Borrower, or (ii) any non-monetary judgment or order shall be rendered against Borrower which has or could reasonably be expected to have a Material Adverse Effect on Borrower; and there shall be any period of 30 consecutive days during which such judgment continues unsatisfied or during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(i) Intentionally left blank

(j) Any of the Collateral Documents shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or cease to create a valid and perfected first priority (subject to Permitted Liens) Lien in any of the Collateral purported to be covered thereby, or Borrower or any other Person shall contest in any manner the validity or enforceability thereof, or Borrower or any other Person shall deny that it has any further liability or obligation thereunder.

(k) There is a change in the record or direct or indirect beneficial ownership or control of more than 30% of the voting capital stock of and other voting ownership interests in Borrower compared to such ownership as of the date of this Agreement without the prior written consent of Lender.

(l) Any Diversion of funds if the amount so diverted is not paid and remitted to Lender in Good Funds within three (3) Business Days.

(m) Client Key Principal Repudiation. A Client Key Principal of Borrower attempts to disavow or otherwise repudiate the Client Key Principal's liability to Lender as provided in **Section 13 (p)** of this Agreement.

(n) Failure by Borrower to notify Lender as required in Section 6 (o).

SECTION 9 Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default, Lender may without notice or demand declare the entire unpaid principal amount of the Loans, all interest accrued and unpaid thereon and all other amounts payable hereunder to be forthwith due and payable (*provided that*, upon the occurrence of any Event of Default under **Section 8(e)** or **(f)**, such acceleration shall be automatic), whereupon all unpaid principal of the Loans, all such accrued interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest, notice of protest and non-payment, notice of default, notice of acceleration or intention to accelerate, or further notice of any kind, all of which are hereby expressly waived by Borrower, and exercise any or all of Lender's rights and remedies under the Loan Documents, the UCC and other applicable law.

(b) For the purpose of enabling Lender to exercise its rights and remedies under this **Section 9** or otherwise in connection with this Agreement, Borrower hereby grants to Lender an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to Borrower) to use, license or sublicense any intellectual property Collateral, while balances are owed to Lender.

(c) Lender shall not have any obligation to clean up or otherwise prepare the Collateral for sale. Lender has no obligation to attempt to satisfy the Obligations by collecting them from any other Person liable for them, and Lender may release, modify or waive any Collateral provided by any other Person to secure any of the Obligations, all without affecting Lender's rights against Borrower. Borrower waives any right it may have to require Lender to pursue any third Person for any of the Obligations. Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Lender may resell the Collateral and Borrower shall be credited with the proceeds of the sale.

(d) The cash proceeds actually received from the sale or other disposition or collection of Collateral, and any other amounts received in respect of the Collateral the application of which is not otherwise provided for herein, shall be applied *first*, to the payment of the reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) of Lender and Manager in exercising or enforcing its rights hereunder and in collecting or attempting to collect any of the Collateral, and to the payment of all other costs, fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) reimbursable by Borrower under the Loan Documents and indemnification obligations of Borrower under the Loan Documents; and *second*, to the payment of the Obligations. Any surplus thereof which exists after payment and performance in full of the Obligations shall be promptly paid over to Borrower or otherwise disposed of in accordance with the UCC or other applicable law. Borrower shall remain liable to Lender for any deficiency which exists after any sale or other disposition or collection of Collateral.

(e) If Borrower shall fail to do any act or thing which it has covenanted to do under this Agreement or any of the Loan Documents, Lender may (but shall not be obligated to) do the same or cause it to be done either in the name of Lender or in the name and on behalf of Borrower, at Borrower's expense, and Borrower hereby irrevocably authorizes Lender so to act.

(f) To the extent that Lender may not have already done so, Lender may send appropriate notifications to Borrower's Registered Debtors under **Sections 9-406(a)** and **9-703(a)** of the UCC, instructing or reinstructing such Registered Debtors to make all of their Invoice Payments to Lender at the Lockbox Account address, and not to pay Borrower directly.

(g) Lender may then proceed to collect all Receivables from the Debtors. In this respect, Borrower agrees that Lender may compromise, settle, extend, or renew for any period (whether or not longer than the original period) any Registered Debtor Receivable or indebtedness thereunder or evidenced thereby, or release all or any part of said indebtedness, without affecting the liability of Borrower to Lender. To that end, Borrower irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact, coupled with an interest, with full power of substitution, to take any and all such actions and any and all other actions permitted hereby, either in Borrower's name or in Lender's name.

(h) Lender shall have the right, at any time before or after the occurrence of an Event of Default, to apply any and all amounts that Lender may then or thereafter owe to Borrower, as well as to apply any funds belonging to Borrower that are in Lender's possession or under Lender's control (including Borrower funds then and thereafter on deposit in the Lockbox Account), to the payment and satisfaction, whole or in part, of Borrower's obligations to Lender.

(i) Borrower shall remain liable for any deficiency that results should the proceeds of the Borrower Collateral not be sufficient to fully pay and satisfy Borrower's then obligations in favor of Lender.

(j) Except as may be prohibited by Applicable Law, all of Lender's Enforcement Rights, whether provided under this Agreement, or available under Applicable Law, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, specifically and without limitation, nothing under this Agreement shall obligate Lender to pursue Enforcement Rights against the Borrower Collateral before filing a collection action against Borrower to collect any and all amounts then owed to Lender.

- (k) Lender shall have the right to file suit or commence arbitration against Borrower to enforce payment of all amounts then or thereafter owed by Borrower, including unpaid Collection Expenses; and
- (l) Lender shall have the right to file suit against or to otherwise enforce payment against each obligated Debtor to collect payment of the Debtor's Invoice Payment Obligations and to exercise whatever additional Enforcement Rights that may be available under Applicable Law.
- (m) Borrower shall be responsible for payment of, and shall reimburse Lender for Lender's Collection Expenses and reasonable attorneys' fees, court cost and out-of-pocket expenses (including third-party collection agency fees) that may be incurred in attempting to collect and in collecting amounts due by Borrower and by Borrower's Debtors.
- (n) Following the occurrence of, and so long as an Event of Default continues to exist, Borrower shall at Lender's reasonable request meet with a Lender representative at the Borrower's main office from time-to-time to review Borrower's billings and collections, financial documents and business activities. Borrower further recognizes and agrees failure of Borrower to comply with this **Section 16(h)** shall result in irreparable harm to Lender to obtain judicially ordered injunctive relief against Borrower as provided under Applicable Law.
- (o) Unless Lender otherwise agrees, all enforcement actions against Borrower shall be brought in a court in California, or in arbitration as provided in **Section 13 (n)** of this Agreement.

SECTION 10 Certain Waivers. Borrower waives, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Obligations; (ii) any right to require Lender (A) to proceed against any Person, (B) to exhaust any other collateral or security for any of the Obligations, (C) to pursue any remedy in Lender's power, or (D) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests, notices of dishonor, notice of acceleration, or notice of intent to accelerate in connection with any of the Collateral; and (iii) all claims, damages, and demands against Lender arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral.

SECTION 11 Expenses. Borrower agrees to pay on demand all fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) of Lender and Manager in connection with any Event of Default, any enforcement or attempted enforcement of, and the protection or preservation of any rights under, any Loan Document and any out-of-court workout or other refinancing or restructuring or in any bankruptcy case, including, without limitation, any and all losses, costs, and expenses sustained by Lender or Manager as a result of any failure of Borrower to perform or observe its obligations contained in any Loan Document.

SECTION 12 Indemnification. Borrower shall indemnify and hold harmless Lender, Manager, their agents and affiliates and each of their respective officers, directors, employees, agents, partners, attorneys, accountants, trustees and advisors (collectively, the “*Indemnitees*”) from and against any and all liabilities, losses, damages, claims and expenses (including reasonable attorney’s fees and expenses) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, instrument or document delivered in connection therewith or the transactions contemplated hereby or thereby, any Loan or the use or proposed use of the proceeds therefrom, or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; *provided that* such indemnity shall not, as to any Indemnitee, be available to the extent such liabilities, losses, damages, claims and expenses result solely from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final, non-appealable court of competent jurisdiction. **BORROWER AND LENDER EXPRESSLY INTEND THAT THE FOREGOING INDEMNITY SHALL COVER, AND THAT BORROWER SHALL INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST, COSTS, EXPENSES AND LOSSES SUFFERED AS A RESULT OF THE NEGLIGENCE OF ANY INDEMNITEE.**

SECTION 13 Miscellaneous Terms.

(a) *Amendment.* No amendment or waiver of any provision of this Agreement or any other Loan Document, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) *Notices.* All notices and other communications to Borrower may be given by email to Borrower’s registered email address provided to Lender or posted to the Platform and each such notice or other communication shall be deemed effective and received upon transmission. Borrower acknowledges that it has sole access to such email account and that communications sent to such account may contain confidential or other sensitive information. Borrower shall give Lender prior written notice of any change in such registered email address to be used for notices and other communications. If applicable law requires that Lender give Borrower notice by other means, such notice shall be sent by overnight courier service or by certified or registered mail, postage pre-paid, to the address provided by Borrower to Lender and shall be deemed received, in the case of overnight courier service, on the next Business Day after delivery to such service, and in the case of mailing, on the third day after mailing (or, if such day is a day on which deliveries of mail are not made, on the next succeeding day on which deliveries of mail are made).

(c) *Integration.* This Agreement and the other Loan Documents reflect the entire agreement between Borrower and Lender with respect to this Loan and supersede any prior agreements, commitments, drafts, communication, discussions and understandings, oral or written, with respect to this Loan.

- (d) *Electronic Signature.* This Agreement and any other Loan Document may be executed by electronic signature as set forth in the Terms of Use delivered to Borrower.
- (e) *No Waiver.* No failure on the part of Lender or Manager to exercise, and no delay in exercising, any right, remedy, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement and the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to Lender or Manager.
- (f) *Limitation on Liability; Waiver.* Neither party shall be liable for any lost profits or special, exemplary, consequential or punitive damages and Borrower hereby waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding any special, exemplary, punitive or consequential damages.
- (g) *Payments Set Aside.* To the extent that any payment by or on behalf of Borrower is made to Lender, or Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Lender in its discretion) to be repaid to a trustee, receiver or any other Person, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.
- (h) *Severability.* Whenever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement or any other Loan Document shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement, or the validity or effectiveness of such provision in any other jurisdiction.
- (i) *Assignment.* Borrower shall not have the right to assign its rights or obligations under this Agreement or any other Loan Document or any interest herein or therein without the prior written consent of Lender. Lender may sell, assign, transfer or grant participations in all or any portion of Lender's rights and obligations hereunder without limitation. In the event of any such assignment, the assignee shall be deemed the "Lender" for all purposes of this Agreement and any other documents and instruments relating hereto with respect to the rights and obligations assigned to it. Borrower agrees that in connection with any such grant or assignment, Lender may deliver to the prospective participant or assignee any relevant information relating to Borrower.
- (j) *Binding Effect.* This Agreement and each other Loan Document shall be binding upon, inure to the benefit of and be enforceable by Borrower, Lender and their respective successors and assigns.

(k) *GOVERNING LAW*: THIS AGREEMENT AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE EXCLUSIVELY GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA EXCLUDING ANY CONFLICT OF LAW RULES THAT WOULD LEAD TO THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. ALL AGREEMENTS BY AND BETWEEN THE PARTIES SHALL BE DEEMED TO HAVE BEEN NEGOTIATED, CONTRACTED FOR, ACCEPTED, CONSUMMATED AND PERFORMED IN CALIFORNIA.

(l) *Forum Selection; California Courts; Waiver of Right to Class or Multiparty Recovery*

(i). Subject to the right of any Party to invoke compulsory arbitration under section 13 (n), any legal action or proceeding by or against any Party to this Agreement, with respect to any claim arising out of this Agreement, or any relationship between the Parties, shall be brought in a California court. Should the Borrower file suit against Buyer, Issuer or Originator before any court other than the foregoing California courts, Borrower shall be responsible for Buyer, Issuer and Originator's legal costs and other expenses in attempting to remove or otherwise relocate such litigation to California.

(ii). Each Party (including each Guarantor) accepts for itself and with respect of its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement, or any relationship between the Parties.

(iii). Each Party (including each Guarantor) hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with this Agreement by any means permitted by Applicable Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address provided to and on file with Lender (and shall be effective when such mailing shall be effective, as provided therein). Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(iv). Each Party (including each Guarantor) hereby irrevocably waives any objection and any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of *forum non conveniens* or improper venue or any other grounds that it may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(v). Borrower waives the right to bring, assert, or participate in a class action or other multiparty litigation asserting any claim or cause of action against Lender, whether related to this Agreement, or otherwise. The foregoing is a bargained-for covenant, which has been knowingly and willingly agreed to by all Parties.

(m) Waiver of Jury Trial:

FOR THE PURPOSES OF THIS AGREEMENT, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, WITH ANY OTHER LENDER AGREEMENT, WITH ANY COURSE OF CONDUCT, WITH ANY COURSE OF DEALING, WITH ANY STATEMENTS (WHETHER VERBAL OR WRITTEN), OR WITH ANY ACTIONS OR OMISSIONS OF ANY PARTY HERETO OR OF ANY OTHER PERSON RELATING TO THIS AGREEMENT. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

(n) Arbitration:

The Parties agree to mediate prior to arbitration.

(i) Compulsory Binding Arbitration: The Parties agree that any Party may elect to arbitrate and require any other Party to arbitrate any claim brought by or against or involving the rights of any Party.

(ii) Limitations If any Party elects to arbitrate a claim, no Party shall have the right to (i) have a court or jury decide the claim, (ii) engage in pre-arbitration discovery to the same extent that the Party would have the right to do in court, (iii) participate in a class action in court or in arbitration, either as a class representative or a class member; or (iv) join or consolidate the claim with claims of any other Person. Notwithstanding the foregoing, Lender shall have the right to exercise Enforcement Rights against a Borrower by filing suit before a court of competent jurisdiction, or otherwise, and nothing under this Agreement shall in any way impair or otherwise affect the Enforcement Rights available to Lender following an Event of Default.

(iii) Election to Arbitrate: To commence arbitration, the electing Party must give written notice to the other Party of an election to arbitrate. This notice may be given within ninety (90) days after a lawsuit has been filed, and may be given in papers or motions in the lawsuit. If an arbitration election notice is given, the claim shall be resolved by arbitration under this **section 13 (n)** and the American Arbitration Association rules for large, complex commercial disputes then in effect. The Arbitration Administrator need not be the American Arbitration Association. The electing Party may select the Arbitration Administrator in its notice electing to arbitrate or by giving written notice to the other Party within twenty (20) days thereafter. The arbitrator will be selected under the Arbitration Administrator's rules.

(iv) Location and Costs: Any arbitration hearing shall take place in California. The Party demanding arbitration shall be responsible for the initial payment of all filing fees and expenses of the Arbitration Administrator. The prevailing party shall recover its reasonable and necessary attorney's fees from the non-prevailing party.

(v) Effective Arbitration Award: Any court with jurisdiction may enter judgment upon the arbitrator's award, which will be final and binding.

(vi) Mandatory Application of California Law; Arbitrator Authority

a). Consistent with the choice of law provisions of section 13 (k) above, the arbitrator shall apply substantive California law (and Federal law to the extent applicable) to all substantive issues presented in arbitration. The arbitrator shall further apply all applicable statutes of limitation (prescription and preemption principles in California) and applicable privilege rules, as well as rules of procedure and evidence consistent with the FAA, the Arbitration Administrator's rules and the rules of the American Arbitration Association.

b). The arbitrator shall be authorized to award all remedies available in an individual lawsuit including awards of compensatory and statutory (but not punitive or exemplary) damages, declaratory, and injunctive and other equitable relief.

c). Upon the request of any Party, the arbitrator shall provide written findings of fact and conclusions of law explaining the basis of the award.

(vii) Injunctive Relief Outside of Arbitration

a). In the event any Party fails to perform, observe or discharge any of its obligations under this, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy of law may prove to be inadequate relief to the Party (*i.e.*, the Party to which the obligation is owed). Therefore, the Party, if the Party so requests, shall be entitled to apply for temporary and permanent injunctive relief as may be granted by the court without the necessity of proving that actual damages are not an adequate remedy.

b). Notwithstanding anything in this Agreement, a Party may seek to obtain injunctive relief before a court of law with any claim for monetary damages remaining subject to elective mandatory arbitration under section 13 (n).

(o) Any waiver of a breach of any provision of this Agreement will not be a waiver of any other breach. Failure or delay by either party to enforce any term or condition of this Agreement will not constitute a waiver of such term or condition. If any part of this Agreement is determined to be invalid or unenforceable under applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid enforceable provision that most closely matches the intent of the original provision, and the remainder of the Agreement shall continue in effect.

(p) Client Key Principal Personal Liability for Diversion of Funds and Other Limited Acts:

(i). Borrower agrees that Client Key Principals shall be personally liable for losses sustained by Lender as a consequence of (i) any Diversion of funds that are not immediately repaid to Lender, or (ii) acts of fraud by Borrower or by any Client Key Principal, or (iii) any attempt by Borrower or by a Client Key Principal to in any way interfere with Lender's collection of Purchased Receivables from an Debtor, or to interfere with Payplant security rights under this Agreement.

(ii). Borrower and each Client Key Principal agrees that Payplant may file suit against Client Key Principals along with Client for any of the reasons mentioned in **(i)** above, before a Court in California, as provided in **Section 13**.

(iii). As a result of Borrower signing this agreement, each Client Key Principal shall conclusively be deemed to have accepted Client Key Principal potential personal liability to Lender (limited to the circumstances described in **(i)** above), and to have consented to the personal jurisdiction of California courts and to the waiver of trial by jury provisions of **Sections 13 (k) and 13 (m)** above.

