

Payment | Banc

I would like to use the following PaymentBanc services:

Credit assessment and payment plan recommendations
Fast and informative. – If selecting this service the PaymentBanc Application For Credit Recommendations form must be completed.

Automatic check and credit card payments
We make recurring transactions easy. PaymentBanc manages the accounts so you have less to worry about. Your payments stay current. Responsibles can see their accounts on-line – 24/7.

I want to accept: Visa MasterCard Discover American Express

Pricing: (See Exhibit A for description of options) Option 1
 Option 2

APPLICANT:

Company Name: _____

Name: _____

Office Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Please provide a list of PaymentBanc users.

Full Name	Phone	Email
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

RESPONSIBLE STAFF:

Name(s): _____

Position: _____

Hours: _____

E-Mail: _____

Preferred method to receive updates from PaymentBanc

Fax Email _____

APPLICANT BANK INFORMATION

Check one: Checking Savings

Bank Name: _____ Address: _____

Bank Account Number /Routing Number: _____ / _____

A copy of a voided check faxed or mailed to PaymentBanc is required to verify account numbers for autodeposit.

SETUP INFORMATION

Internet Service Provider: _____ Browser Type & Version: _____ (requires IE 5.5 or higher)

Adobe Acrobat: Yes No (required – free download) Check Type of Computer: PC MAC

OUTSOURCING SERVICES AGREEMENT

THIS OUTSOURCING SERVICES AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, _____ by and between **OrthoBanc, LLC**, a Tennessee limited liability company, doing business as PaymentBanc (hereinafter “*PaymentBanc*”), and _____ (hereinafter “*Applicant*”).

Agreement:

Applicant petitions PaymentBanc for the use of its services and Applicant and PaymentBanc agree as follows:

1. Fees and Taxes.

1.1 **Fees.** As consideration for the services provided by PaymentBanc hereunder, Applicant shall pay PaymentBanc fees and expenses as set forth on Exhibit A. PaymentBanc shall have the right to increase such fees upon sixty (60) days prior written notice to Applicant.

1.2 **Taxes.** Applicant shall be responsible for all taxes due in connection with the provision of the Services except for taxes relating to the income of PaymentBanc.

1.3 **Method of Payment.** All fees and other amounts owed by Applicant to PaymentBanc under this Agreement shall be automatically deducted from payments collected from Applicant’s Clients by PaymentBanc. If for any reason such amounts are not so collectible by PaymentBanc, PaymentBanc shall send an invoice for such non-collectible amounts to Applicant, and such non-collectible amounts shall be paid within thirty (30) days after the date the invoice is mailed.

2. **Terms and Conditions.** Applicant agrees to be bound by the PaymentBanc Terms and Conditions that will be provided to Applicant. If upon review of the PaymentBanc Terms and Conditions Applicant does not agree to the terms and conditions, Applicant may terminate this agreement immediately by providing PaymentBanc written notice of termination. Otherwise, this Agreement shall continue in effect unless either party terminates this Agreement by providing sixty (60) days prior written notice of termination to the other party.

3. **Adverse Action.** PaymentBanc makes available to Applicant the ability to print Adverse Action Notices from its website. If Applicant indicates the desire to use Adverse Action

letters by checking “Yes” in the setup information area, Applicant hereby agrees to the following conditions of use.

3.1 PaymentBanc makes available the ability to print Adverse Action Notices, and that portions of the language of the notices can be modified and customized by Applicant.

3.2 Applicant understands that PaymentBanc will not store a copy of the individual Adverse Action Notices printed from PaymentBanc’s website. Applicant shall be responsible for retaining copies of Adverse Action Notices.

3.3 Applicant understands that PaymentBanc recommends that Applicant consult with its own legal counsel regarding the language contained in the Adverse Action Notices.

3.4 Applicant assumes all responsibility for insuring that the language of the Adverse Action Notices complies with all Federal, State, and Local laws.

4. **Vermont Certification.** The undersigned Applicant, acknowledges that it subscribes to receive information services from PaymentBanc in accordance with the Vermont Fair Credit Reporting Statute, 9 V.S.A. § 2480e (1999), as amended (the “VFCRA”) and the Federal Fair Credit Reporting Act, 15, U.S.C. 1681 et. Seq., as amended (the “FCRA”) and its other state law counterparts. In connection with Applicant’s continued use of PaymentBanc information services in relation to Vermont consumers, Applicant hereby certifies as follows:

Applicant certifies that it will comply with applicable provisions under Vermont law. In particular, Applicant certifies that it will order information services relating to Vermont residents, that are credit reports as defined by the VFCRA, only after Applicant has received prior consumer consent in accordance with VFCRA § 2480e and applicable Vermont Rules. Applicant further certifies that a copy of VFCRA § 2480e and applicable Vermont Rules (Exhibit B) were received from PaymentBanc.

