

# PayCircle<sup>â</sup>

## Member Registration Form

### Parties:

**PayCircle, Inc.**  
**2694 Bishop Drive, Suite 275**  
**San Ramon, CA 94583**  
**USA**

\_\_\_\_\_  
Corporate Name (“*Applicant*”)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code, Country

\_\_\_\_\_  
Voting Representative Name and Title

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Phone

This Member Registration Form (“Registration Form”) is an offer by Applicant to become a member of a consortium under PayCircle, Inc. (“PayCircle”) as set forth below. By executing this Registration Form, Applicant agrees to be bound by the terms and conditions set forth in the attached Member Agreement, the PayCircle Bylaws, and any PayCircle policies, as may be duly amended from time to time, adopted under the Member Agreement and Bylaws in the event that Applicant is accepted for membership in PayCircle. Dues are set forth below and are based on the Applicant’s selection and eligibility. Please submit two fully executed Member Agreements along with a check in the appropriate amount payable to “PayCircle, Inc.” at the address listed above.

### Member Type

### Annual Dues

Full Member

\$ 35,000 USD

Associate Member

\$ 15,000 USD

Participant

\$ 1,500 USD

### **PayCircle, Inc.**

### **Applicant**

\_\_\_\_\_  
PayCircle President / Acting Secretary

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

Date: \_\_\_\_\_

## PayCircle Member Agreement

This Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between PayCircle, Inc. ("PayCircle") and \_\_\_\_\_ (a "Member" as defined below).

**WHEREAS**, PayCircle has been formed as a nonprofit corporation in order to support the creation of specifications to describe payment services in different environments, and to develop uniform application programming interfaces (APIs) for payment systems; and

**WHEREAS**, Member would like to participate in PayCircle;

**NOW, THEREFORE**, PayCircle agrees to allow Member to join on the terms and conditions contained herein, and Member agrees to abide by the terms and conditions contained herein.

### Agreement

1. Group Membership: Control Group. Membership in PayCircle will cause all entities which are in the same control group as Member to be bound by this Agreement. For purposes of this Section, "Control" shall mean (i) the ownership of more than 50% of the total voting securities of another entity, or (ii) in the case of unincorporated entities "Control" shall mean the ownership of more than 50% of the ownership interest representing the right to make decisions for the entity; and "Control Group" shall include all corporations or other entities which are Controlled by Member, which Control Member, or which are Controlled by the corporation or entity Controlling Member.

2. Membership

2.1 Adherence to PayCircle Policies. Member has reviewed and agrees to adhere to the PayCircle Bylaws and all other policies and procedures established by the Board of Directors in writing and provided to the Member in written form prior to its membership. The Member shall be given at least thirty (30) days' prior written notice of the effective date of an amendment or addition to the bylaws, policies and procedures, and such amendments and additions shall be prospective only. A Member shall be bound by a duly adopted amendment or bylaw with respect to Member's activities at PayCircle facilities and within the scope of Member's activities with PayCircle, unless it elects to terminate this Agreement and its membership in PayCircle.

2.2 Membership Fees. Member agrees to pay all applicable membership dues and any fees or other assessments duly imposed on Members by written resolutions of the Board of Directors. In the event that Member withdraws from PayCircle within 90 days of the notification by PayCircle of a resolution imposing dues, fees or assessments in written form to the Member, Member shall not have any liability for payment of such dues, fees or assessments. If a Member does not withdraw within 90 days of such notification of passage of a resolution concerning such dues, fees or assessments, Member shall be responsible for such payment, even if Member subsequently withdraws from PayCircle.

2.3 Costs and Expenses. Member shall bear its own costs and expenses for its participation in PayCircle, such as compensation of its employees, and all travel and expenses associated with the Member's participation in PayCircle meetings and conferences, and such Member understands that it has no right of reimbursement from PayCircle.

2.4 Publicity. PayCircle shall NOT use the name of another member or members, and vice versa in any form of publicity without the written permission of the other member or members, provided that Member may publicly disclose and identify its own membership in PayCircle in documentation, press releases, brochures and other materials, and PayCircle (unless requested in writing by Member) may publicly disclose and identify the membership of Member in PayCircle in documentation, press releases, brochures and other materials, provided that all such references are truthful and accurate and provided that such press release, brochure, or other material solely lists the name of the Member, with no further references to, attribution to or statements on the Member, and provided the full Membership list is listed. Notwithstanding any such written request by Member, PayCircle may disclose the membership of such a Member if required by law or any court of competent jurisdiction. Nothing in this clause 2.4 shall serve to restrict PayCircle's rights to publish the name of the Member as part of a publicly available membership list.