(q) Requirement That All Registered Debtor Invoice Payments Be Paid into the Lender Controlled Lockbox Account

(i). Borrower agrees that Lender may instruct each and every one of Borrower's Registered Debtors to pay all Invoice Payments under Receivables initially due to Borrower into a designated Lockbox Account maintained and controlled by Lender, and further instructing the Debtor not to pay Borrower directly. Borrower further agrees to re-notify Debtors at Lender's request should Lender's Lockbox Account details change in the future.

THIS REQUIREMENT APPLIES TO PAYMENT OF ALL INVOICES DUE FROM REGISTERED DEBTORS TO BORROWER, AND IS NOT LIMITED TO INVOICE PAYMENTS DUE UNDER RECEIVABLES SOLD ON THE PLATFORM. ALL REGISTERED DEBTOR INVOICE PAYMENTS, INCLUDING INVOICE PAYMENTS UNDER BORROWER'S OTHER RECEIVABLES NOT SOLD OVER THE PLATFORM, ARE REQUIRED TO BE PAID INTO THE LENDER CONTROLLED LOCKBOX ACCOUNT WITHOUT EXCEPTION.

(ii). Borrower agrees that Lender may re-notify the Registered Debtor as Lender may deem to be necessary, making it clear to the Debtor that the Debtor is required to make all Invoice Payments otherwise due to Borrower into the Lockbox Account.

(iii). Borrower shall further include appropriate written instructions on each Invoice sent to a Registered Debtor instructing the Debtor to make its Invoice Payments into the Lender controlled Lockbox Account, with Borrower removing any contrary written instructions to pay Borrower directly.

(iv). Once a Registered Debtor is instructed to make Invoice Payments into the Lender controlled Lockbox Account, Borrower shall have no right whatsoever to counter-instruct the Debtor to pay Borrower directly or to pay an Affiliate of Borrower or some other third Person.

(v). Once a Registered Debtor is instructed to make Invoice Payments into the Lender controlled Lockbox Account, Borrower shall have no right whatsoever to receive Invoice Payments from the Debtor. To the extent that Borrower receives any Invoice Payment from a Registered Debtor, whether due to Debtor error or otherwise, Borrower shall notify Lender of such occurrence within two (2) Business Days and turn such payment over to Lender in the form received within three (3) Business Days, transferring funds within 3 business days, and if received via check, without depositing the check into a Borrower deposit account. In the interim, and at all times while Borrower may possess or have control over amounts received from Registered Debtors, Borrower shall hold such funds "in trust" for and on behalf of Lender, with Borrower having full fiduciary duties and obligations to segregate and safeguard such funds.

(vi). Borrower agrees to pay Lender a Misdirected Payment Fee in the amount equal to 1% of each Invoice Payment that a Registered Debtor pays to Borrower, or to an Affiliate of Borrower, if after the Registered Debtor receives notice from Lender or Borrower to make its Invoice Payments into the Lender controlled Lockbox Account, and Borrower does not forward such misdirected payment to Payplant by no later than three (3) Business Days following receipt.

(vii). Borrower recognizes, confirms and agrees that Lender have or will have a perfected UCC Security Interest in all of Borrower's Purchased Receivables sold on the Platform, and that any failure on the part of Borrower to comply with the requirements of **Sections 13 (q) (iv) and (v)** above shall constitute a Diversion of funds due to Lender and an act of civil conversion under Applicable Law, giving rise to an Event of Default under **Section 8** of this Agreement.

(r) *Lender Authorized to Indorse Borrower's Name on All Instruments Deposited into the Lockbox Account*: Borrower irrevocably authorizes Lender to indorse Borrower's name on all checks, drafts and instruments deposited into the Lockbox Account for Borrower's account. Borrower forever waives any claim that Borrower may now or in the future have against Lender based on wrongful or unauthorized endorsement of Borrower's name on any check, draft or instrument deposited into the Lockbox Account.

(s) *Notification*:

(i) Borrower agrees that Lender may, at any time, and at Lender's sole election, notify all or selected Registered Debtors of the fact that their Invoice Payment Obligations have been or may be sold on the Platform, or otherwise encumbered in favor of Lender, and Lender shall have the further right to instruct or reinstruct such Registered Debtors to make their respective Invoice Payments directly to Payplant at the Lockbox Account address.

(ii) All such notifications shall be made pursuant to **Sections 9-406(a) and 9-607(a)** of the UCC.

(iii) Once Lender notifies a Registered Debtor to make its Invoice Payments directly to Lender, Borrower shall have no right to counter-instruct the Debtor to make its Invoice Payments to Borrower, or to an Affiliate of Borrower, or to any other third person. Any attempt by Borrower to do so shall constitute a Diversion of funds due to Lender.

SECTION 14 Termination. Upon payment and performance in full of all Obligations (other than contingent indemnification Obligations for which no claim has been made), the security interest created under this Agreement automatically shall terminate and Lender shall promptly execute and deliver to Borrower such documents and instruments reasonably requested by Borrower as shall be necessary to evidence termination of all security interests given by Borrower to Lender hereunder.

SECTION 15 Limitation on Liability. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANOTHER FOR ANY LOST PROFITS OR SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, NO PARTY MAKES ANY REPRESENTATION OR WARRANTY TO BORROWER REGARDING THE EFFECT THAT THE AGREEMENT MAY HAVE UPON THE FOREIGN, FEDERAL, STATE OR LOCAL TAX LIABILITY OF THE OTHER.

THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS BETWEEN BORROWER AND LENDER REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower and Payplant have duly executed this Agreement.

Payplant LLC

Signature: /s/ Neerav Berry

Name: Neerav Berry

Title: CEO

Date: _____

Borrower:

Inpixon, formerly known as Sysorex Global:

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon USA, formerly known as Sysorex USA

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon Federal, Inc., formerly known as Sysorex Government Services, Inc.

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

EXHIBIT A: PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, Inpixon Federal Virginia Corporation ("**Borrower**"), HEREBY UNCONDITIONALLY PROMISES TO PAY to the order of Payplant Alternatives Fund, LLC, a Delaware limited liability company ("**Lender**"), or its successors or permitted assigns, the principal sum of Nine Hundred and Fifty Five Thousand Four Hundred and Seventy Two Dollars and Sixty One cents dollars (**\$ 995,472.61**) plus a Due Diligence fee of N/A (\$0.00), or, if less, the aggregate unpaid principal amount of the Loan outstanding under the Loan and Security Agreement referred to below, which sum shall be due and payable in such amounts and on such dates as are set forth in the Loan and Security Agreement via ACH or Wire. Borrower further promises to pay interest on the outstanding principal amount hereof from [•], the Funding Date at the rates, and on the dates, specified in such Loan and Security Agreement.

This Note is referred to in the Loan and Security Agreement, effective as of [•] (as amended, restated, supplemented or otherwise modified from time to time, the **Loan and Security Agreement**"), between Borrower and Lender. Capitalized terms used but not otherwise defined herein have the meanings given to them in the Loan and Security Agreement.

This Note is secured and guaranteed as and to the extent provided in the Loan and Security Agreement and the other Loan Documents. Reference is hereby made to the Loan and Security Agreement and the other Collateral Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more Events of Default specified in the Loan and Security Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided therein.

All parties now or hereafter liable with respect to this Note, whether maker, principal, surety, endorser or otherwise, hereby waive diligence, presentment, demand, protest, notice of protest, notice of acceleration, notice of intent to accelerate, and all other notices of any kind.

Borrower agrees to make all payments under this Note without setoff or deduction and regardless of any counterclaim or defense.

No single or partial exercise of any power under this Note shall preclude any other or further exercise of such power or exercise of any other power. No delay or omission on the part of the holder hereof in exercising any right under this Note shall operate as a waiver of such right or any other right hereunder.

This Note shall be binding on Borrower and its successors and assigns, and shall be binding upon and inure to the benefit of Lender, any future holder of this Note and their respective successors and assigns. THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AND SECURITY AGREEMENT.

The following sections of the Loan and Security Agreement, are adopted and incorporated by reference as though fully set forth herein:

- a. Governing Law: section 13 (k)
- b. Forum Selection: section 13 (l)
- c. Waiver of Jury Trial: section 13 (m)
- d. Arbitration: section 13 (n)
- e. No Punitive or Exemplary Damages: section 15

IN WITNESS WHEREOF, Borrower has duly executed this Note, as of the date written below.

Inpixon, formerly known as Sysorex Global:

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon USA, formerly known as Sysorex USA

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon Federal, Inc., formerly known as Sysorex Government Services, Inc.

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

EXHIBIT B
CLIENT KEY PRINCIPALS

1. Nadir Ali

EXHIBIT C: FINAL LOAN REQUEST

1. Loan Term: maximum of 30 days
2. Loan Purpose: working capital for delivering the customer POs below:

Jefferson County, OH – 21955
Hamilton County Jail, IN – 14384
Outagamie County Sheriff's Department, WI – 123520
Summit County Sheriff, OH - P1703009

EXHIBIT D: ACH DEBIT AUTHORIZATION

Inpixon ("Borrower"), authorizes Payplant LLC ("Lender") to charge/debit the following bank accounts (Designated Accounts) in accordance with the Loan and Security Agreement dated [●] ("Agreement"). Company agrees to notify Lender in writing of any changes in the account information below within two (2) business days. Borrower will not dispute Lender's withdrawals with their bank so long as the transaction corresponds to the terms indicated in the Agreement. Lender agrees to charge the company's account only in accordance with the Agreement.

Inpixon Bank Account:

Checking Saving

Bank Name: _____
Bank Address: _____
Bank ABA#: _____
Bank Account number: _____
Account name: _____
Inpixon USA Bank Account: _____

Checking Saving

Bank Name: _____
Bank Address: _____
Bank ABA#: _____
Bank Account number: _____
Account name: _____
Inpixon Federal, Inc. Bank Account: _____

Checking Saving

Bank Name: _____
Bank Address: _____
Bank ABA#: _____
Bank Account number: _____
Account name: _____

Payplant LLC

Signature: /s/ Neerav Berry

Name: Neerav Berry

Title: CEO

Date: _____

Borrower:

Inpixon, formerly known as Sysorex Global:

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon USA, formerly known as Sysorex USA

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17

Inpixon Federal, Inc., formerly known as Sysorex Government Services, Inc.

Signature: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

Date: 8/14/17



AMMENDED AND RESTATED GEMCAP LOAN AND SECURITY AGREEMENT - PAYPLANT CLIENT AGREEMENT

The Loan and Security Agreement dated as of November 14, 2016 between Gemcap Lending I LLC, a Delaware limited liability company with an address of 24955 Pacific Coast Highway, Suite A202, Malibu, CA 90265 (“Gemcap”) and Inpixon, previously known as Sysorex Global, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISG”), Inpixon USA, previously known as Sysorex USA, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISUSA”) and Inpixon Federal, Inc., previously known as Sysorex Government Services, Inc., a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISGS” and together with ISUSA and ISG, jointly and severally the “Client” or “Borrower”) (“Loan and Security Agreement”), which was purchased by Payplant LLC, a Delaware limited liability company with an address of 2625 Middlefield Road #595, Palo Alto, CA 94306, as an agent of Payplant Alternative Fund LLC, with an address of 2625 Middlefield Road #595, Palo Alto, CA 94306 (collectively “Payplant”) on August 14, 2017 per the Commercial Loan Purchase between Gemcap and Payplant (“Loan Purchase Agreement”) is amended and restated below.

This **Payplant Client Agreement** is entered into by and between **(1)** the undersigned by and between Inpixon, previously known as Sysorex Global, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISG”), Inpixon USA, previously known as Sysorex USA, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISUSA”) and Inpixon Federal, Inc., previously known as Sysorex Government Services, Inc., a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“ISGS” and together with ISUSA and ISG, jointly and severally the “Client”) and **(2) Payplant LLC** a Delaware Limited Liability corporation with an address of 2625 Middlefield Road #595, Palo Alto, CA 94306, on 8/14/17.

PREFACE

A. This Agreement sets forth the understandings of the Parties with respect to: Posting procedures and Client’s additional representations and warranties at time of posting; (iii) Payplant’s right to direct Debtors to pay Collection Proceeds into the Lockbox Account; (iv) other covenants with respect to funds held on deposit in the Lockbox Account; (v) Consummation of sales of Purchased Receivables; (vi) the True Sale effects of such sales; (vii) Client Fees and Client Reimbursable Expenses; (viii) provisions applicable to charge backs and credit adjustments to Client’s Receivables; (ix) Client’s obligation to assist in the collection of Receivables; (xii) Client Remittance Payments; (x) Client’s Repurchase Obligations; (xi) Client late charges; (xii) the potential personal liability of Client Key Principals for certain acts; (xiii) Client’s grant of a security interest in Client’s Receivables and other Client Collateral; (xvii) termination of Client’s registration rights; (xiv) provisions relating to referrals; and (xx) such other matters as included therein.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION Client absolutely, unconditionally and irrevocably agrees to the following:

Section 1. Applicability

This Agreement shall apply to all matters relating to Client's sale of Receivables to Payplant.

Section 2. Accuracy of Data; Authority to Provide Debtor Information

Client shall be solely responsible for the completeness and accuracy of the Client Information and Debtor Information that Client may have provided to Payplant from time to time, with Client representing and warranting to Payplant that such Client Information and Debtor Information is complete and accurate in all material respects at the time provided. Client further represents and warrants to Payplant that Client has the requisite right and authority to provide Debtor Information to Payplant.

Section 3. Payplant Work Product Data

A. Client agrees that Payplant, through its own analysis and data gathering, may compile and formulate Payplant Work Product Data, including but not limited to Payplant's summarized transactional and observational experience regarding Client and Client's Registered Debtors.

B. Client recognizes and agrees that all Payplant Work Product Data shall be the sole and exclusive property of Payplant, and that Payplant shall have the right to sell, resell, distribute and redistribute Payplant Work Product Data for any purpose within Payplant's sole discretion, with Client having no rights or interest therein or in and to any proceeds thereof. Client's and Client's customer information and all financial data are confidential information.

Section 4. Client Information, Debtor Information and Payplant Work Product Data

A. Client agrees to periodically update Client Information and Debtor Information to include such additional information and reports as Payplant may reasonably request.

B. Client further agrees to provide Payplant with such reasonable additional information about Client and Client's business, customers, owners, officers, persons of influence and employees as Payplant may reasonably request from time to time.

C. At the time of posting of a Receivable, Client recertifies and reaffirms to Payplant that the Client Information and Debtor Information that Client previously provided to Payplant is the most current Client Information and Debtor Information available, and accurately reflects Client's and each Registered Debtor's then business and financial condition, and that since the date of Client's most recent Officer Certificate provided to Payplant, no Client Event of Default has occurred or may exist with the passage of time and failure to cure.

Section 5. Posting Procedures

While Client is registered with Payplant and no Client Event of Default exists, Client is authorized to post Client's Eligible Receivables for sale to Payplant. Client shall at all times follow the posting procedures implemented by Payplant from time to time. Client must only post Eligible Receivables that satisfy requirements specified by Payplant. Client shall further cooperate with Payplant by responding to questions and inquiries submitted by Payplant. Payplant is under no obligation to purchase Eligible Receivables and maintains full and absolute discretion to not purchase any Eligible Receivable or provide additional advances for previously Purchased Receivables for any reason. Only Eligible Receivables may be posted for sale.

Section 6. Additional Client Representations and Warranties at Time of Posting

A. Each and every time that Client posts a Receivable for sale on the Payplant Platform, Client reaffirms all of the Client general representations and warranties as set forth in this Agreement, and Client further affirms, represents and warrants that:

- (i) each Posted Receivable in all respects satisfies the requirement of an Eligible Receivable; and
- (ii) each Posted Receivable validly exists and represents the bona fide Invoice Payment Obligation of the Debtor enforceable against the Debtor in accordance with the Invoice terms; and
- (iii) to the extent that the Posted Receivable represents the Debtor's Invoice Payment Obligation for goods sold or services performed, such goods and services have been accepted by the Debtor without condition or reservation of rights; and
- (iv) Client has satisfied its obligations to pay all applicable sales, use, excise and similar taxes to appropriate Governmental Authorities with respect to sales of goods or performance of services; and
- (v) Client knows of no reason why the Debtor does not have the financial ability, or the authority, or is not legally or contractually obligated to pay the Posted Receivable in full as and when due; and
- (vi) Client is not then Insolvent or contemplating filing for bankruptcy relief from creditors; and
- (vii) Client is not in default under any loan or debt or performance obligation in favor of any third-party creditor of Client, and Client is not subject to or contemplating entering into a workout or forbearance agreement with any of Client's creditors except HP Inc., Test Plan, Version 1, HP Enterprise, Embarcadero Technologies, Dianna Associates, Inc., NewGator Technologies, Inc., Zenoss Inc., Avnet . Inc. ("Avnet") and Dell Marketing L.P.; and
- (viii) Client fully intends that the sale of the Purchased Receivable results in a True Sale for all purposes under Applicable Law.

B. All Client representations and warranties under this Agreement, and under each Officer Certificate provided to Payplant, shall conclusively be deemed for all purposes to be made and directed to Payplant at Payplant's main office in California.

Section 7. Verification

Client agrees that Payplant or its agent may, in Client's name and stead, contact Client's Registered Debtors, to verify (i) the status and existence of each Receivable posted for sale or sold to Payplant, (ii) the Invoice Face Value amount and the Invoice Due Date thereof, and (iii) such other matters as Payplant may deem important.

Section 8. Requirement That All Registered Debtor Invoice Payments Be Paid into the Payplant Controlled Lockbox Account

A. Client agrees that Payplant may instruct each and every one of Client's Registered Debtors to pay all Invoice Payments under Receivables initially due to Client into a designated Lockbox Account maintained and controlled by Payplant, and further instructing the Debtor not to pay Client directly. Client further agrees to re-notify Debtors at Payplant's request should Payplant's Lockbox Account details change in the future.