IN WITNESS THEREOF, the parties have executed this agreement as of the date above written.

APPLICANT:

PAYMENTBANC, LLC

Signature: _____

Signature: _____

Printed Name: _____

Its: _____

2146 Chapman Road
Chattanooga, TN 37421
Telephone: (888) 758-0583
Facsimile: (888) 758-0586

PaymentBanc Application For Credit Recommendations

(Complete this form only if you are requesting the PaymentBanc credit assessment and payment plan recommendations service)

IDENTIFICATION (Please Print)

Type of organization: Corporation Non-Profit Corporation Partnership Individual

If Corporation, list date and place of Incorporation: _____

Business License #: _____ State: _____ Federal Tax ID#: _____

List names and titles of individual, partners, or local principals and their Social Security numbers and home addresses.

Name Title

Home Address S.S. #

Name Title

Home Address S.S. #

HISTORY

How long has this company been in business? _____ Years at this location _____

Type of Business _____

Does company belong to any type of association? Yes No If yes, list the association name(s). _____

Would company have a need to request credit recommendations for employment purposes? Yes No

List all reasons why a credit recommendation will be requested? (Be specific) _____

REFERENCES

Business reference - Indicate the kind of business. (Not a personal reference)

Account Number (required)

Business reference - Indicate the kind of business. (Not a personal reference)

Account Number (required)

PaymentBanc is authorized to complete any credit investigation necessary of the principals of this company for this processing of the application.

Signatures of Principles required:

Signature

Date

Signature

Date

PaymentBanc Terms and Conditions

Background:

PaymentBanc is in the business of performing certain back office services and functions for businesses, including (i) the performance of payment option analyses for Clients (as such term is hereinafter defined) who wish to make progress payments for services rendered by Applicant and (ii) the automation of the payment and fee collection process. Applicant wishes to retain PaymentBanc to perform such services and functions for Applicant, and PaymentBanc wishes to perform such services and functions, all on the terms and conditions set forth in this Agreement. For purposes of this Agreement, the term “*Client*” shall mean either (i) a person receiving services from Applicant or (ii) the person or persons responsible for making payments to Applicant on behalf of a person receiving services from Applicant.

Agreement:

In consideration of the foregoing and the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services.

1.1 Web Site. The services provided by PaymentBanc under this Agreement (the “*Services*”) are to be facilitated via the Internet at PaymentBanc’s Web site (the “*Site*”), which has the following URL: <http://www.PaymentBanc.com>. PaymentBanc shall provide Applicant with a user ID and password that will grant Applicant access to the Site’s functions. PaymentBanc will provide detailed instructions to Applicant on how to use the Site.

1.2 Submission of Client Names to PaymentBanc. Applicant shall provide to PaymentBanc the names of each Client with respect to which Applicant desires PaymentBanc perform a progress payment analysis. Applicant shall have each such Client execute a Client Authorization Form in a form approved by PaymentBanc.

1.3 Progress Payment Plan Recommendations. Upon receipt of a request for Services transmitted from Applicant via the Site with the box marked indicating that the Client Authorization Form was executed by the Client and received by Applicant, PaymentBanc shall (i) perform a progress payment analysis with respect to such Client by procuring a report on such Client from a credit reporting agency and (ii) recommend to Applicant a plan for progress payments to Applicant by such Client.

1.4 Collection and Transfer of Progress Payments. Applicant shall have each Client for which Applicant desires PaymentBanc to administer a plan for progress payments execute a Progress Payment Plan Form in a form approved by PaymentBanc, and Applicant shall deliver such executed forms to PaymentBanc. Upon receipt of a Progress Payment Plan form executed by a Client, PaymentBanc will collect payments from such Client via ACH, bankcard or credit card processing as set forth on the Progress Payment Plan Form. All Client payments collected by PaymentBanc shall be held for at least two (2) days before being transferred to Applicant. A reconciliation statement shall be provided to Applicant in connection with each transfer to Applicant of Client funds.