THIS REQUIREMENT APPLIES TO PAYMENT OF ALL INVOICES DUE FROM REGISTERED DEBTORS TO CLIENT, AND IS NOT LIMITED TO INVOICE PAYMENTS DUE UNDER RECEIVABLES SOLD ON THE PLATFORM. ALL REGISTERED DEBTOR INVOICE PAYMENTS, INCLUDING INVOICE PAYMENTS UNDER CLIENT'S OTHER RECEIVABLES NOT SOLD OVER THE PLATFORM, ARE REQUIRED TO BE PAID INTO THE PAYPLANT CONTROLLED LOCKBOX ACCOUNT WITHOUT EXCEPTION.

B. Client agrees that Payplant may re-notify the Registered Debtor as Payplant may deem to be necessary, making it clear to the Debtor that the Debtor is required to make all Invoice Payments otherwise due to Client into the Lockbox Account.

C. Client shall further include appropriate written instructions on each Invoice sent to a Registered Debtor instructing the Debtor to make its Invoice Payments into the Payplant controlled Lockbox Account, with Client removing any contrary written instructions to pay Client directly.

D. Once a Registered Debtor is instructed to make Invoice Payments into the Payplant controlled Lockbox Account, Client shall have no right whatsoever to counter-instruct the Debtor to pay Client directly or to pay an Affiliate of Client or some other third Person.

E. Once a Registered Debtor is instructed to make Invoice Payments into the Payplant controlled Lockbox Account, Client shall have no right whatsoever to receive Invoice Payments from the Debtor. To the extent that Client receives any Invoice Payment from a Registered Debtor, whether due to Debtor error or otherwise, Client shall notify Payplant of such occurrence within two (2) Business Days and turn such payment over to Payplant in the form received within three (3) Business Days, transferring funds within 3 business days, and if received via check, without depositing the check into a Client deposit account. In the interim, and at all times while Client may possess or have control over amounts received from Registered Debtors, Client shall hold such funds "in trust" for and on behalf of Payplant, with Client having full fiduciary duties and obligations to segregate and safeguard such funds.

F. Client agrees to pay Payplant a Misdirected Payment Fee in the amount equal to 1% of each Invoice Payment that a Registered Debtor pays to Client, or to an Affiliate of Client, if after the Registered Debtor receives notice from Payplant or Client to make its Invoice Payments into the Payplant controlled Lockbox Account, and Client does not notify Payplant and transfer funds to Payplant as required in Section 8 E.

G. Client recognizes, confirms and agrees that Payplant have or will have a perfected UCC Security Interest in all of Client's Purchased Receivables sold on the Platform, and that any failure on the part of Client to comply with the requirements of **Sections 8(D)** and **(E)** above shall constitute a Diversion of funds due to Payplant and an act of civil conversion under Applicable Law, giving rise to a Client Event of Default under **Section 29.1** of this Agreement.

Section 9. Payplant Authorized to Indorse Client's Name on All Instruments Deposited into the Lockbox Account

Client irrevocably authorizes Payplant to indorse Client's name on all checks, drafts and instruments deposited into the Lockbox Account for Client's account. Client forever waives any claim that Client may now or in the future have against Payplant based on wrongful or unauthorized endorsement of Client's name on any check, draft or instrument deposited into the Lockbox Account.

Section 10. Notification

A. Client agrees that Payplant may, at any time before or after the occurrence of a Client Event of Default, and at Payplant's sole election, notify all or selected Registered Debtors of the fact that their Invoice Payment Obligations have been or may be sold on the Platform, or otherwise encumbered in favor of Payplant, and Payplant shall have the further right to instruct or reinstruct such Registered Debtors to make their respective Invoice Payments directly to Payplant at the Lockbox Account address.

B. All such notifications shall be made pursuant to **Sections 9-406(a)** and **9-607(a)** of the UCC.

C. Once Payplant notifies a Registered Debtor to make its Invoice Payments directly to Payplant, Client shall have no right to counter-instruct the Debtor to make its Invoice Payments to Client, or to an Affiliate of Client, or to any other third person. Any attempt by Client to do so shall constitute a Diversion of funds due to Payplant.

SECTION 11. True Sale

11.1 Party Intent

IT IS THE STATED INTENT OF THE PARTIES AND OF EACH AND EVERY ONE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, PARTNERS, MEMBERS AND OWNERS, THAT ALL SALES OF RECEIVABLES TO PAYPLANT SHALL FOR ALL PURPOSES CONSTITUTE AND RESULT IN TRUE SALES OF A 100% OWNERSHIP INTEREST IN AND TO EACH PURCHASED RECEIVABLE AND ALL COLLECTION PROCEEDS THEREOF, WITH ALL OF CLIENT'S RIGHTS, TITLE AND INTEREST (WHETHER LEGAL, EQUITABLE OR BENEFICIAL) AND ALL CONTROL THEREIN AND THERE OVER BEING FULLY TRANSFERRED TO AND THEREAFTER BEING SOLELY VESTED IN PAYPLANT. THE PARTIES AND EACH AND EVERY ONE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, PARTNERS, MEMBERS AND OWNERS, FURTHER INTEND THAT ALL SALES OF RECEIVABLES TO PAYPLANT NOT BE CONSTRUED BY ANY PERSON, INCLUDING BY ANY GOVERNMENTAL AUTHORITY OR BY ANY COURT OR ARBITRATOR IN ARBITRATION, AS A LOAN OF MONEY BY THE PAYPLANT TO THE CLIENT OR AS A TRANSACTION INTENDED AS SECURITY UNDER THE UCC OR ANY OTHER APPLICABLE LAW.

11.2 True Sale for All Purposes

A. It is the further stated intent of the Parties, and of each and every one of their respective officers, directors, managers, partners, members and owners, that all purchases of Purchased Receivables by Payplant result in True Sales of such Receivables *for all purposes*, including permitting Payplant (i) to carry the Receivable as a financial asset on Payplant's books and records, (ii) to grant a Security Interest in the Receivable in favor of Payplant's creditors, and (iii) to resell the Receivable to a Subsequent Buyer, only with Client's written permission, which the Client cannot unreasonably withhold.

B. Client shall reflect each sale of a Purchased Receivable over the Platform as a true and complete sales, transfer and assignment on Client's books, records and computer files, and Client shall advise all Persons inquiring about the ownership of Purchased Receivables that such Receivables are no longer owned by Client and are now owned by Payplant.

11.3 California Law Applicable

The Parties agree and covenant that all sales of Receivables to Payplant, and assignment of all of the Client's ownership rights, title and interests therein and thereto to the Payplant, shall conclusively be deemed to have been Consummated and to having taken place at Payplant's offices in California, and that such sale, transfer and assignment of rights shall be exclusively governed by and under the substantive laws of the State of California irrespective of the conflicts of law principles of that state.

Section 12. Purchase Price and Accrual of Discount Fees

A. The Purchase Price of each Receivable will be displayed on the Platform for the Client to view.

B. Discount Fees are assessed at a 30-day minimum, and will accrue on a daily basis thereafter on the unrecovered amount of each Receivable, commencing on the Consummation Date until the date that Payplant is repaid in full.

Section 13. Consummation

The sale of each Client Receivable shall be deemed to be Consummated (that is, a completed and final sale under Applicable Law) at the time the Advance Amount (less any Client Fees and Client Reimbursable Expenses then due to Payplant) is paid to Client or is otherwise applied by Payplant for the Client's account. Payplant will transfer the remaining amount due to Client within 2 business days of receiving the funds from Client's accounts.

Section 14. True Sale of Purchased Receivables

A. Client intends that all purchases and sales of Purchased Receivables on the Platform result, for all purposes, in True Sales of a 100% ownership interest in the Purchased Receivable by Client to Payplant. Following Consummation, Client shall have no residual rights, title or interest (whether legal, equitable or beneficial) in and to, and no control over, the Purchased Receivable and all Collection Proceeds derived or to be derived therefrom, with the Collection Proceeds and any and all monies and funds in any way attributable to the Purchased Receivable being exclusively owned by Payplant.

B. Client further agrees that, following Consummation, Client shall have no right whatsoever (i) to agree to (whether overtly or tacitly) or otherwise allow any compromise, reduction, credit or setoff to be made in or against the amount owed by the Debtor under the Traded Receivable, (ii) to issue a new or replacement Invoice, (iii) to instruct or request the Debtor to make its Invoice Payments to any address other than to the Lockbox Account address, or (iv) to receive or apply any Invoice Payment made by the Debtor under the Purchased Receivables, or (v) to otherwise Divert all or any portion of the Debtor's Invoice Payment.

Section 15. Client Fees and Client Reimbursable Expenses

A. Client agrees to pay Client Fees to Payplant in the amounts provided in **Schedule 1** attached hereto, and additionally to pay all Client Reimbursable Expense to Payplant as provided in **Section 31.1** of this Agreement. Once paid, Client Fees are not subject to refund, rebate or reduction.

B. Client agrees that Payplant may include such sums in the amount of Direct Debit Transfers from Client's designated deposit accounts with Client's Bank(s). Alternatively, Payplant may set off such amounts so owed by Client against any amounts then or thereafter due to Client.

C. Payplant reserves the right to adjust all or any portion of Client Fees at any time by providing Client with two-months prior written notice. Any increase or decrease in the amount of Client Fees shall apply prospectively only to sales of Purchased Receivables after the effective date of such adjustment.

Section 16. Chargebacks, Credit Adjustments and Reissuance of Invoices

A. Client shall notify Payplant in writing within three (3) Business Day (i) should a Registered Debtor subsequently return purchased goods to Client for credit, or (ii) should a Registered Debtor become entitled to or claim a credit adjustment against the Debtor's Invoice Payment Obligation, or (iii) should a Registered Debtor dispute the amount owed under a Purchased Receivable or attempt to set off any other amount that Client may owe to the Debtor against the Debtor's Invoice Payment Obligation, or (iv) should Client subsequently reissue an Invoice with respect to a Purchased Receivable after the Receivable has been sold to Payplant.

B. Upon the occurrence of any of the events listed in **Section 16(A)** above, Client shall pay to Payplant within three (3) Business Days, the full amount of (i) the credit adjustment made or claimed by the Debtor against the Debtor's Invoice Payment Obligation, or (as applicable) (ii) the Face Value of the Purchased Receivable for which is substitute or corrected Invoice has been issued. Alternatively, Payplant may set off any amounts so owed by Client against any amounts then or thereafter due to Client.

C. Any failure on the part of Client to comply with the requirements of **Sections 16(A)** and **(B)** above shall constitute a Diversion of funds due to Payplant, giving rise to a Client Event of Default under **Section 29.1** of this Agreement.

Section 17. Obligation to Assist in Collection

Client agrees to use its reasonable commercial efforts to assist Payplant in collecting each Client Purchased Receivable from the Debtor. Such assistance shall include (i) making calls to or otherwise contacting the Debtor, (ii) forwarding collection and demand letters to the Debtor (or permitting Payplant to do so), (iii) providing Payplant with such information with respect to the Debtor as Payplant may reasonably require; and (iv) timely performing such further acts and executing such waivers and consents as the Debtor may require as a precondition for payment. Client agrees not to hinder in any way Payplant's efforts in collecting Purchased Receivables, except that Payplant will not unduly burden the Debtor.

Section 18. Reconciliation

Client agrees to assist Payplant in reconciling Registered Debtor Invoice Payments and credit adjustments with Payplant's internal records relating to Client's Purchased Receivables and amounts due and paid and payable thereunder.

Section 19. Client Remittance Payment; Right to Setoff; Forfeiture in Client Event of Default

A. Depending upon if and when a Debtor pays the full Face Value amount owed under a Purchased Receivable, and when such payment is received by Payplant in Good Funds, Client may receive a Client Remittance Payment payable out of the Retained Amount.

B. Client agrees that Payplant may, at any time and for any reason, setoff any amounts that Client may owe to Payplant against any Client Remittance Payments that may then be due to Client.

C. Client further agrees that Client shall forfeit any right to receive Client Remittance Payments so long as (i) any Client Event of Default exists under **Section 29.1** of this Agreement, and (ii) any amount or contingent amount is owed by Client under this Agreement. Client's forfeiture of the right to receive Client Remittance Payments is an agreed-upon penalty as a result of a Client Event of Default.

Section 20. Repurchase Obligations; Right to Setoff and Withhold Payments to Client

A. Client agrees to repurchase any and all then outstanding Purchased Receivables for the Repurchase Price thereof from Payplant when one of the following types of events occurs.

(i) if for any reason the Debtor fails to pay the Face Value of the Purchased Receivable, in full and in Good Funds, by no later than the 60th day following the Invoice Due Date (an "Debtor Event of Default"); or

- (ii) if and when the Debtor becomes or otherwise claims to be entitled to a credit adjustment against any amount owed under the Purchased Receivable; or
- (iii) if and when the Debtor raises any defense to payment or otherwise demonstrates that it is unable or unwilling to pay the Face Value of the Purchased Receivable in full and when due; or
- (iv) should the Purchased Receivable fail to qualify for any reason as an Eligible Receivable eligible to be sold on to Payplant; or
- (v) if and when Client or the Debtor files or becomes subject to a bankruptcy or Insolvency proceeding; or
- (vi) at the time of the occurrence of any other Client Event of Default not mentioned above.

In the case of an event of type (i) above the Repurchase Date is 60 days after the Invoice Due Date. In the case of an event of type (ii)-(vi) above, the Repurchase Date is the date the event occurs.

B. Client further agrees to pay the Repurchase Price to Payplant, in full, by no later than the Repurchase Date.

CLIENT'S REPURCHASE OBLIGATIONS ARE ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE AND ARE NOT SUBJECT TO ANY CLAIM THAT CLIENT MAY HAVE AGAINST PAYPLANT OR ANY PAYPLANT RELATED PERSON, OR TO ANY DEFENSES TO PAYMENT (INCLUDING SURETYSHIP DEFENSES), ALL OF WHICH ARE KNOWINGLY AND WILLINGLY WAIVED BY CLIENT.

C. It is the stated intent of the Parties that Client's repurchase of Purchased Receivables and payment of the Repurchase Price shall result in a True Sale of such Receivables by Payplant back to Client for all purposes, with the Payplant thereafter retaining no rights, title or interest (whether legal or equitable) therein, and with Client thereafter having total ownership and responsibility for the collection thereof.

D. Client agrees that Payplant shall have the right to set off any amounts then or thereafter due to Client (including proceeds derived from sales of Client's Purchased Receivables) against Client's then or contingent Repurchase Obligations in favor of Payplant. Client further agrees that Payplant, in its reasonable Administrative Discretion, shall have the right to withhold payment of funds otherwise due to Client, and to hold such funds as additional Client Collateral to secure the prompt and punctual payment and satisfaction of Client's present and future obligations (including Client's Repurchase Obligations) to Payplant for so long as an Event of Default persists.

Section 21. Client Key Principal Personal Liability for Diversion of Funds and Other Limited Acts

A. Client agrees that Client Key Principals, specified in Exhibit 2, shall be personally liable for losses sustained by Payplant as a consequence of (i) any Diversion of funds that are not immediately repaid to Payplant, or (ii) acts of fraud by Client or by any Key Principal, or (iii) any attempt by Client or by a Client Key Principal to in any way interfere with Payplant's collection of Purchased Receivables from an obligated Debtor, or to interfere with Payplant security rights under this Agreement.

B. Client and each Key Principal of Client agree that Payplant may file suit against Client Key Principals along with Client for any of the reasons mentioned in **Section 21(A)** above, before a Court in California, as provided in **Section 31.14** of this Agreement.

C. As a result of Client signing this agreement, each Client Key Principal shall conclusively be deemed to have accepted Client Key Principal potential personal liability to Payplant (limited to the circumstances described in **Section 21(A)** above), and to have consented to the personal jurisdiction of California courts and to the waiver of trial by jury provisions of **Section 31.15** of this Agreement.

Section 22. Late Charges

For each day after the Repurchase Date that Client fails to pay the Repurchase Price in full to Payplant, Client agrees to pay an additional daily late charge in an amount equal to .049315% (equating to 18% per annum) multiplied by the then unpaid balance of the Advance Amount for each day that payment is delinquent.

Section 23. Security Interest

Client hereby reaffirms and grants Payplant and a continuing Security Interest in the Client Collateral described in **Section 24** below, to secure the prompt and punctual payment and satisfaction of Client's present and future obligations (including Client's Repurchase Obligations) in favor of Payplant incident to and as a consequence of the Payplant Receivables Program.

Section 24. Client Collateral

Client Collateral includes the following:

1. All of Client's present and future accounts, payment intangibles, chattel, paper, instruments, commercial tort claims identified in writing to Payplant, contracts, letter-of-credit rights, and other receivables, of all types and descriptions (individually and collectively, "Additional Receivables"); and
2. All of Client's present and future inventory, equipment of all types and descriptions and property including investment property; and
3. All of Client's present and future general intangibles of all types and descriptions, including all intellectual property, books, records, files, computer programs, etc. relating to the foregoing; and
4. All of Client's cash and cash equivalents, deposit accounts, securities accounts; and
5. All proceeds (including, without limitation, proceeds of insurance covering any of the foregoing or other property resulting from the sale, exchange, collection, or other disposition of any of the foregoing) and supporting obligations of any and all of the foregoing.

Section 25. Perfection

Client agrees that Payplant may file whatever financing statements and amendments thereto, and take whatever additional actions as Payplant may determine to be necessary and proper to perfect and continue perfection of Payplant's Security Interest in the Client Collateral. Upon request of Payplant, Client agrees to deliver to Payplant any and all documents evidencing or constituting the Client Collateral.

Section 26. Client Default and Enforcement Rights

A. Upon the occurrence of a Client Event of Default, and at any time thereafter, Payplant shall have all of the rights of a secured party under the UCC and other Applicable Law. In addition, and without limitation, Payplant may exercise any one or more of the following Enforcement Rights in addition to the Enforcement Remedies provided in **Section 29.2** of this Agreement and available under the UCC and other Applicable Law:

(i) Payplant may immediately terminate Client's rights, thereby prohibiting Client from posting and selling additional Receivables to Payplant.

(ii) Payplant may require that Client repurchase all then unpaid and outstanding Purchased Receivables that Client may have previously sold to Payplant, further requiring that Client immediately pay Payplant the Repurchase Price, in full and in Goods Funds, within three (3) Business Days, without further notice to or demand on Client, which rights are knowingly and willingly waived.

(iii) To the extent that Payplant may not have already done so, Payplant may send appropriate notifications to Client's Registered Debtors under Sections 9-406(a) and 9-703(a) of the UCC, instructing or reinstructing such Registered Debtors to make all of their Invoice Payments to Payplant at the Lockbox Account address, and not to pay Client directly.

(iv) Payplant may then proceed to collect all Receivables from the Debtors. In this respect, Client agrees that Payplant may compromise, settle, extend, or renew for any period (whether or not longer than the original period) any Registered Debtor Receivable or indebtedness thereunder or evidenced thereby, or release all or any part of said indebtedness, without affecting the liability of Client to Payplant. To that end, Client irrevocably constitutes and appoints Payplant as Client's attorney-in-fact, coupled with an interest, with full power of substitution, to take any and all such actions and any and all other actions permitted hereby, either in Client's name or in Payplant's name.

B. Payplant shall have the right, at any time before or after the occurrence of a Client Event of Default, to apply any and all amounts that Payplant may then or thereafter owe to Client, as well as to apply any funds belonging to Client that are in Payplant's possession or under Payplant's control (including Client funds then and thereafter on deposit in the Lockbox Account), to the payment and satisfaction, whole or in part, of Client's obligations to Payplant.

C. Client shall remain liable for any deficiency that results should the proceeds of the Client Collateral not be sufficient to fully pay and satisfy Client's then obligations in favor of Payplant.

D. Except as may be prohibited by Applicable Law, all of Payplant's Enforcement Rights, whether provided under this Agreement, or available under Applicable Law, shall be cumulative and may be exercised singularly or concurrently. Election by Payplant to pursue any remedy shall not exclude pursuit of any other remedy, specifically and without limitation, nothing under this Agreement shall obligate Payplant to pursue Enforcement Rights against the Client Collateral before filing a collection action against Client to collect any and all amounts then owed to Payplant.

Section 27. Termination

A. Client may elect to notify Payplant at any time and for any reason of Client's decision to withdraw as a registrant on the Platform, with Client having no rights to post additional Receivables for sale on the Platform after the sending of such notice. Client further agrees to pay Payplant a UCC Termination Fee in the amount provided in **Schedule 1** to this Agreement, should Client withdraw as a registrant on the Platform. Payplant's consent to allow Client to terminate its relationship with Payplant shall be conditioned on Client paying such UCC Termination Fee to Payplant should Client request Payplant terminate its UCC-1 on behalf of the Client.

B. Payplant shall have the unrestricted right to terminate or to temporarily suspend Client's registration rights on the Platform at any time for any or no reason whether or not a Client Event of Default then exists. Thereafter, Client shall have no right to post additional Receivables for sale on the Platform or to access the Payplant Platform.

C. Following Client's termination as a registrant on the Platform for any reason, whether at Client's election or at the election of Payplant, Client's Repurchase Obligations and other payment and indemnity obligations under this Agreement shall continue in effect with respect to previously sold and unpaid Purchased Receivables, and Client shall continue to be obligated to assist Payplant in collecting Receivables from Client's customers.

D. Payplant's Security Interest in the Client Collateral shall continue in effect until such time as all of Client's payment and other obligations in favor of Payplant have been fully and finally paid and satisfied.

Section 28. Client General Representations and Warranties

Client makes the following general representations and warranties to Payplant

- (i) as of the date that Client agrees to be bound and obligated under this Agreement and again
- (ii) as of each date that Client posts a Receivable for sale on the Platform.

28.1 Organization

Client is duly organized and in good standing under the laws of Client's jurisdiction of organization and is duly qualified to do business and is in good standing under the laws of all other jurisdictions in which qualification and good standing are necessary in order to conduct its business and to own its properties, and where the failure to do so could reasonably be expected to have a material adverse effect on Client's ability to conduct business in that state or jurisdiction.

28.2 Authorization

Client is duly authorized to perform under this Agreement.

28.3 No Conflict; Notice to Client's Creditors

A. The performance by Client of its obligations under this Agreement, and Consummation of Payplant Receivables Program Transactions, are within Client's organizational powers, and will not (i) conflict with or constitute a breach of Client's Organizational Documents, or (ii) conflict with, constitute a default under, or result in the termination of, or accelerate, or permit the acceleration of any performance, under any loan or credit agreement, indenture, mortgage, deed of trust, lease, contract, note, order, judgment, decree or other material agreement, instrument or restriction of any kind to which Client or any of Client's Affiliates is a party or by which it or any of its or their properties are or may be bound or affected, or (iii) result in a violation of Applicable Law or of any judgment, decree, order that may apply to Client or its Affiliates.

B. There are no prohibitions or restrictions under any loan or credit agreement, or under any other agreement binding on Client that would limit or restrict (i) Client's ability to freely offer Client's Receivables for sale and to sell such Receivables to Payplant, or (ii) on Client's ability to use and employ the sale and collection proceeds of such Receivables for any purpose within Client's discretion. Furthermore, there is no requirement that collection proceeds of Client's Receivables be paid into a lockbox, impound or concentration account with a particular bank or financial institution.

C. Client has notified, and in the future Client shall notify, each and every one of Client's secured creditors, verbally or in writing, to make their respective Invoice Payments directly to Payplant at the Lockbox Account address. Client recognizes that Payplant has the right to contact each of Client's secured fs to verify their understanding and agreement to the foregoing.

D. To the extent that Payplant determines that a third party has filed a Priming Lien with respect to the Client's Receivables or other Client Collateral, Client authorizes Payplant to contact the Priming Lien Holder to obtain a Priming Lien Holder Authorization and Consent to permit Client to sell its Receivables to Payplant free and clear of such Priming Lien.

28.4 Legality, Validity and Enforceability

This Agreement is a legal, valid and binding obligation of Client, enforceable against Client and its properties in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy and other Applicable Laws affecting creditors' rights.

28.5 No Client Event of Default

No Client Event of Default has occurred and is continuing.

28.6 Financial Information

The financial statements and other Client Information and Debtor Information that Client delivered to Payplant fairly present the financial condition and results of operation of Client for the periods then ended on and as of the dates thereof.

28.7 Disclosure

No representation or warranty made by Client in any Payplant Receivables Program Agreement, or in any Client Information or Debtor Information provided by Client, or in any financial statement, report, officer certificate or any other document furnished by Client to Payplant, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements true, correct and accurate in all material respects. There is no fact known or which reasonably should be known to Client's management officials which Client has not disclosed to Payplant in writing which could reasonably be expected to have a material adverse effect on any Payplant Receivables Program Transaction to which Client may be a Party.

28.8 Material Litigation; Default under Material Obligations; Forbearance

Except as previously disclosed to Payplant in writing, there is no Material Litigation pending or threatened against or affecting Client or its properties, and neither Client nor any Affiliate of Client is in default under any Material Obligation. Specifically, Client is not in material default under any loan or credit agreement, and is not subject to, or has not been requested or required to enter into any type of forbearance or similar agreement with any creditor.

28.9 Solvency; Bankruptcy

A. Client is not Insolvent at the time of, and will not be rendered Insolvent after giving effect to, each Payplant Receivables Program Transaction.

B. Client is not in bankruptcy, and Client Key Principals do not contemplate placing Client in bankruptcy or seeking protection under any bankruptcy, insolvency or orderly liquidation law.

28.10 Taxes

Except as previously disclosed to Payplant in writing, Client has paid all taxes and other Charges due and payable on such returns and all other taxes and charges that may be lawfully assessed, levied or imposed on it, other than when Client is properly contesting any such taxes or other Charges in good faith with diligence and by appropriate proceedings.

28.11 Security Interest

Client has granted Payplant a Security Interest in the Client Collateral.

28.12 Anti-Terrorism Law

Neither Client nor any of its Affiliates (i) is, or is controlled by, a “restricted party” within the meaning of the Anti-Terrorism Laws, (ii) has received funds or other property from, or engaged in any other transaction with, a restricted party, or (iii) is the subject of any action or investigation under any Anti-Terrorism Law. Client and its Affiliates are in compliance with the Anti-Terrorism Laws.

28.13 Foreign Corrupt Practices Act

Neither Client nor any of its Affiliates, or any of their respective officers, directors, employees, agents or other representatives, have taken any action in connection with the Payplant Receivables Program or any Payplant Receivables Program Transaction that violates or will violate the FCPA, or any similar law to the extent applicable.

Section 29. Client Default

29.1 Client Events of Default

The occurrence of any one or more of the following events shall constitute a Client Event of Default:

29.1.1 Repurchase Obligations

Failure by Client to comply with Client’s Repurchase Obligations as and when required under this Agreement.

29.1.2 Diversion of Funds.

Any Diversion of funds if the amount so diverted is not paid and remitted to Payplant as specified in Section 8 E.

29.1.3 Failure to Comply with Sections 10 and 19 of this Agreement.

Failure by Client to comply with the requirements of Sections 10 and 19 of this Agreement to pay Payplant amounts owed under those Sections within three (3) Business Days.

29.1.4 Breach of Representation. Any representation or warranty made or deemed made by Client in this Agreement, or in any agreement or in any certificate, document or financial or other statement furnished at any time in connection herewith or therewith, shall prove to have been untrue, incorrect or misleading in any material respect on the date when made or when deemed to be made.

29.1.5 Financial Information. Failure by Client to (i) furnish financial information as required under Section 32.1 of this Agreement when due and as requested, (ii) copies of tax returns as required under Section 32.2 of this Agreement hereof when due, or (iii) permit Payplant to inspect Client’s books or records.

29.1.6 Judicial Actions. As of effective date of this agreement Issuance of a notice of Lien, levy, assessment, injunction or attachment against any material portion of the Client Collateral or against a material portion of Client’s other property, which is not stayed or lifted within twenty (20) business days.

29.1.7 Bankruptcy. Client or any of Client’s Affiliates shall (i) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of creditors, (iii) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (iv) be adjudicated a bankrupt, (v) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (vii) take any action for the purpose of effecting any of the foregoing.

29.1.8 Insolvency. Client becomes Insolvent.

29.1.9 Default under a Material Obligation. Client or an Affiliate of Client defaults under a Material Obligation or is required to or otherwise enters into a forbearance or similar agreement with a creditor. Additionally a Client Event of Default will be triggered, if within thirty (30) days of signing this agreement (a) Client fails to pay Avnet \$575,000 or (b) Avnet fails to sign the the Notification of Assignment sent to Avnet on August 11, 2017.

29.1.10 Invalidity. Any material provision of this Agreement, for any reason, cease to be valid and binding on Client in accordance with the terms thereof.

29.1.11 Client Repudiation. Client attempts to disavow or otherwise repudiate any provision of this Agreement.

29.1.12 Client Key Principal Repudiation. A Client Key Principal of Client attempts to disavow or otherwise repudiate the Client Key Principal's liability to Payplant as provided in **Section 21** of this Agreement.

29.1.13 Seizure. Client's rights under any Client Collateral shall be seized, or taken by a Governmental Authority, or become the subject matter of a claim, litigation, suit or other proceeding, which might, in the reasonable opinion of Payplant, upon final determination, result in impairment or loss to Payplant, or in any way adversely affect Payplant's ownership rights and interests in any of Client's Purchased Receivables sold to Payplant.

29.1.14 Breach of Section 33 Covenants of this Agreement Any breach of Client's covenants under **Section 33** of this Agreement.

29.1.15 Non-compliance. Any failure or neglect on the part of Client to perform, keep or observe any additional term, provision, condition or covenant not otherwise mentioned in this **Section 29.1**, as contained in this Agreement which (to the limited extent that such failure of compliance is subject to cure) is not cured within fifteen (15) days from the first occurrence of such failure or neglect.

29.2 Enforcement Rights

A. Payplant shall have the following Enforcement Rights following the occurrence of any Client Event of Default.

A-1. Against Defaulting Clients:

- (i)** to require Client to immediately repurchase any and all of Client's then outstanding and unpaid Purchased Receivables, with Client agreeing to pay the Repurchase Price within three (3) Business Days of demand; and
- (ii)** to file suit or commence arbitration against Client to enforce payment of Client's Repurchase Obligation and all other amounts then or thereafter owed by Client, including unpaid Client Fees and Client Reimbursable Expenses; and
- (iii)** to exercise any and all of the Enforcement Rights provided under this Agreement or under Applicable Law, including all enforcement rights and remedies of a secured party under the UCC; and
- (iv)** to set off any amounts then or thereafter owed by Client against any amounts then or thereafter due to Client; and

A-2. Against Debtors:

(i) to notify each and every of Client's Debtors under **UCC Sections 9-406(a)** and **9-607(a)** of the fact that their Invoice Payment Obligation has been sold to and purchased by Payplant, and to instruct each Debtor to pay all amounts (Collection Proceeds) with respect to the Purchased Receivable directly to Payplant; and

(ii) to file suit against or to otherwise enforce payment against each obligated Debtor to collect payment of the Debtor's Invoice Payment Obligations and to exercise whatever additional Enforcement Rights that may be available under Applicable Law.

B. Client shall be responsible for payment of, and shall reimburse Payplant for Payplant's Collection Expenses and reasonable attorneys' fees, court cost and out-of-pocket expenses (including third-party collection agency fees) that may be incurred in attempting to collect and in collecting amounts due by Client and by Client's Debtors.

C. Unless Payplant otherwise agrees, all enforcement actions against any Client of Purchased Receivables shall be brought in a court in California, or in arbitration as provided in **Section 30** of this Agreement.

D. All amounts collected by Payplant from defaulting Clients or Debtors shall be paid into the Lockbox Account.

E. Following the occurrence of, and so long as a Client Event of Default continues to exist, Client shall at Payplant's reasonable request meet with a Payplant representative at the Client's main office from time-to-time to review Client's billings and collections, financial documents and business activities. Client further recognizes and agrees failure of Client to comply with this **Section 29.2(E)** shall result in irreparable harm to Payplant to obtain judicially ordered injunctive relief against Client as provided under Applicable Law.

Section 30. Arbitration

The Parties agree to mediate prior to arbitration.

30.1 Compulsory Binding Arbitration.

The Parties agree that any Party may elect to arbitrate and require any other Party to arbitrate any Claim brought by or against or involving the rights of any Party.

30.2 Limitations

If any Party elects to arbitrate a Claim, no Party shall have the right to (i) have a court or jury decide the Claim, (ii) engage in pre-arbitration discovery to the same extent that the Party would have the right to do in court, (iii) participate in a class action in court or in arbitration, either as a class representative or a class member; or (iv) join or consolidate the Claim with claims of any other Person or involving any other Payplant Receivables Program Transaction. Notwithstanding the foregoing, Payplant shall have the right to exercise Enforcement Rights against a Defaulting Client or a Debtor (as applicable) by filing suit before a court of competent jurisdiction, or otherwise, and nothing under this **Section 30** shall in any way impair or otherwise affect the Enforcement Rights available to Payplant following a Client Event of Default.

30.3 Election to Arbitrate

To commence arbitration, the electing Party must give written notice to the other Party of an election to arbitrate. This notice may be given within ninety (90) days after a lawsuit has been filed, and may be given in papers or motions in the lawsuit. If an arbitration election notice is given, the Claim shall be resolved by arbitration under this **Section 30** and the American Arbitration Association rules for large, complex commercial disputes then in effect. The Arbitration Administrator need not be the American Arbitration Association. The electing Party may select the Arbitration Administrator in its notice electing to arbitrate or by giving written notice to the other Party within twenty (20) days thereafter. The arbitrator will be selected under the Arbitration Administrator's rules.

30.4 Location and Costs

Any arbitration hearing shall take place in California. The Party demanding arbitration shall be responsible for the initial payment of all filing fees and expenses of the Arbitration Administrator. Notwithstanding the outcome of the arbitration, the Client shall be responsible for reimbursement of Payplant's reasonable arbitration related attorneys' fees and costs to the extent provided in **Sections 31.1** and **31.2** of this Agreement.

30.5 Effective Arbitration Award

Any court with jurisdiction may enter judgment upon the arbitrator's award, which will be final and binding.

30.6 Mandatory Application of California Law; Arbitrator Authority

A. Consistent with the *situs* of each Payplant Receivables Program Transaction and the choice of law provisions of **Sections 31.13 and 11.3 of this Agreement** the arbitrator shall apply substantive California law (and Federal law to the extent applicable) to all substantive issues presented in arbitration. The arbitrator shall further apply all applicable statutes of limitation (prescription and preemption principles in California) and applicable privilege rules, as well as rules of procedure and evidence consistent with the FAA, the Arbitration Administrator's rules and the rules of the American Arbitration Association.

B. The arbitrator shall be authorized to award all remedies available in an individual lawsuit including awards of compensatory and statutory (but not punitive or exemplary) damages, declaratory, and injunctive and other equitable relief.

C. Upon the request of any Party, the arbitrator shall provide written findings of fact and conclusions of law explaining the basis of the award.