1.5 Insufficient Client Funds. In the event that PaymentBanc efforts to collect Client funds are unsuccessful due to insufficient funds in Clients’ accounts, closed Client accounts, disputed ACH or bankcard transactions, stop payments or any other

reason, PaymentBanc will promptly notify Applicant and will attempt to collect the payment again. If such second collection attempt fails, PaymentBanc will notify Applicant of such failure and cease any further attempts to collect funds from such Client. In such case, if Applicant desires PaymentBanc to reinstate the payment and collection process, PaymentBanc will do so upon notification from the Applicant or the Client.

1.6 Disputed Transactions/Errors. If, after PaymentBanc has transferred a Client’s payment to Applicant, PaymentBanc is required to transfer an amount equal to such payment back to the Client due to a disputed credit card transaction, a disputed ACH transaction, an error in transfer of funds or otherwise, PaymentBanc may deduct an amount equal to such payment from the next following transfer of funds to Applicant’s account.

1.7 Telephonic Support. PaymentBanc will provide telephonic support to Applicant during PaymentBanc’s normal business hours to answer questions and provide assistance in connection with the provision of the Services.

1.8 Additional Services. The parties may agree from time to time for PaymentBanc to perform additional services and functions. A description of any such additional services, and the fees relating thereto, shall be attached to this Agreement as an addendum hereto and signed by each party. The performance of any such additional services shall be governed by this Agreement. Services outside the scope of this Agreement will be provided pursuant to a separate agreement.

2. **Control of Services.** The method and means of providing the Services shall be under the exclusive control, management and supervision of PaymentBanc. PaymentBanc may, in its sole discretion take the following actions: (i) change locations where its work functions are performed; (ii) perform its obligations through its subsidiaries or affiliates, or through the use of PaymentBanc-selected independent subcontractors, *provided, however*, that PaymentBanc shall not be relieved of its obligations under this Agreement by the use of such subsidiaries, affiliates or subcontractors; (iii) modify or replace work processes or technology relating to the Services; (iv) from time to time initiate changes in order to improve, modify or migrate the Services; and (v) from time to time consolidate or transfer any or all of the Services being provided hereunder into any facility or facilities selected by PaymentBanc and relocate the personnel, equipment and other resources used in providing the Services.

3. **Right to Perform Services for Others.** PaymentBanc may, in its sole discretion, perform services similar to the Services for other PaymentBanc clients, and this Agreement does not prevent PaymentBanc from using any of its personnel, equipment, facilities or technology for such purposes.

4. Confidentiality of Client Information.

Restrictions on Disclosure. The information transmitted from Applicant to PaymentBanc hereunder, including all personal, health and financial information with regard to clients, shall be held by PaymentBanc in confidence, shall be used by PaymentBanc and its employees and agents only for the purposes set forth in this Agreement and shall not be disclosed without the prior written consent of Applicant and Client or unless disclosure is required by law. The information transmitted from PaymentBanc to Applicant hereunder, including all personal and financial information with regard to clients or prospective clients, shall be held by Applicant in

confidence, shall be used by Applicant and his/her employees and agents only for the purposes set forth in this Agreement, and shall not be disclosed without the prior written consent of PaymentBanc and Client unless disclosure is required by law.

5. **Proprietary Rights.** PaymentBanc retains all right, title and interest, including any and all intellectual property rights therein, in and to any and all PaymentBanc Technology (as hereinafter defined). PaymentBanc's use on Applicant's behalf of any pre-existing software and documentation owned by and/or licensed from a third party by PaymentBanc shall be governed by the then current written license agreement required by such third party. For purposes hereof, "*PaymentBanc Technology*" means PaymentBanc's (or its licensors') proprietary information, data, technology, methods and methodologies, processes, know-how, algorithms, tools, development tools, templates, software code, documentation, tools, software and interfaces, trade secrets, works of authorship and other proprietary materials, and all patented or patentable work that are owned, developed, or licensed by PaymentBanc (or its licensors) and used by PaymentBanc in the performance of the Services, including, without limitation, any and all Innovations (as hereinafter defined). For purpose hereof, "*Innovations*" means any and all inventions, developments, innovations, findings, discoveries, formulate and trade secrets, created or made by PaymentBanc in the course of providing the Services, including all patents, copyrights, trademarks, trade secrets or know-how embodied therein or otherwise pertaining thereto.