Section 31. Miscellaneous

31.1 Client Reimbursable Expenses

A. Client shall pay and reimburse Payplant within three (3) business days:

- (i) Wire/ACH fees as specified in the Client Fee Schedule for transferring funds in and out of Client's designated account with Client's bank, and
- (ii) all reasonable outside counsel and professional fees and costs incurred in connection with or arising out of any litigation, contest, dispute, suit, proceeding, arbitration, or other action threatened or instituted by or against Payplant, against Client, or against or involving any Client Key Principal, or Registered Debtor of Client, or any other Person, and whether as a party, witness or otherwise, that is in any way related to the Payplant Receivables Program, or this Agreement, or with respect to any Payplant Receivables Program Transaction, to which Client may be a Party, including any appeal or review thereof; or any litigation, contest, dispute, suit, proceeding or action threatened or instituted by Client against Payplant asserting any claim, cause of action or theory of recovery; or any work-out or restructuring of Client's or any Client Key Principal's obligations during the pendency of one or more Client Events of Default; and

(iii) all Collection Expenses (including reasonable outside counsel and other professional fees, collection agency fees and other out-of-pocket costs and expenses) incurred by Payplant in the administration and exercise of Enforcement Rights (a) against Client and Key Principals of Client, or against any Client Collateral, or (b) against Defaulting Debtors to collect Purchased Receivables that Client may have sold on the Platform, or (c) in attempting to work out or restructure Client's or Defaulting Debtor obligations; and

(iv) all reasonable outside counsel and other professional fees, costs and expenses arising out of or incurred in connection with any pending or threatened dispute by and among any one or more Debtors and Payplant or Client; and

(v) UCC Termination Fee specified in Client Fee Schedule for releasing and terminating Payplant's Security Interest in the Client Collateral; and

(vi) Due Diligence Fee as specified in Client Fee Schedule; and

(vii) all other sums that Client may be obligated to pay under **Section 31.2** of this Agreement (Client Indemnification).

B. Client further agrees that Payplant may initiate Direct Debt Transfers out of Client's designated deposit account with Client's bank to pay such amounts after the Repurchase Date to satisfy Client's Repurchase Obligations, or alternatively, Payplant may set off such amounts owed by Client against amounts then or thereafter due to Client, with notification to Client.

31.2 Client Indemnification

Client shall defend, indemnify and hold harmless each Client Indemnified Person from and against any costs, losses, liabilities, damages, penalties, claims, actions, judgments, suits, charges, expenses (including attorney's fees, expenses and other costs of investigation or defense), disbursements or proceedings of any kind or nature whatsoever incurred by, imposed on, instituted or asserted against any such Client Indemnified Person in any way relating to or arising out of (i) any failure by Client to perform Client's obligations or any material breach of Client's representations and warranties provided in this Agreement, (ii) acts of fraud, misrepresentation or omission on the part of Client, any Client Key Principal, or any of Client's Debtors, (iii) claims or defenses to payment that Client, any Client Key Principal, or any Debtor, or any creditor of Client, or creditor of an Debtor, may assert or threaten to assert against Payplant in any way relating to the Payplant Receivables Program or any Payplant Receivables Program Transaction, (iv) claims that may be asserted against any Client Indemnified Person in any bankruptcy or insolvency proceeding brought by or against Client, any Client Key Principal, or any Debtor, or any third-party creditor of Client, or by any trustee in bankruptcy, including alleged fraudulent conveyance, preferential transfer or related state law claims, or (v) claims that may be asserted by any Debtor, Debtor issuing bank, or any other person asserting a fraudulent or unauthorized endorsement of Client's name on any Debtor check or draft deposited into the Lockbox Account.

31.3 Waivers

No failure or delay on the part of any Party in exercising any right, power or privilege hereunder and no course of dealing between any Party and any other Party or Person, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on any Party in any case shall entitle such Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Party to take any other or further action in any circumstances without notice or demand. Any waiver, consent or Specific Amendment shall be effective only in the specific instance and for the specific purpose for which it was given and shall not entitle any Party to any further or subsequent waiver, consent or amendment. All Enforcement Rights and remedies, either under this Agreement, or pursuant to any Applicable Law or otherwise afforded, shall be cumulative and not alternative.

31.4 Transfers; Successors in Interest

A. Client may not assign, transfer or dispose of any of its rights, interests or obligations under this Agreement unless Client shall have received the prior written consent of Payplant, which shall not be unreasonably withheld by Payplant unless Payplant is being paid-off as part of the transaction, and any purported assignment, delegation or other transfer in violation of this **Section 31.4(A)** shall be void and of no effect.

B. Payplant may assign its rights, interests and obligations under this Agreement and Payplant may subcontract out any of its services or duties.

31.5 Giving of Notice; Address of Notices

A. All notices, instructions, directions or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been effectively given or delivered:

(i) when delivered in person;

(ii) if sent by a reputable overnight delivery service (including Federal Express, UPS, Emery, DHL, Airborne and other similar overnight delivery services) with all charges prepaid, one (1) Business Day after deposit with such courier service;

(iii) if mailed by first class mail, postage prepaid, and registered or certified with return receipt requested, upon the earlier of actual receipt and three (3) Business Days after deposit in the mail;

(iv) if sent by facsimile, upon transmission, with confirmation of receipt; or

(v) if sent by email, upon transmission, with confirmation of receipt.

B. Any Party shall have the right to change its address for notice hereunder to any other location by giving notice to the other parties in the manner set forth herein, which notice shall be effective five (5) Business Days after it is deemed delivered or effectively given pursuant to **Section 31.5(A)** above.

C. Any communications between the Parties hereto or notices provided herein shall be given to the respective Parties at their respective addresses then on file with Payplant.

31.6 Amendments in Writing

No amendment, modification, consent or waiver of any provision of this Agreement, and no consent to any departure by any Party hereto and thereto, shall be effective unless the same shall be in the form of a written Specific Amendment to this Agreement, and then shall be effective only as to the specific instance and for the specific purpose for which given. No course of dealing, and so subsequent conversations, emails and other written or oral communications by and between any of the Parties hereto shall be deemed to expressly or impliedly amend, modify, supplement, or waive any of the provisions of this Agreement. Furthermore, the promotional content of the Payplant website is not part of this Agreement and Payplant is not bound by such website content, which is subject to change at Payplant's will.

31.7 Intentionally left blank

31.8 Specific Amendments

A Specific Amendment or waiver with respect to this Agreement, or any, exhibit or schedule thereto, shall be effective only if reduced to writing and executed (either manually or electronically) or otherwise agreed to by each affected Party

31.9 Party Confidentiality

Each Party agrees to use commercially reasonable efforts (at least equivalent to efforts as it applies to maintaining the confidentiality of its own confidential information) to maintain as confidential all Confidential Information provided to it by any other Party (the "Delivering Party"), except that any such Party (the "Receiving Party") may disclose such Confidential Information:

(i) to its Affiliates and to its and their employees, officers, directors, auditors, consultants, attorneys, agents and advisors (collectively, "Representatives") for proper business purposes related to such Party's participation in the Payplant Receivables Program and such Party's oversight, compliance and similar functions (it being understood and agreed that

(a) the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such information confidential and

(b) such Party shall be responsible for causing such Persons to comply with the terms of this **Section 31.9** and **Section 31.10** to the same extent as if they were Parties to this Agreement;

(c) Client's Corporate, Financial information and Debtor information and contacts are confidential;

(ii) any Party may disclose Confidential Information as required or requested by any Governmental Authority, or reasonably believed by such Party to be compelled by any court decree, subpoena or legal or administrative order or process;

(iii) any Party may disclose Confidential Information as is required by Applicable Law; and

(iv) any Party may disclose Confidential Information in the event that such information has been published or announced in conditions free from confidentiality or has otherwise entered the public domain without default on the part of such Party.

31.10 Return or Destruction of Confidential Information

If and when no longer needed or appropriate, the Receiving Party shall (i) destroy all Confidential Information of the Delivering Party, including internal Confidential Information, analyses, data, summaries, memoranda and other documents prepared or generated by the Receiving Party or by third-party service providers, without the Receiving Party retaining a copy of any such material, (ii) promptly deliver to the Delivering Party all other Confidential Information of the Delivering Party, together with all copies thereof, in the possession, custody or control of the Receiving Party or, alternatively, with the written consent of the Delivering Party, the Receiving Party shall destroy all such Confidential Information and (iii) certify all such return or destruction in writing to the Delivering Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Delivering Party's Confidential Information is returned.

31.11 Severability; Entire Agreement

A. Each provision of this Agreement shall be deemed to be effective and valid under applicable California law, but if any provision of this Agreement determined to be invalid, void or unenforceable under any law, rule, administrative order or judicial decision, that determination will not affect the validity of the remaining provisions of this Agreement.

B. This Agreement, and all subsequent amendments hereto and thereto, and any and all other agreements, documents or instruments attached or referred to herein or therein, integrate all of the terms and conditions mentioned herein, therein or incidental thereto.

31.12 Counterparts; Caption Headings

A. This Agreement may be executed manually, or by Electronic Signature, or otherwise agreed to in one or more counterparts all of which shall constitute a single binding agreement.

B. Caption headings under this Agreement are for convenience only and shall not be construed to limit the content of any section, subsection, addendum, exhibit or schedule.

31.13 Governing Law

THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS AGREEMENT AND EACH PAYPLANT RECEIVABLES PROGRAM TRANSACTION SHALL BE EXCLUSIVELY GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, BUT EXCLUDING ANY CONFLICT OF LAW RULES THAT WOULD LEAD TO THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. ALL AGREEMENTS, ALL SALES OF PURCHASED RECEIVABLES AND ALL PAYPLANT RECEIVABLES PROGRAM TRANSACTIONS BY AND BETWEEN THE PARTIES SHALL BE DEEMED TO HAVE BEEN NEGOTIATED, CONTRACTED FOR, ACCEPTED, CONSUMMATED AND PERFORMED IN CALIFORNIA.

31.14 Forum Selection; California Courts; Waiver of Right to Class or Multiparty Recovery

A. Subject to the right of any Party to invoke compulsory arbitration under **Section 30** of this Agreement, any legal action or proceeding by or against any Party to this Agreement, including a Client, a Key Principal, or Payplant, with respect to any claim arising out of this Agreement, or any other Payplant Receivables Program Agreement, or any Payplant Receivables Program Transaction, or any relationship between the Parties, shall be brought in a California court. Should a Client file suit against Payplant before any court other than the foregoing California courts, Client shall be responsible for Payplant's legal costs and other expenses in attempting to remove or otherwise relocate such litigation to California.

B. Each Party (including each Client Key Principal) accepts for itself and with respect of its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement, or any Payplant Receivables Program Transaction, or any relationship between the Parties.

C. Each Party (including each Client Key Principal) hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with this Agreement or Payplant Receivables Program Transaction by any means permitted by Applicable Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address provided to and on file with Payplant (and shall be effective when such mailing shall be effective, as provided therein). Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

D. Each Party (including each Client Key Principal) hereby irrevocably waives any objection and any right to stay or dismiss any action or proceeding under or in connection with this Agreement, any other Payplant Receivables Program Agreement or any Payplant Receivables Program Transaction to which it is a party brought before the foregoing courts on the basis of *forum non conveniens* or improper venue or any other grounds that it may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

E. Nothing in **Section 31.14(A)** shall affect the right of Payplant to bring any legal action in against Client's Debtors in any other competent jurisdiction.

F. Each Client waives the right to bring, assert, or participate in a class action or other multiparty litigation asserting any claim or cause of action against Payplant, whether related to this Agreement, or any Payplant Receivables Program Transaction, or otherwise. The foregoing is a bargained-for covenant, which has been knowingly and willingly agreed to by all Parties.

31.15 Waiver of Jury Trial

FOR THE PURPOSES OF THIS AGREEMENT, AND EACH PAYPLANT RECEIVABLES PROGRAM TRANSACTION, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, WITH ANY OTHER PAYPLANT RECEIVABLES PROGRAM AGREEMENT, OR ANY PAYPLANT RECEIVABLES PROGRAM TRANSACTION CONTEMPLATED HEREBY OR THEREBY, WITH ANY COURSE OF CONDUCT, WITH ANY COURSE OF DEALING, WITH ANY STATEMENTS (WHETHER VERBAL OR WRITTEN), OR WITH ANY ACTIONS OR OMISSIONS OF ANY PARTY HERETO OR OF ANY OTHER PERSON RELATING TO THIS AGREEMENT. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

31.16 Relationship of the Parties; No Joint Venture

A. The Parties intend that nothing contained in this shall be deemed or construed by any Person, court or arbitrator in arbitration, to create a partnership, joint venture or comparable legal relationship by or between any Client, Payplant, or any other Person.

B. Payplant and each Client are independent contractors and neither Payplant nor any Client may represent to any third-party that it is the agent or representative of any other Party. No Party shall incur any obligation or liability in the name of or in behalf of any other Party and each Party shall have the full responsibility and obligations for all of its expenses of operation and for all obligations with respect to its employees, agents and representatives.

31.17 Public Announcements

Each Client agrees that, without first obtaining Payplant's specific approval, neither it nor its Affiliates will issue any public announcement, press release or similar publicity using the name "Payplant" or any other trade name, service mark, trademark or logo owned or used by Payplant or any of its Affiliates, or referring to the Payplant Receivables Program, this Agreement. Payplant similarly agrees not to include Client's name or logo in any public announcement, press release or similar publicity without having first obtained Client's prior approval. Each Party reserves the right to provide to industry trade organizations information necessary and customary for inclusion in statistical analyses prepared by or for such entities.

31.18 Reinstatement

The obligations of the Parties under this Agreement shall remain in full force and effect and continue (i) should any petition be filed by or against any Party for liquidation or reorganization, or (ii) should any Party become Insolvent or make an assignment for the benefit of any creditor or creditors, or (iii) should a receiver or trustee be appointed for all or any significant part of any Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the obligations, or any part thereof, pursuant to Applicable Law, is rescinded or reduced in amount, or must otherwise be restored or returned by any Party of the obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

31.19 No Third-Party Rights

The Agreements, undertakings and relationships of the Parties are solely for the benefit of the Parties, and their respective Affiliates, successors and assigns, and (except as otherwise specifically provided) no other Person shall have any third-party rights hereunder.

31.20 Survival

Termination of this Agreement shall not terminate any rights, liabilities or obligations set forth herein, which by their nature would be intended to be applied following any such termination. Specifically, the rights and obligations in the parts and sections pertaining to True Sale, Client Repurchase Obligations, payment of fees and reimbursable expenses, contractual limitations on Payplant's responsibilities and liability, governing law, compulsory binding arbitration, forum selection, party confidentiality, copyright protection, indemnification, and provisions relating to Payplant's Administrative Discretion, shall survive and continue and shall bind the Parties and their legal representatives, successors and permitted assigns. Termination of this Agreement shall not affect any obligations of the Parties prior to such termination, which shall be determined and paid as provided herein.

31.21 Injunctive Relief Outside of Arbitration

A. In the event any Party fails to perform, observe or discharge any of its obligations under this Agreement or with respect to any Payplant Receivables Program Transaction, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy of law may prove to be inadequate relief to the Party (*i.e.*, the Party to which the obligation is owed). Therefore, the Party, if the Party so requests, shall be entitled to apply for temporary and permanent injunctive relief as may be granted by the court without the necessity of proving that actual damages are not an adequate remedy.

B. Notwithstanding anything in **Section 30** of this Agreement, a Party may seek to obtain injunctive relief before a court of law with any claim for monetary damages remaining subject to elective mandatory arbitration under **Sections 30.1, et seq.**

31.22 No Punitive or Exemplary Damages

No Party shall be liable to any other Party or any other Person for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to this Agreement or any Payplant Receivables Program Transaction.

31.23 Force Majeure

No Party will be liable for delay or failure to perform its obligations under this Agreement (other than a failure to pay amounts when due or to consummate the purchase of a Posted Receivable) caused by an event that is beyond the Party's control; provided, however, that such Party will not have contributed in any way to such event.

31.24 Power of Attorney

Each Client hereby grants Payplant an irrevocable power of attorney, coupled with an interest to:

- (i) allow Payplant and its agent bank or banks to take all of the necessary steps to process, approve and receive monies in connection with Payplant Receivables Program Transactions, including
 - (a) the right on or after the Repurchase Date to initiate wire transfers of funds out of Client's designated deposit account with Client's bank to satisfy Client's Repurchase Obligations,
 - (b) the right to endorse Client's name on third-party checks, drafts and other payment instruments, as appropriate;
 - (c) the right to notify Debtors making it clear to the Debtor that the Debtor is required to make all Invoice Payments otherwise due to Client into the Lockbox Account.
 - (d) execute and/or file in the name of the Client any documents that Payplant may require in its Administrative Discretion to collect Client Purchased Receivables from Debtors (to the extent Client fails to do so within five (5) Business Days of Payplant's request or the time when the Client is otherwise obligated to do so)
 - (e) do such other and further acts and deeds in the name of Client that Payplant may deem necessary to make, create, maintain, continue, enforce or perfect Payplant's rights in any Client Collateral.
- (ii) to perfect, modify and discharge Liens and Security Interests; and
- (iii) if necessary, to require Clients to execute such further documents as Payplant may require in its Administrative Discretion to give effect to this **Section 31.24**.

31.25 US Dollars

Unless otherwise agreed to by Payplant in advance and in writing, all Payplant Receivables Program Transactions shall be paid and settled in US Dollars.

31.26 Certification

EACH CLIENT ACKNOWLEDGES THAT IT HAS THOROUGHLY READ THE PROVISIONS OF THIS AGREEMENT AND THAT CLIENT HAS FREELY AGREED TO ALL OF THE PROVISIONS HEREIN AND THEREIN. EACH CLIENT FURTHER REPRESENTS AND WARRANTS THAT EACH CLIENT KEY PRINCIPAL HAS READ THIS AGREEMENT AND THAT EACH OF CLIENT KEY PRINCIPAL UNDERSTANDS AND AGREES TO THE PROVISIONS OF **SECTION 21** OF THIS AGREEMENT IMPOSING PERSONAL LIABILITY ON SUCH CLIENT KEY PRINCIPAL FOR THE TRIGGERING EVENTS LISTED THEREIN.

31.27 Communications with Payplant

Client shall be solely responsible for and shall bear all costs for providing and maintaining all necessary communications with Payplant, including client's own computer hardware, software, wiring, communication line access and networking devices.

Section 32 Client Reporting Requirements; Notices

32.1 Financial Statements

Except as previously waived by Payplant, Client shall provide to Payplant:

- (i) within one hundred twenty (120) days after the end of each fiscal year, the previous year-end unaudited financial statements of Client and its subsidiaries, if any, on a consolidated basis, consisting of balance sheets and statements of income and cash flow, which financial statements (if required by Payplant) shall be prepared in accordance with GAAP on an accrual basis; and
- (ii) within forty-five (45) days after the end of each fiscal quarter the year-to-date unaudited financial statements of Client and its subsidiaries, if any, containing the Client's balance sheet, income statement, statement of cash flows, accounts receivable aging, accounts payable aging, an overview of the Vendor settlement negotiations, and such information as Payplant may reasonably request.

The financial statements referred to in paragraphs (i) and (ii) above shall be accompanied by an Officer Certificate of Client's chief financial officer (or similar official) certifying that (i) such financial statements present fairly (if required by Payplant, in accordance with GAAP on an accrual basis subject to normal adjustments) the financial position, results of operations and statements of cash flow of Client on a consolidated basis, as of the dates thereof, (ii) any other information presented is true, correct and complete in all material respect, and (iii) there are no Client Events of Default or other events that, with notice, the passage of time and failure to cure, may result in a Client Event of Default.

32.2 Tax Returns

Client shall provide Payplant with copies of all requested tax returns, amended tax returns, and requests for extensions thereof, within thirty (30) Business Days following Client's filing of such returns, amended returns and requests for extensions with each appropriate Governmental Authority, if requested by Payplant. Alternatively, Client authorizes Payplant to obtain copies of such tax returns directly from the taxing authority with Client agreeing to sign whatever authorizations may be required in order to effectuate the same.

32.3 Schedules

Client shall deliver to Payplant on or before the thirtieth (30th) day of each calendar month, as and for the prior month, such schedules, reports and other information as Payplant may reasonably request in form and substance satisfactory to Payplant. In addition, Client shall deliver to Payplant at such intervals as Payplant may reasonably request (i) copy of Debtor Invoices, (ii) evidence of shipments or delivery, and (iii) such further schedules, documents and/or information as Payplant may reasonably require.

32.4 Notices

Client shall promptly, upon acquiring or giving notice, or obtaining knowledge thereof, as the case may be, provide Payplant with notice of:

- (i) the filing of a petition for bankruptcy relief by or against Client or any Affiliate of Client, or by or against any Registered Debtor;
- (ii) any Debtor assertion of a claim or defense to payment of a Purchased Receivable;
- (iii) the issuance of any credit adjustment or the reissuance of an Invoice with respect to a Purchased Receivable within the context of **Section 16** of this Agreement;
- (iv) the occurrence of any Client Event of Default, specifically stating that a Client Event of Default has occurred and describing such default in reasonable detail, the circumstances giving rise thereto and any action that Client is taking or proposes to take to remedy the same;

- (v) the filing or threatened filing of Material Litigation involving or affecting Client or any Affiliate of Client or any of their respective properties;
- (vi) Client's default under a Material Obligation, or if Client or any Affiliate of Client is requested or otherwise enters into a credit related forbearance or similar agreement with any creditor;
- (vii) any change in Client's legal name, or form of organization, or jurisdiction of organization;
- (viii) any Change of Control with respect to Client or change in Client's senior management;
- (ix) the existence or purported existence of any Lien over any part of the Client Collateral other than Permitted Liens, specifying any action Client is taking or proposes to take in respect of or to release such Lien
- (x) any circumstance those results in Client becoming a "restricted person" under the Anti-Terrorism Laws; or
- (xi) Client's receipt of a notice from the IRS or another tax authority regarding a threat to levy or file a lien.

32.5 Read-only Bank Account Access

Client shall provide Payplant with a username and password to electronically access its bank accounts.

SECTION 33 CLIENT AFFIRMATIVE COVENANTS

So long as this Agreement remains in effect, and until such time as all of Client's Purchased Receivables are fully paid and satisfied, Client agrees and covenants:

33.1 Existence

Client shall take all necessary steps and actions to preserve its corporate existence (or the existence of any successor or transferee), it being acknowledged that no merger of Client, or sale by Client of all or substantially all of its assets, shall be permitted unless the successor entity or transferee shall assume and be liable for all obligations of Client hereunder, either by operation of law or under written agreement. Client shall promptly notify Payplant of any change in its corporate structure.

33.2 Performance of Client's Obligations

Client shall comply with and perform each of its obligations under each SMB Program Agreement to which Client is a Party, in each case to the standards and within the time frames required.

33.3 Books and Records of Accounts; Inspection

A. Client shall (i) maintain proper and accurate books and records with respect to Client, its business and operations, and its Debtors and Receivables, and (ii) make appropriate accounting entries with respect to True Sales of Purchased Receivables to Payplant reflecting that Client no longer has any rights, title or interest therein.

B. Client agrees to permit Payplant and Payplant's designated agents and representatives to have unrestricted access to Client's office facilities, where ever located, during ordinary business hours as determined necessary or proper by Payplant in connection with this Agreement with reasonable notice to Client and at Payplant's expense, (i) to examine and make copies of Client's books and records, and (ii) to discuss matters relating to Client's general business affairs with Client management officials and other personnel, all subject to Applicable Law restrictions that apply to public companies generally if Client is a public company. Payplant's inspection rights shall continue while there are previously sold and unpaid Purchased Receivables or there are outstanding Client payment obligations in favor of Payplant.

C. Client further agrees to provide Payplant with such reports and summaries of Client's business affairs, sales and aging of Client's accounts receivables, all in form and substance as Payplant may request from time to time.

33.4 Taxes and Other Charges

Client shall timely pay and discharge all taxes and other Charges due and payable by Client and any other Charges that may be lawfully assessed, levied or imposed on it, and Client shall pay, as the same become due, the nonpayment of which may result in a Lien being asserted against the Client Collateral, other than any tax or other Charge that is properly contested by payment under protest or by securing an appropriate and adequate bond. For any invoices and purchase orders financed by Payplant, Client shall pay third-party vendors immediately on receipt of funds from Payplant. For other accounts payable, Client shall make best effort to make timely payments.

33.5 Compliance with Applicable Law

A. Client shall at all times comply in all material respects with, and perform such acts as may be required by all Applicable Laws (including all laws relating to dealings with public officials, anti-money laundering, anti-fraud, consumer credit protection and foreign exchange regulations) and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking (including the Anti-Terrorism Laws).

B. Without limiting the foregoing, each of Client's directors, managers, employees, shareholders, partners, members, owners, agents and Affiliates acting on its behalf, (i) shall not take any action that would constitute a violation of the FCPA or any similar law, (ii) shall maintain an effective system of controls adequate to ensure that Client's agents, representatives, employees, and other staff are trained to ensure compliance with the FCPA, and (iii) shall not take any action that may constitute a violation of the Export Administration Regulations of the United States or similar Applicable Laws with respect to technology transfer (through export, deemed export or otherwise) and shall observe all such Applicable Laws.

C. Client shall furnish Payplant promptly such other information with documentation required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including the USA PATRIOT Act), as from time to time may be reasonably requested by Payplant.

33.6 Security Interest

A. Client shall take all actions necessary or reasonably advisable or requested by Payplant to give effect, perfect, preserve or protect Payplant's Security Interest in the Purchased Receivables and other Client Collateral and the priority thereof, and Payplant's exercise any of the rights conferred thereunder.

B. Client may not amend, terminate or release any Payplant filed UCC financing statement under any circumstance. Any attempt by Client to do so shall be of no effect and an intentional interference by Client and Client Key Principals with Payplant's security and other rights.

C. Client shall, at its own expense, deliver to Payplant each of the instruments, agreements, certificates and documents as Payplant may reasonably request to perfect and maintain Payplant's Security Interest in the Purchased Receivables and other Client Collateral and to comply with, or evidence compliance with, its obligations under this **Section 33.6**.

33.7 Further Assurances

From time to time, upon the reasonable request of Payplant, Client shall promptly and duly execute and deliver any and all such further documents and instruments and render all such (or such further) assistance as Payplant may reasonably require for the purpose of enabling Payplant to obtain the full benefit of such Receivables.

33.8 Performance under Sales Contracts; Notice of Default

A. Client shall timely perform and comply with all material terms, provisions, and obligations under all applicable Sales Contracts with Client's customers that produce Purchased Receivables, and refrain from taking any action or omitting to take any action which might in any way prejudice or limit Payplant's rights to payment on Purchased Receivables from Client's Debtors.

B. Client shall notify Payplant within three (3) Business Days in writing of (i) any event or occurrence, including any breach or default by Client or by the Debtor of any of the material terms or provisions of any Sales Contract relating to a Purchased Receivable, or any dispute or any governmental action affecting the ability of Client or the Debtor to perform in a material respect thereunder, (ii) any material adverse change in the timeliness of Client receiving payments from the Debtor on any Purchased Receivable, and (iii) any material amendment or modification of any Sales Contract relating to any Purchased Receivable. Client shall not modify the terms of any Sales Contract relating to any Purchased Receivable in any manner which would adversely affect the rights of Payplant.

33.9 Tax Withholdings

If Client is organized under the laws of the United States of America or any State thereof, Client shall furnish to Payplant, on the date hereof, two properly completed and duly executed originals of U.S. Internal Revenue Service Form W-9 certifying that such Client is exempt from U.S. backup withholding tax, provided that the requirements of this sentence shall not apply to a Client that is entitled to a presumption under applicable Treasury Regulations that it is a domestic corporation for U.S. federal income tax purposes.

33.10 Payment of Sales and Other Taxes

Client shall timely pay and transmit to the appropriate taxing authorities all applicable sales, use, excise and similar taxes and fees that Client is required to collect from Client's customers incident to Client's sale of goods or services on a deferred payment (invoice) basis. Client shall be obligated to pay such amounts either out of the proceeds of Client's sale of Purchased Receivables or out of Client's other funds. Under no circumstance whatsoever shall Payplant be obligated to pay and satisfy Client's tax liability of any Governmental Authority.

33.11 IRS Liability Monitoring

Client will sign IRS form 8821 to allow Payplant to monitor Client's IRS liabilities. Client shall not revoke or supplant the Payplant's ability to monitor IRS liabilities via 8821 while there are amounts owed to Payplant under the Agreement.

Section 34. Client Negative Covenants

So long as this Agreement remains in effect, and until such time as all of Client's Purchased Receivables are fully paid and satisfied, Client agrees and covenants:

34.1 Creation of Liens

Except for Permitted Liens, Client will not create or suffer to exist any Lien upon or against any Receivable posted for sale to Payplant or against any other Client Collateral.

34.2 Amendment to Organizational Documents Triggering Subsequent UCC Filing

Without first obtaining Payplant's prior written notice, Client will not amend its Organizational Documents to change its legal name to a materially dissimilar name, or change its form of organization, or its jurisdiction of organization, if and to the extent that such change might necessitate that Payplant amend its then existing UCC filing or file a new UCC financing statement

34.3 Anti-Terrorism Laws

Client shall not (i) conduct any business or engage in any transaction or dealings with any restricted person including the making or receiving any contribution of funds, goods or services to or for the benefit of any "restricted person", (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, the USA PATRIOT Act or any other Anti-Terrorism Law. Client shall deliver to Payplant any certification or other evidence requested from time to time by Payplant, in its sole discretion, confirming Client's compliance with this **Section 34.3**.

34.4 Trading with the Enemy Act

Client shall not engage in any business or activity in violation of the Trading with the Enemy Act.

34.5 Diversion of Funds

Client shall not Divert all or any portion of funds to be paid into the Payplant controlled Lockbox Account or otherwise due to Payplant. Consistent with the stated intent of the Parties that all purchases and sales of Purchased Receivables on the Platform result in True Sales for all purposes, Client recognizes and agrees that, following Consummation, Client shall have no rights to or interests whatsoever in Collection Proceeds of Purchased Receivables and no right to possess or to use such collected funds for any purpose.

34.6 Illegal Purpose

Client shall not access or use or permit the access or use of the Platform for any illegal purpose or for any purpose that is not permitted under this Agreement or any other Payplant Receivables Program Agreement to which Client is a Party.

34.7 Additional Financing

Client shall not raise additional financing, without Payplant's approval, which shall not be unreasonably withheld by Payplant unless it is an equity financing or a convertible equity financing, where Client can force conversion, while Payplant's advances are outstanding.

Payplant LLC

Signature:

Name:
Title:
Date:

CLIENT:

Inpixon, formerly known as Sysorex Global:

Signature:

Name:
Title:
Date:

Inpixon USA, formerly known as Sysorex USA

Signature:

Name:
Title:
Date:

Inpixon Federal, Inc., formerly known as Sysorex Government Services, Inc.

Signature:

Name:
Title:
Date:

SCHEDULE 1 TO PAYPLANT CLIENT AGREEMENT

CLIENT FEE SCHEDULE

Description	Fee Amount
1. UCC Termination Fee	\$ 150
2. Wire/ACH Fee	\$ 12
3. Due Diligence Fee	\$ 0

ADVANCE RATE – Eligible Receivables will be advanced by Payplant to the Client at a rate of 80% of Face Value (less sales discounts).

DISCOUNT RATE – The Discount Rate for an Eligible Receivables shall be applied at 1.5% of the invoice price per 30 days.

A minimum of 30 days of interest is charged per invoice and on a per day basis thereafter. Payplant reserves the right to adjust the discount rate based on credit analysis of debtor.

PAYMENT INSTRUCTIONS – Updated remittance instructions to Payplant’s address shall be submitted to Debtors upon signing of this agreement. In the event the change remittance address process is not completed with the Debtor before the first scheduled payment, Client will transfer any received payment within 3 business days. If in the event this is not made, Payplant will initiate an ACH draft from the Client’s designated bank accounts within 3 business days after the payment had been received by Client, for the advanced amount plus discount and other applicable fees.

ADDITIONAL DEBTORS – Other debtors may be added at a future date. Client and Payplant will agree separately in writing on the advance rate and interest rate terms for each additional debtor.

EXHIBIT 1: DEFINITIONS AND INTERPRETATION

1. Definitions.

The following terms shall have the following meanings for purposes of Payplant Receivables this Agreement:

“**Debtor**” means, with respect to any Receivable, any Person obligated to pay such Receivable.

“**Debtor Event of Default**” means any failure of the Debtor to fully pay the Invoice Face Value amount by the 60th day following the Invoice Due Date of the Purchased Receivables.

“**Debtor Information**” means such financial and other information with respect to a Debtor that a Client may provide to Payplant.

“**Administrative Determination**” and “**Administrative Discretion**” means Payplant’s decisions, determinations, approvals, consents and confirmations of a routine or administrative nature, whether or not such administrative decision is specifically designated as such. Administrative Determination and Administrative Discretion include:

(a) routine determinations as to administration compliance with Payplant procedures, this Payplant Agreement, certificates, and other similar items required to be delivered under the terms of this Agreement; and

(b) determinations of (i) Advance Amounts, (ii) Discount Fees, (iii) Client Fees, (iv) Client Remittance Payments, (v) Repurchase Dates, (vi) Repurchase Amounts, (vii) Client Reimbursable Expenses, and (viii) such other amounts as may be provided for under this Agreement; and

(c) decisions as to (i) the existence or absence of an Event of Default, (ii) exercise of any Enforcement Right, and (iii) amendments, modifications or supplements to or waivers of any term of this Agreement.

“**Advance Amount**” means the amount that Payplant will advance to the Client incident to the purchase of a Receivable. Advance Amount will be negotiated between Client and Payplant and will be visible on the Platform for the Client to view.

“**Affiliate**” means, with respect to any Person, (i) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee or other fiduciary, 25% or more of the Equity Interests having ordinary voting power in the election or appointment of directors or officers of such Person, (ii) each Person that controls, is controlled by or is under common control with such Person, (iii) each of such Person’s officers, directors, joint ventures, owners and partners, and (iv) in the case of any Person that is an individual, the immediate family members, spouses and lineal descendants of such Person. For the purposes of this definition, “control of a Person” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“**Anti-Terrorism Law**” means each of (i) Executive Order No. 13224, (ii) the USA PATRIOT Act, (iii) the Money Laundering Control Act of 1986, Public Law 99-570, (iv) the OFAC Regulations, and (v) any similar Applicable Law enacted in the United States subsequent to the date of this Agreement or in any other jurisdiction that applies to any Client.

“**Applicable Law**” means, with respect to any Person, any and all laws (including common law), statutes, ordinances, regulations, rules, orders, injunctions, directives, codes, decrees, writs, determinations, awards and judgments issued by any Governmental Authority applicable to or binding upon such Person or any of its properties and any judicial or administrative interpretation thereof, including, for the avoidance of doubt, all environmental laws.

“Arbitration Administrator” means the Person under whose auspices arbitration is conducted. The Party electing commencement of arbitration shall have the right to select the Arbitration Administrator, which may be a national company or a company or law firm with offices in California.

“Associated Rights” means any and all of the Client’s right, title and interest in relation to any Purchased Receivable including, in each case, to the extent related to such Receivable:

- (a) all Security Interests in the relevant goods arising by law or by agreement with the related Debtor for the purpose of securing payment of the related Invoice Face Amount, including retention of title rights, if applicable;
- (b) all rights, remedies and privileges under the related contract;
- (c) all documents of title to goods, warehouse keepers’ receipts, bills of lading, shipping documents, airway bills or similar documents, if applicable;
- (d) all Collection Proceeds and other remittances and payments of or on account of Collections of such Receivable, and any related securities, bonds, guarantees, indemnities and letters of credit, including direct debit rights if applicable; and
- (e) all of the Client’s interest in any returned goods related to any sale giving rise to such Receivable and any proceeds of sale thereof.