6. **Noncompetition.** Applicant agrees with PaymentBanc that for a period commencing on the date of this Agreement and ending two (2) years after the termination of this Agreement, Applicant and its affiliates will not establish, own, operate, manage or control any business that (i) is engaged in the business of providing services substantially similar to the Services and (ii) competes with the business of PaymentBanc. In the event that any provisions in this section shall be determined to be unenforceable, it shall be interpreted to extend only over the maximum period of time, geographic area or range of activities as to which it may be enforceable. Applicant acknowledges that the breach of this Section 8 may give rise to irreparable injury to PaymentBanc. Accordingly, in the event that Applicant breaches, or threatens to breach the provisions of this Section 8, PaymentBanc shall be entitled to injunctive or other equitable relief.

7. **Warranties and Representations.**

7.1 General Representations and Warranties.

Each party represents and warrants to the other party that: (i) it has all requisite power and authority to execute this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance of this Agreement have been duly authorized; (iii) it will comply with all federal, state and local laws and regulations applicable to the transactions contemplated by this Agreement; (iv) it has obtained all permits, rights and licenses required for the transactions contemplated by this Agreement; and (v) this Agreement is a valid and binding agreement enforceable in accordance with its terms.

7.2 Representations and Warranties of PaymentBanc. PaymentBanc represents, warrants and covenants to Applicant that: (i) the Services will be performed in a professional and workmanlike manner by qualified and properly trained personnel; (ii) in connection with providing the Services, PaymentBanc shall comply with all applicable federal, state, and local laws and regulations and has obtained all applicable permits, rights, and licenses; and (iii) PaymentBanc shall perform its

responsibilities under this Agreement in a manner that does not infringe on the intellectual property rights of any person. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PAYMENTBANC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. **Indemnification.**

8.1 Indemnification by Applicant. Applicant shall indemnify, defend and hold harmless PaymentBanc, each officer, director, employee or agent thereof, their respective controlling persons, and their respective estates, successors and assigns, from and against any and all claims, losses, damages, liabilities and expenses (including, without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) reasonably incurred by any of them as a result of: (i) the untruth, inaccuracy or breach of any representation or warranty made by Applicant in this Agreement; or (ii) the nonfulfillment or breach of any covenant, agreement or obligation of Applicant contained in this Agreement.

8.2 Indemnification by PaymentBanc. PaymentBanc shall indemnify, defend and hold harmless Applicant and his or her estate, successors and assigns, from and against any and all claims, losses, damages, liabilities and expenses (including, without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) reasonably incurred by any of them as a result of: (i) the untruth, inaccuracy or breach of any representation or warranty made by PaymentBanc in this Agreement; or (ii) the nonfulfillment or breach of any covenant, agreement or obligation of PaymentBanc contained in this Agreement.

9. **Limitation on Liability.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WHETHER IN TORT, CONTRACT, OR OTHERWISE SHALL PAYMENTBANC OR ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS BE LIABLE TO APPLICANT OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS EVEN IF PAYMENTBANC HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT SHALL PAYMENTBANC'S TOTAL LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE FEE PAID TO PAYMENTBANC FOR THE SERVICES. IN NO EVENT SHALL PAYMENTBANC BE LIABLE TO APPLICANT FOR AN INABILITY BY PAYMENTBANC TO COLLECT FROM CLIENTS ANY AMOUNTS OWED BY SUCH CLIENTS TO APPLICANT DUE TO CIRCUMSTANCES OUT OF PAYMENTBANC'S CONTROL.

10. **Miscellaneous.**

10.1 Severability. If any provision of this Agreement should be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and such provision shall be deemed restated to reflect the original intention of the parties as nearly as possible in accordance with applicable law.

10.2 Survival. The provisions of Sections 6, 7, 8, 10 and 11 shall survive the termination of this Agreement for any reason.

10.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee, without giving effect to the conflicts of laws provisions thereof. The parties, by their execution hereof, irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Chattanooga, Tennessee for the purpose of any action, claim, cause

of action or suit, inquiry proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof.

10.4 Notices. Whenever one party is required or permitted to give notice to the other, such notice shall be deemed given: when delivered by hand; one day after being given to an express courier with a reliable system for tracking delivery; when telecopied or faxed and receipt confirmed; or three (3) days after the day of mailing when mailed through United States mail, registered or certified mail, return receipt requested, postage prepaid. The addresses for delivery of notices are set forth on the signature page hereto.

10.5 No Third Party Beneficiaries. This Agreement is entered into solely for the respective benefit of the parties and their respective successors and assigns, and nothing in this Agreement will be construed as giving any entity other than the parties to this Agreement, persons and entities expressly indemnified hereunder and their respective successors and permitted assigns, any right, remedy or claim under this Agreement.