“Authorized Representative” means with respect to a Client, the Client’s designated owner, officer or other official who is authorized to (i) agree to the terms of this Agreement, (ii) enter into and consummate Payplant Receivables Program Transactions for and on behalf of Client, (iii) submit quarterly Officer Certificates and other reports to Payplant, and (iv) discuss matters relating to Client with Payplant.

“Bankruptcy Code” means the United States Federal Bankruptcy Code of 1978, as amended from time to time.

“Business Day” means a day (other than a Saturday or Sunday, a legal holiday or a day on which banking institutions are authorized or required by Applicable Law or other government action to close in Santa Clara, CA) on which banks are open for business.

“Change of Control” means (i) the occurrence of any event (whether in one or more transactions) which results in a transfer of control of a Client to a Person who did not have control of the Client at the time the Client applied for registration or membership on the Platform, (ii) any merger or consolidation of or with the Client, or (iii) the sale of all or substantially all of the property or assets of the Client. For purposes of this definition, control shall mean the power, directly or indirectly (x) to vote 50% or more of the Equity Interests having ordinary voting power for the election of directors (or the individuals performing similar functions) of the Client, or (y) to direct or cause the direction of the management and policies of the Client by contract or otherwise.

“Charges” means all taxes, charges, fees, imposts, levies or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation and property taxes, custom duties, fees, assessments, liens, claims and charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing or other authority, domestic or foreign (including the Pension Benefit Guaranty Corporation or any environmental agency or superfund), upon Client’s Receivables, Client or any of Client’s Affiliates.

“Client” means a Person registered with Payplant and eligible to offer Receivables for sale to Payplant.

“Client Agreement” means this agreement.

“Client Collateral” means Client’s property and assets on which Payplant is granted a security interest as provided in **Section 24** of this Agreement.

“Client Event of Default” means each of the events or circumstances described as a Client default under **Section 29.1** of this Agreement.

“Client Failed Payment Fee” means fees paid by a Client to Payplant as a result Client’s failure to pay the Repurchase Price to Payplant in full on the Repurchase Date.

“Client Fees” mean the fees provided in **Schedule 1** to this Agreement.

“Client Funds” means any moneys, funds or credits belonging to or otherwise due to Client.

“Client Indemnified Person” means Payplant and its Affiliates, owners, shareholders, members, partners, officers, directors, managers, employees, agents, attorneys, successors and assigns.

“Client Information” means such financial and other information with respect to a Client that the Client may make available to Payplant.

“Client Key Principal” means an owner or executive officer (i.e., president, manager, chief executive officer, chief financial officer, or officer performing executive management functions) of a Client.

“Client Reimbursable Expenses” means the costs and expenses listed in **Section 31.1** of this Agreement.

“Client Remittance Payment” means the amount payable to the Client subsequent to Payplant’s receipt of Collection Proceeds. A Client Remittance Payment may consist of the Retained Amount less any accrued Discount Fees, late charges and Client fees.

“Client Termination Fee” means fees owed by a Client to Payplant as provided in **Section 27** of this Agreement upon termination of Client’s relationship with Payplant.

“Code” means the Internal Revenue Code and Internal Revenue Service regulations promulgated thereunder.

“Collection Expenses” means Payplant’s out-of-pocket costs and expenses in pursuing collection from Defaulting Clients, Defaulting Debtors, including Payplant’s reasonable outside counsel fees, collection agency fees, court costs, and other third-party expenditures.

“Collection Proceeds” means all funds and money collected from the Debtor, the Client or from any other obligated Person, or from the exercise of Enforcement Rights with respect to or in any way accruing from a Purchased Receivable.

“Confidential Information” of any Party means non-public information that such Party may designate as being confidential or which, under the circumstances surrounding its disclosure, the receiving Party ought to know is confidential.

“Consume” or **“Consummation”** means the completed purchase and True Sale of a Receivable to Payplant as provided in **Section 13** of this Agreement.

“Consummation Date” means the date on which the Sale is deemed for all purposes to be completed or Consummated.

“Defaulted Receivable” means and includes a Purchased Receivable that (i) is not paid by the Debtor within 60-days following the Invoice Due Date of the Purchased Receivable, or (ii) is otherwise subject to mandatory repurchase by the Client under **Section 20(A)** of this Agreement for failure to qualify as an Eligible Receivable or for any other reason provided therein.

“Defaulting Debtor” means and includes a Debtor that is subject to a Debtor Event of Default.

“Defaulting Client” means a Client that is subject to a Client Event of Default.

“Delivering Party” has the meaning given to that term in **Section 31.9** of this Agreement.

“Direct Debit Transfer” means a transfer of funds by Payplant from the Client’s designated account at their respective bank via (i) an inbound Fed wire draw down request for credit transfer or, (ii) a SWIFT Direct Debit request. The transfer of funds from a Client’s bank may be initiated by any of the methods described above, or via debit originated by Payplant via entries on the Automated Clearing House (ACH) system which obligates the Client’s bank to settle the amount requested.

“Discount Fees” are fees paid to and earned by Payplant for Purchased Receivables. Discount Fees are computed as follows, with a minimum duration of 30 days. Purchase Date is the date that the Receivable was purchased by Payplant. Payment Date is the date when the Invoice Payment was received by Payplant in Good Funds. E.g. let’s take a sample invoice with Purchase Price of \$10,000 and Discount Rate of 1.2% per month.

- a. If no Invoice Payment has been made then $\text{Discount Fees} = \text{Purchase Price} * (\text{current date} - \text{Purchase Date}) * \text{Discount Rate}$. For the sample invoice above if Current date – Purchase Date is 10 days then Discount Fees are calculated as $\$10,000 * 10 * (1.2/30)\%$ or \$40.
- b. If one complete Invoice Payment has been made then $\text{Discount Fees} = \text{Purchase Price} * (\text{Payment Date} - \text{Purchase Date}) * \text{Discount Rate}$. E.g. for the sample invoice about if Payment Date – Purchase Date is 45 days then Discount Fees are calculated as $\$10,000 * 45 * (1.2/30)\%$ or \$180.
- c. If multiple Invoice Payments have been made and there is no balance remaining then $\text{Discount Fees} = ((\text{Purchase Price}) * (\text{first Payment Date} - \text{Purchase Date}) * \text{Discount Rate}) + ((\text{Purchase Price} - \text{previous Invoice Payment}) * (\text{next Payment Date} - \text{previous Payment Date}) * \text{Discount Rate}) + \dots + ((\text{Purchase Price} - \text{all previous Invoice Payments}) * (\text{last Payment Date} - \text{previous Payment Date}) * \text{Discount Rate})$. For the sample invoice above if there were two payments made – \$5,000 after 30 days and \$5,000 after 60 days - then Discount Fees are calculated as $\$10,000 * 30 * (1.2/30)\% + \$5,000 * 15 * (1.2/30)\%$ or \$180.

- d. If multiple payments have been made but there is still Unrecovered Purchase Price then Discount Fees = ((Purchase Price) * (first Payment Date – Purchase Date) * Discount Rate) + ((Purchase Price – previous Invoice Payment) * (next Payment Date – previous Payment Date) * Discount Rate) + ... (Purchase Price – all previous Invoice Payments) * (current date – last Payment Date) * Discount Rate). For the sample invoice above if there were 2 payments made – \$5,000 after 30 days and \$3,000 after 60 days then Discount Fees after 90 days are calculated as $\$10,000 * 30 * (1.2/30) + \$5,000 * 15 * (1.2/30)\% + \$1,000 * 30 * (1.2/30)\%$ or \$192.

“Discount Rate” is the daily interest rate agreed between Client and Payplant at the time of the Sale. Discount Rate is also available on the Platform for the Client to view.

“Divert” or “Diversion” means any action or inaction on the part of a Client which results in all or any portion of the Collection Proceeds of any Purchased Receivable, or in all or any portion of Other Proceeds of Other Receivables that the Registered Debtor is instructed to pay into the Payplant controlled Lockbox Account, being used by the Client or any Affiliate of Client for any purpose other than payment and transmittal to Payplant. Divert or Diversion additionally includes (i) any action or inaction on the part of a Client which results in a setoff of the Registered Debtor’s Invoice Payment Obligation against any obligation that the Client may owe to the Debtor, (ii) any Client instruction to a Registered Debtor not to make Invoice payments into the Lockbox Account, or (iii) the Client’s reissuance of an Invoice evidencing a Purchased Receivable without notifying Payplant and without making immediate payment as required under **Section 16(B)** of this Agreement.

“Dollars”, “US Dollars”, “\$” or “US\$” means the lawful currency of the United States of America.

“Due Diligence Fees” are fees paid by the Client to Payplant in order to perform business and officer background checks, with applicable authorizations, including but not limited to credit, criminal history, lien searches and filings, bankruptcy and court filings, and other 3rd party verifications deemed necessary by Payplant. The Due Diligence fees must be paid by Client prior to initial funding and are not refundable.

“Electronic Signature” means the electronic signature of any Party sufficient to legally obligate such Party to the terms of any pertinent contract or agreement under the Electronic Signatures in Global and National Commerce Act, the Model Uniform Electronic Transactions Act and the Electronic Signatures and Records Act.

“Eligible Receivable” means and includes a Receivable, subject to sale under Article 9 of the UCC, that:

- (a) represents a bona fide Payment Obligation of an Debtor enforceable in accordance with its terms; and
- (b) is not, at the time of sale or at any time thereafter, subject to dispute, compromise, reduction, cancellation, refund, offset, counterclaim or recoupment for any reason; and
- (c) the Client knows of no reason why the Debtor will not or cannot pay the Receivable on a timely basis when due; and
- (d) is payable to and is owned by the Client; and
- (e) is payable in U.S. dollars; and
- (f) is not more than 60 days past due as of the Sale Closing Date; and

“Enforcement Rights” mean and include all available enforcement rights and remedies that may be \ (i) against a Defaulting Client following a Client Event of Default, or (ii) against a Defaulting Debtor following an Debtor Event of Default, Enforcement rights further include default rights and remedies that may be asserted against the property of a third Person to satisfy an indebtedness.

“Equity Interest” means for any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, limited liability company membership interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Claim” means any of the following claims or proceedings, which are not subject to compulsory binding arbitration under **Section 30** of this Agreement:

- (a) any action to assert, collect, protect, realize upon or obtain possession of the Client Collateral following a Client Event of Default;
- (b) any action to assert, collect, protect, realize upon or obtain possession of the Client Collateral in any bankruptcy proceeding;
- (c) any action insofar as it seeks provisional or ancillary remedies in connection with (a) or (b) above;
- (d) any non-judicial repossessions or exercise of Enforcement Rights against any Person; and
- (e) any action involving or against a Debtor to enforce the Debtor’s Payment Obligations with respect to a Purchased Receivable.

Notwithstanding the foregoing, the Parties may mutually agree to arbitrate any matter covered under items **(a)** through **(d)** above if arbitration will afford the Parties substantially the same rights and remedies as a court action.

“Face Value” means the principal amount of the Purchased Receivable that is billed to or that is otherwise owed by the Debtor.

“FAA” means the Federal Arbitration Act, **9 U.S.C. §§ 1 et seq.**

“Foreign Corrupt Practices Law” or **“FCPL”** means the Foreign Corrupt Practices Law and any other Applicable Law concerning making unlawful payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, corrupt practices or making unlawful payments or gifts, bribes, rebates, payoffs, influence payments or kickbacks in any jurisdiction.

“GAAP” means generally accepted accounting principles and practices as in effect from time to time in the United States.

“Good Funds” means funds that (i) have been collected by means of the drawee bank’s full, final and irrevocable payment of one or more checks, drafts or monetary instruments, and (ii) are immediately available to be electronically transferred from the depositor’s account to a third party.

“Governmental Authority” means any federal, state or local government, governmental department, governmental commission, governmental board, governmental bureau, governmental agency, regulatory authority, instrumentality, judicial, legislative, executive or administrative body or other political subdivision thereof and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any of the foregoing entities, having jurisdiction over the Person or matters in question.

“Government Receivable” means a Receivable under which the Debtor is a department, agency or instrumentality of the United States government.

“Insolvency” means with respect to any Person on a particular date, that

(a) such Person is unable to realize upon its property and assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, or

(b) such Person has made a transfer or incurred an obligation with the intent to hinder, delay or defraud any of its present or future creditors.

The amount of contingent liabilities (such as litigation, guarantees and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably expected to become an actual or matured liability.

“Insolvent” means, with respect to a Person, the fact that such Person is in Insolvency.

“Intellectual Property” means a patent, patent application, copyright, trademark, service mark, trade name, logo, domain name, mask work, trade secret or license or other right to use any of the foregoing.

“Invoice” means a legal debt instrument which indicates the Face Value due from a Debtor to pay the Client for delivered goods or services.

“Invoice Date” means the date an Invoice is issued.

“Invoice Due Date” means the specified date listed on the Invoice by which a Client requests payment by the Debtor.

“Invoice Payment” means any payment made by a Debtor under an Invoice.

“Invoice Payment Obligation” means a Debtor’s obligation to pay the Invoice Face Value under a Receivable sold to Payplant.

“Lien” means any mortgage, lien, privilege, deed of trust, encumbrance, pledge, security interest, hypothecation, covenant, condition, restriction (including restrictions on voting rights or rights of disposition), claim, charge, option, right of first refusal, right of use or occupancy, any legal or equitable encumbrance, or any preference, priority or other arrangement having materially the same effect as any of the foregoing.

“Lockbox Account” means the depository account maintained by Payplant into which Collection Proceeds and other sums shall be deposited.

“Material Litigation” means any action, claim, lawsuit, demand, inquiry, investigation or proceeding that is brought against the Client or its Affiliate, in which the amount in controversy exceeds 25% of Client’s, or its Affiliate’s then net worth.

“Material Obligation” means a payment or performance obligation of a Client, which in the event of the Client’s default, would likely jeopardize Client’s ability to continue to conduct its business as previously conducted.

“Misdirected Payment” means a Debtor Invoice Payment that is paid to the Client, or to an Affiliate of Client, or to a third party, and that is not paid by the Debtor into the Payplant controlled Lockbox Account as required by **Section 8** of this Agreement.

“Misdirected Payment Fee” has the meaning provided in **Section 8(F)** of this Agreement.

“Money-Laundering Activities” means activities involving funds which are (i) proceeds of crime in violation of Applicable Law, or (ii) derived or potentially derived from any restricted party.

“Net Advance Amount” means the Advance Amount less Client Fees.

“Net Present Value Discount Rate” means the prime rate as quoted in the Money & Investing Section of the Wall Street Journal on the last day of each calendar quarter.

“OFAC Regulations” means (i) the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), (ii) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), and (iii) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations).

“Officer Certificate” means the certificate signed by the Client’s chief executive officer, chief financial officer, or similar official in the form required by Payplant.

“Organizational Documents” means with respect to any Person, (i) the certificate of incorporation, articles of partnership, partnership agreement, certificate of organization or formation or other similar organizational documents of such Person, (ii) the by-laws, operating agreement, limited liability company agreement or other similar document of such Person, and (iii) such other documents or instruments that are required to be registered or lodged in the place of incorporation or organization of such Person and which establish the legal existence of such Person.

“Other Proceeds” means and includes Invoice Payments received from Registered Debtors that are attributable to the Client’s Other Receivables not sold to Payplant.

“Other Receivables” means and includes Client Receivables that are not sold on the Platform.

“Party” means Payplant and each Client that has agreed to be bound and obligated under this Agreement. Payplant Receivables.

“Paying Party” means the Client, a Client Key Principal, a Debtor, or any other obligated Person making payment on a Payment Obligation to Payplant after the occurrence of a Client Event of Default whether or not such Paying Party payment can be identified to any particular Purchased Receivable.

“Payment Date” for an Invoice Payment is the date the Invoice Payment is received in Good Funds by Payplant.

“Payment Obligation” means the contractual obligations of a Person to pay an amount owed to another.

“Permitted Liens” means:

(a) Liens in favor of Payplant for the benefit of Payplant;

(b) Liens for taxes, assessments or other governmental Charges not delinquent or being properly contested in good faith, provided that the Lien shall have no effect on the priority of the Liens in favor of Payplant and a stay of enforcement of any such Lien shall be in effect;

(c) Liens arising by virtue of the rendition, entry or issuance against Client or any Affiliate, or any property of Client or any Affiliate, of any judgment, writ, order, or decree, for so long as each such Lien (i) is in existence for less than 20 consecutive days after it first arises or is being properly contested, and (ii) is at all times junior in priority to any Liens in favor of Payplant;

(d) additional Liens as may be approved by Payplant in advance and in writing

(e) Existing liens

“Person” means any individual, sole proprietorship, partnership, joint venture, unincorporated organization or association, trust, corporation (including a business or statutory trust), limited liability company, institution, public benefit corporation, joint stock company, firm, body corporate, authority, Governmental Authority, or any other entity of whatever nature.

“Platform” means the software platform owned and operated by Payplant for the purchase of Receivables from Clients.

“Posted Receivable” means a Receivable that is offered for sale on the Platform by the Client. The Receivable may be entered on the Platform by Client or by Payplant’s staff on the Client’s behalf.

“Priming Lien” means a perfected Lien encumbering the Client’s Purchased Receivables and other Client Collateral that potentially has priority over Payplant’s later in time UCC filing, and that may adversely affect the Payplant’s rights to purchase the same free and unencumbered by any then existing Lien.

“Priming Lien Holder” means a Person that has a Priming Lien on or with respect to any posted Receivable or other Client Collateral.

“Priming Lien Holder Authorization and Consent” means an authorization and consent by a Priming Lien Holder agreeing to permit the Client to sell Purchased Receivables to Payplant on a free and clear basis.

“Purchase Price” means the Face Value of the Purchased Receivable.

“Racketeering Activities” means involvement or affiliation with any organization, group or individual that engages in or encourages its members to engage in any illegal activities specified in (i) Title 18 of the U.S. Code, or (ii) any other similar state or applicable foreign criminal law.

“Receivable” means and includes the Client’s accounts, contract rights, general intangibles, payment intangibles and all other forms of payment obligations owing to Client, and further includes the Client’s Associated Rights.

“Receiving Party” has the meaning given to such term in **Section 31.9** of this Agreement.

“Registered Debtor” means a Debtor that is registered by a Client on the Platform.

“Repurchase Date” means the date on which the Client is obligated to repurchase a Purchased Receivable from Payplant whether due to a Debtor Event of Default, or a Client Event of Default, or both.

“Repurchase Obligation” means Client’s absolute, irrevocable and unconditional agreement and obligation to repurchase a Purchase Receivable from Payplant as provided in **Section 20** of this Agreement.

“Repurchase Price” means (i) the greater of the outstanding amount of the Face Value of a Purchased Receivable, or the sum of the then unpaid Advance Amount and accrued Discount Fees with respect to the repurchased Receivable, together with (ii) the amount of any Late Charges and Client Reimbursable Expenses that may then be due and owing by the Client.

“Retained Amount” means the difference between (i) the Face Value of the Purchased Receivable sold on the Platform and (ii) the Advance Amount paid by Payplant.

“Sale” means the sale Receivables to Payplant.

“Sale Closing Date” means the date that the Sale was made.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Law” means any and all federal and state laws (including common law), statutes, regulations, rules, orders, injunctions, directives, codes, decrees, writs, determinations, awards and judgments issued by any Governmental Authority relating to “securities” and any judicial or administrative interpretation thereof.

“Security Interest” means a consensual Lien in the Client’s Purchased Receivables and other Client Collateral granted under the UCC.

“Payplant Receivables Program” means and refers to the program operated by Payplant for purchasing receivables from Clients.

“Payplant Receivables Program Transactions” means all transactions and dealings between the Parties incident to the Payplant Receivables Program, including Payplant Receivables Program Transactions involving (i) sale of Purchased Receivables on the Platform, (ii) all payments by and between the Parties, and (iii) all related payments and dealings with Debtors and third Persons.

“Purchased Receivable” means any Receivable that has been sold to Payplant on the Platform.

“Specified Obligations” means Payment Obligations of a Defaulting Client or Defaulting Debtor that are subject to a Settlement.

“Trading with the Enemy Act” means the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, and Chapter V, as amended) and any enabling legislation or executive order relating thereto.

“Payplant” means Payplant LLC, as owner and operator of the Platform. Payplant LLC is the Managing Member of Payplant Alternatives Fund LLC. The Payplant Alternatives Fund LLC will fund the Purchased Receivable(s). To the extent necessary for any reason, including enforcement of any obligation in this agreement, Client acknowledges and agrees that Payplant Alternatives Fund LLC may enforce any provisions in this agreement directly or through Payplant LLC as its Agent and/or representative.

“Payplant Platform” means all related Payplant internet and electronic products including the Payplant website, Payplant Receivables purchase application and Payplant code.

“Payplant Related Person” means and includes each of Payplant’s respective officers, directors, managers, shareholders, members, employees, agents, and attorneys.

“Payplant Work Product Data” means the results of Payplant internally produced or otherwise obtained information, data and statistical information, including information, data and statistical information with respect to Clients and Debtors, and with respect to Client and Debtor creditworthiness.

“True Sale” means the sale for all purposes of absolute ownership of a Receivable, with the Client retaining no residual rights, title, interest or control (whether legal, equitable or beneficial) therein, and with all of the Client’s rights, title and ownership interests being fully transferred to and vesting in Payplant.

“UCC” means the Uniform Commercial Code as in effect in California and other applicable jurisdictions.

“UCC Termination Fee” has the meaning provided in **Section 27** of this Agreement.

“Global Amendment” means an amendment to any Payplant Receivables Program that has general applicability to similarly situated Clients.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

2. Interpretation.

For the purpose of this Agreement, unless the context otherwise requires:

A. Any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP.

B. Any UCC term used in this Agreement shall have the meaning given in the UCC unless otherwise defined. Without limited the foregoing, the terms “accounts”, “chattel paper”, “instruments”, “general intangibles”, “payment intangibles”, “supporting obligations”, “securities”, “financial assets”, “investment property”, “documents”, “deposit accounts”, “software”, “letter of credit rights”, “inventory”, “equipment”, “fixtures” and “ordinary course of business”, as and when used shall have the meanings given to such terms in Articles 8 or 9 of the UCC. To the extent the definition of any category or type of UCC collateral is expanded by any subsequent amendment, modification or revision to the UCC, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

EXHIBIT 2
CLIENT KEY PRINCIPALS

1. Nadir Ali

GOVERNMENT RECEIVABLES ADDENDUM

This Government Receivables Addendum amends, modifies and supplements the Agreement by and between Client and Payplant.

Preliminary Statements

A. Client provides goods and services on a deferred payment basis to departments, agencies and instrumentalities of the United States, and Client has expressed a desire to offer for sale and to sell Client's Government Receivables to Payplant.

B. In order to be permitted to do so, it is necessary that Client agree to the additional terms of this Government Receivables Addendum, which amends, modifies and supplements the Payplant Client Agreement signed between Client and Payplant on 8/14/17 ("Agreement").

Agreement

NOW THEREFORE, for good and valuable consideration received and with the intent to be legally bound, Client additionally agrees as follows:

ARTICLE I: INITIAL PROVISIONS

1.01 This Addendum applies solely to Client's sales of Government Receivables (as defined herein), and shall not apply to Client's sales of other Receivables that are not Government Receivables.

1.02 All provisions of the Agreement not amended, modified or supplemented under this Addendum shall be and remain in full force and effect.

ARTICLE II: ADDENDUM TO THE AGREEMENT APPLICABLE TO SALES OF GOVERNMENT RECEIVABLES

The Agreement is hereby amended, modified and supplemented to include the following additional covenants specifically applicable to Client's sale of Government Receivables Payplant.

2.01 Additional Defined Terms. The following terms have the following meanings as used under this Addendum:

"Change Order" means a change in the Work to be performed under a Government Contract that may affect the amount owed to Client under the resulting Government Receivable.

"Consent and Authorization" means a document acceptable in form and substance to Payplant, under which a Priming Lienholder agrees and consents to permit Client to sell its Receivables to Payplant free and clear of the Priming Lienholder priming lien.

"FACA" means the Federal Assignment of Claims Act (31 U.S.C. 3727 and 41 U.S.C. 15).

"Federal Account Debtor" means the United States government department, agency or instrumentality obligated to pay the Government Receivable.

“Government Contract” or “Contract” means a contract, purchase order, or similar agreement under which Client will perform Work, and under which Government Receivables will be generated. A “Government Contract” further includes all Change Orders, addenda, modifications, supplements and replacements of the applicable Contract, and additionally includes all exhibits, addenda, supplemental documents and agreements with respect thereto and with respect to Work performed or to be performed by Client related to the Contract.

“Government Receivable” means a Receivable generated under a Government Contract for Work performed and to be performed by Client for a department, agency or instrumentality of the United States.

“Subcontractor” has the meaning provided in Section 2.07(A) below.

“Sub-Subcontractor” has the meaning provided in Section 2.07(A) below.

“Work” means the sale and furnishing of goods and materials or the performance of services under or with respect to relating to a Government Contract.

2.02 Sales of Government Receivables; Limitations and Prerequisites.

A. Government Receivables eligible for sale to Payplant are and shall be limited to Receivables that are subject to assignment under the FACA, and which are derived from Client’s performance of Work (including sales of goods and the furnishing of services) under one or more Government Contracts that Client may present to Payplant for review and consideration, and that Payplant may approve. Payplant shall have the right to reject any Government Contract and any Government Receivable for any or no reason in Payplant’s sole Administrative Discretion.

B. As a precondition to Client being permitted to post Government Receivables for sale to Payplant, Payplant or Client must first obtain Consents and Authorizations from all Priming Lienholders who may have filed UCC-1 financing statements encumbering Client’s Receivables prior in time to Payplant’s later UCC filing. Such Consents and Authorizations must be in form and substance satisfactory to Payplant, and must specifically authorize Client to sell its Receivables to Payplant free and clear of the Priming Lienholder’s security rights and interest.

2.03 FACA Filings; Assignment of Government Receivables; Additional UCC Security Interest.

A. Prior to initially posting a Government Receivable for sale to Payplant, Client shall advise Payplant of Client’s intention to do so with sufficient lead time, to the extent applicable, to permit Payplant to make necessary filings under the FACA.

B. Client shall assist Payplant in making required filing under the FACA, and Client understands and agrees that Payplant may not purchase a Government Receivable from Client until such time as Payplant successfully completes the FACA filing process.

C. In order to permit Payplant to make required FACA filings, Payplant, as a qualifying “financing institution” under the FACA, must be the “assignee” of all Government Receivables arising out of the same Government Contract as the Government Receivables that Client intends to offer for sale to Payplant, and Client must grant Payplant a UCC security interest in such Receivables. This assignment and grant of security interest is provided in Section 3.01 of this Addendum.

D. Client and Payplant additionally must execute a separate Assignment Agreement and transmit a separate Notice of Assignment (as set forth in 48 C.F.R. 32.805(c)) to the relevant Federal Account Debtor for each Government Contract that will generate Government Receivables that Client intends to sell to Payplant.

E. A FACA filing shall be deemed to be complete at the time that Payplant receives an acknowledgement from the Federal Account Debtor (as set forth in 48 C.F.R. 32.805(c)) that it has received and processed the Notice of Assignment for the relevant Government Contract.

2.04 Payments Directly to Payplant.

A. Client absolutely, unconditionally and irrevocably agrees that all Government Receivables payments subject to a FACA filing in favor of Payplant shall be paid into the Payplant controlled Lockbox Account with the Lockbox Account Bank, irrespective of whether such Federal Account Debtor payments are attributable to Purchased Receivables sold to Payplant or to Government Receivables that remain owned by Client. All Government Receivables payments that are paid into the Payplant controlled Lockbox Account, which are not attributable to Purchased Receivables sold to Payplant, shall constitute and be considered to be Other Proceeds of Other Receivables within the context of the Agreement, subject to all security and other rights and remedies that Payplant may have with respect thereto.

B. Should Client receive any payment from a Federal Account Debtor that is subject to a FACA filing in favor of Payplant, whether due to Account Debtor error or otherwise, Client shall immediately turn over such payment in the form received to Payplant without depositing such funds into Client's operating or other deposit accounts. In the interim, Client shall hold such funds "in trust" for and on behalf of Payplant separate and apart from Client's other funds. Any failure by Client to comply with the requirements of this Subsection 2.04(B) likewise shall constitute a Diversion of funds under Section 8 of the Agreement, and shall give rise to Client Default under Agreement Section 29.

2.05 Additional Client Representations and Warranties. Every time Client posts a Government Receivable for sale to Payplant, Client additionally represents and warrants to Payplant that:

2.05.1 The Government Contract and Government Receivable are subject to assignment under the FACA.

2.05.2 The Government Contract under which the Government Receivable is payable does not prohibit the assignment of rights to payment as may be provided under 48 C.F.R. 52.232-24 ("Prohibition of Assignment of Claims") or under any other provision of law of similar effect.

2.05.3 The Government Contract under which the Government Receivable is payable has an aggregate value of at least \$1,000.

2.05.4 The Government Contract under which the Government Receivable is payable is not issued by and does not involve the National Security Agency, Maryland Procurement Office, the Defense Intelligence Agency, the Central Intelligence Agency, or any other Federal Account Debtor that restricts the public disclosure of information regarding its procurement activities.

2.05.5 The assignment of Client's Government Receivables to Payplant and the posting of the Government Receivables for sale to Payplant do not violate any law, regulation, requirement, covenant, representation, warranty, or provision applicable to the Government Receivables or the Government Contracts associated therewith, including laws and provisions addressing the treatment of classified information.

2.05.6 Each Government Receivable posted for sale to Payplant is a Qualifying Receivable, and represents a bona fide payment obligation of the Federal Account Debtor enforceable in accordance with the terms of the pertinent Federal Contract for Work performed to the Federal Account Debtor's satisfaction, without dispute or reservation of rights, and without later rights of adjustment, set off or recoupment.

2.05.7 Client has fully and completely complied with all obligations and requirements imposed on Client under the Government Contract, including Client's obligation (i) to perform all Work in a diligent, skillful, safe and workman like manner, and in accordance with all pertinent specifications and requirements, (ii) likewise, to provide goods and materials that are without defect, and in accordance with all pertinent specifications, (iii) to comply with all pertinent invoicing procedural and documentation requirements necessary to obtain payment, and further (iv) to comply with all applicable insurance, indemnity, lien prevention, health, safety, security, environmental requirements, and all other requirements of Applicable Law. The foregoing additional Client representations and warranties are in addition to Client's representations and warranties under Part V of the MPA and under Section 7 of the Client Agreement.

2.06 Notice to Payplant; Immediate Repurchase Obligations

A. Client shall immediately notify Payplant upon the occurrence of any of the following:

2.06.1 Any modification of the Government Contract or issuance of a Change Order thereunder, which might affect the amount owed or payable to Client under a Government Receivable sold or offered for sale to Payplant.

2.06.2 Any modification or rescission (in whole or in part) of a Payment Authorization that might affect the amount owed or payable to Client under a Government Receivable sold or offered for sale to Payplant.

2.06.3 Any event or circumstance that might result in a delay in payment under a Government Receivable sold or offered for sale to Payplant.

2.06.4 Any refusal or delay by the Federal Account Debtor to accept the Work as performed, or to issue a Payment Authorization approving Client's Invoice or other request for payment, whether or not Client believes that there may be just cause for such refusal or delay.

2.06.5 Should the Federal Account Debtor contest, dispute, or otherwise raise any defense to payment of any amount owed under a Government Receivable sold or offered for sale to Payplant.

2.06.6 Should Client for any reason fail to fully and timely comply with Client's obligations and contractual commitments under the Government Contract, and such failure of compliance might result in (i) grounds for termination of the Government Contract, or (ii) the reduction in or delay in making payments thereunder.

2.06.7 Should the Government Contract be terminated by any party for any reason.

B. Notwithstanding anything in the Agreement to the contrary, Payplant may make demand on Client to repurchase, and Client shall immediately repurchase any Government Receivable that (i) does not satisfy the requirements of a Qualifying Receivable, or the additional requirements of a Government Receivable under this Addendum, or (ii) is subject to failure of any Client representation and warranty contained herein or elsewhere in the Agreement that might affect the timing of payment or the amount owed thereunder, or (iii) likely will not be paid in full when due as a result, in whole or in part, of a default by any party to the Government Contract.

2.07 Subcontractors, Materials Suppliers, Lien Waivers.

A. To the extent that Client subcontracts any Work to be performed under the Government Contract to one or more third-persons (Subcontractors), Client shall cause each Subcontractor and each of their respective Subcontractors (Sub-Subcontractors) to fully comply with all of Client's obligations and commitments under the Government Contract and under Applicable Law, including all insurance, indemnity, lien prevention, health, safety, security and environmental requirements.

B. To the extent applicable, Client shall timely pay any and all amounts owed to Client's Subcontractors, and to other persons supplying goods and materials with respect to the Work (Materials Suppliers), so that no Subcontractor, Sub-Subcontractor or Materials Supplier may assert a lien or charge for the unpaid amount due to such Person. Client agrees, upon request, to provide Payplant with documentary evidence of such payments having been made to Subcontractors, Sub-Subcontractors and Materials Suppliers and, at Payplant's request, to further obtain from such Persons lien waivers in form and substance satisfactory to Payplant.

C. Client absolutely, unconditionally and irrevocably agrees to pay the proceeds derived from sales of Government Receivables to Payplant first to Client's Subcontractors and Material Suppliers so as to further insure that such Persons will not assert a lien for unpaid amounts due to them.

2.08 Additional Client Events of Default. Any failure on the part of Client to timely comply with any of its obligations and commitments under the Government Contract, or under this Addendum, or any material breach of Client's additional representations, warranties and obligations as provided in Section 2.05 above, shall result in a Client Default under Section 29 of the Agreement.

ARTICLE III: AMENDMENTS TO THE CLIENT SECURITY AGREEMENT

3.01 Client Collateral Additionally to Include Government Receivables. In order to permit Payplant to make required FACA filings, Client hereby assigns to and grants Payplant (acting in its own behalf and as Collateral Agent of Client's Receivables), a UCC security interest in all present and future Government Receivables arising out of each Government Contract presented to and approved by Payplant under Section 2.02(A) above, and in all proceeds thereof and rights with respect thereto. Client's Government Receivables shall be considered and shall constitute addition Client Collateral under the Agreement, and shall be subject to all pertinent provisions of the Agreement.

3.02 UCC-1 Financing Statement. Client agrees, consents and authorizes Payplant to file an initial UCC-1 financing statement, or alternatively, to file an amendment to Client's existing UCC-1 financing statement, including Client's Government Receivables and proceeds as Client Collateral.

3.03 Additional Actions. Client additionally agrees consents and authorizes Payplant to take any and all other actions with respect to of Government Receivables as Payplant may deem necessary and proper in Payplant's Administrative Discretion.

IN WITNESS WHEREOF, Client has executed this Government Receivables Addendum effective as of 8/14/17.

CLIENT:

Inpixon, formerly known as Sysorex Global:

Signature: /s/ Nadir Ali

Name: Nadir Ali
Title: CEO
Date: 8/14/17

Inpixon USA, formerly known as Sysorex USA

Signature: /s/ Nadir Ali

Name: Nadir Ali
Title: CEO
Date: 8/14/17

Inpixon Federal, Inc., formerly known as Sysorex Government Services, Inc.

Signature: /s/ Nadir Ali

Name: Nadir Ali
Title: CEO
Date: 8/14/17