10.6 Relationship of the Parties. The parties shall be deemed independent contractors with respect to all performance rendered under the Contract Documents. Neither PaymentBanc nor its employees shall be considered employees or agents of Applicant for any purpose. Neither Party shall have the authority to bind or make commitments on behalf of the other Party for any purpose, and neither shall hold itself out as having such authority. PaymentBanc shall have sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like of PaymentBanc personnel.

10.7 Force Majeure. Neither party shall be responsible for any delay or failure in performance resulting from acts beyond their

control including but not be limited to an act of God; an act of war, sabotage or terrorism; a riot or other civil disturbance; outages of electrical, telecommunications or computer server services provided by third parties; an epidemic, fire, flood, extreme weather condition, or other disaster; an act of government; delays in transit or delivery; or labor shortage, labor unrest, strike or lockout; provided that, in order to be excused from delay or failure to perform, such party must act diligently and reasonably to remedy the cause of such delay or failure.

10.8 Entire Agreement. This Agreement constitutes the entire and final and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, communications, negotiations and agreements, written or oral, with respect to the subject matter hereof. There are no representations, warranties, understandings or agreements relating to the subject matter hereof which are not fully expressed in this Agreement. No amendment, modification, waiver or discharge of this Agreement shall be valid unless in writing and signed by an authorized representative of the party against whom such amendment, waiver or discharge is sought to be enforced.

10.9 Assignment. Applicant shall not assign or otherwise transfer its rights and/or obligations under this Agreement without the written consent of PaymentBanc.

10.10 Counterparts. This Agreement may be executed in counterparts, including counterpart transmitted by facsimile, each of which shall be deemed an original, and all such counterparts shall constitute one and the same agreement.

10.11 Headings. The section and subsection headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

Exhibit B
Vermont Fair Credit Reporting Statute, 9 V.S.A. § 2480e (1999)

§ 2480e. Consumer consent

- (a) A person shall not obtain the credit report of a consumer unless:
- (1) the report is obtained in response to the order of a court having jurisdiction to issue such an order; or
 - (2) the person has secured the consent of the consumer, and the report is used for the purpose consented to by the consumer.
- (b) Credit reporting agencies shall adopt reasonable procedures to assure maximum possible compliance with subsection (a) of this section.
- (c) Nothing in this section shall be construed to affect:
- (1) the ability of a person who has secured the consent of the consumer pursuant to subdivision (a)(2) of this section to include in his or her request to the consumer permission to also obtain credit reports, in connection with the same transaction or extension of credit, for the purpose of reviewing the account, increasing the credit line on the account, for the purpose of taking collection action on the account, or for other legitimate purposes associated with the account; and
 - (2) the use of credit information for the purpose of prescreening, as defined and permitted from time to time by the Federal Trade Commission.

VERMONT RULES * CURRENT THROUGH JUNE 1999 *****
AGENCY 06. OFFICE OF THE ATTORNEY GENERAL
SUB-AGENCY 031. CONSUMER PROTECTION DIVISION
CHAPTER 012. Consumer Fraud--Fair Credit Reporting
RULE CF 112 FAIR CREDIT REPORTING
CVR 06-031-012, CF 112.03 (1999)
CF 112.03 CONSUMER CONSENT

(a) A person required to obtain consumer consent pursuant to 9 V.S.A. §§ 2480e and 2480g shall obtain said consent in writing if the consumer has made a written application or written request for credit, insurance, employment, housing or governmental benefit. If the consumer has applied for or requested credit, insurance, employment, housing or governmental benefit in a manner other than in writing, then the person required to obtain consumer consent pursuant to 9 V.S.A. §§ 2480e and 2480g shall obtain said consent in writing or in the same manner in which the consumer made the application or request. The terms of this rule apply whether the consumer or the person required to obtain consumer consent initiates the transaction.

(b) Consumer consent required pursuant to 9 V.S.A. §§ 2480e and 2480g shall be deemed to have been obtained in writing if, after a clear and adequate written disclosure of the circumstances under which a credit report or credit reports may be obtained and the purposes for which the credit report or credit reports may be obtained, the consumer indicates his or her consent by providing his or her signature.

(c) The fact that a clear and adequate written consent form is signed by the consumer after the consumer's credit report has been obtained pursuant to some other form of consent shall not affect the validity of the earlier consent.