3. Confidentiality. All exchanges of information between Members and between PayCircle and Members, which relate to PayCircle activities, are non-confidential except as may be otherwise provided below.

All information developed by PayCircle shall be deemed the Confidential Information of PayCircle until rightfully made publicly available. All works in progress, minutes of Membership Meetings, minutes of the Board of Directors or the Advisory Board, minutes or results of the Committees, and attorney work product shall in all cases be deemed Confidential Information of PayCircle and subject to the terms hereof, unless required by PayCircle's corporate structure to be publicly available.

From time to time one party (the "Discloser") may deem it necessary to disclose information to the other (the "Recipient") which such party considers confidential or proprietary ("Confidential Information"). In such instances the relevant information may be disclosed in confidence and shall be considered Confidential Information of the Discloser if, and only if, the information is specifically designated as Confidential Information by the Discloser at the time of disclosure. Any such designation shall be effected by (1) marking any information disclosed in writing in a manner which indicates it is the Confidential Information of the disclosing party; or (2) by orally indicating that any information disclosed orally is the Confidential Information of the disclosing party and then within ten (10) days providing the Recipient with a written summary of the orally disclosed Confidential Information so that such Confidential Information is more easily identified. All information disclosed by Member prior to the date of this Agreement directly for the purposes of PayCircle shall be governed by the provisions of this section.

With respect to Confidential Information, the Recipient agrees, for a period of three (3) years, to use the same care and discretion to avoid disclosure, publication, and dissemination outside the Recipient and its affiliates<sup>1</sup>, contractors and consultants as the Recipient employs with its own Confidential Information, but no less than reasonable care. Any disclosure by a Recipient to its affiliates, contractors and consultants shall be subject to an obligation of confidentiality at least as restrictive as those contained in this section. The foregoing obligation shall not apply to any information which is: (1) already known by the receiving party prior to disclosure; (2) publicly available through no fault of the receiving party; (3) rightfully received from a third party without a duty of confidentiality; (4) disclosed

1.1 \_\_\_\_\_

<sup>1</sup> Affiliate(s) of a party shall mean an entity, which is directly, or indirectly controlling such party, which is under the same direct or indirect ownership or control of such party, or which is directly or indirectly owned or controlled by such party. For these purposes, an entity shall be treated as being controlled by another if that other entity has fifty percent (50%) or more of the votes in such entity, is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

by the disclosing party to a third party without a duty of confidentiality on such third party; (5) independently developed by the receiving party; (6) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that the receiving party provides reasonable prior written notice to the disclosing party, and cooperates with the disclosing party, so that the disclosing party has the opportunity to oppose any such order; or (7) disclosed by the receiving party with the disclosing party's prior written approval.

After resignation, suspension, exclusion, expulsion or non-renewal as a Member, for any reason, a former Member has a continuing duty under this section.

#### 4. Intellectual Property Licensing Policy.

Definitions. The following definitions shall apply to this section 4:

“Specification” means a document adopted and approved for public release by the PayCircle Board of Directors, and any updates or revisions thereof adopted and approved for public release by the PayCircle Board of Directors.

“Contribution” means a submission to the PayCircle Board of Directors proposing creation of a specification, an addition to or modification of a Specification or any portion thereof, or a submission proposing changes or modification to related reference design documents, provided that such submission is submitted in writing (including a writing in electronic medium). Members may only make contributions on materials, including patents and patent applications, under which a Member, or its AFFILIATES has the right, at any time during the term of their membership, to grant licenses of the scope contemplated herein.

“Necessary Claims” shall mean those claims of all patents and published patent applications of a Member which are essential for the implementation of the payment interface and which are necessarily infringed by an implementation of a version of the Specification adopted and approved for release by the PayCircle Board of Directors, where such infringement could not have been avoided by another technically feasible non-infringing implementation of such Specification. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent or patent application as Necessary Claims; or that, if licensed, would require a payment of royalties or other consideration by the licensor to unaffiliated third parties unless the licensee agrees in writing to indemnify the licensor against all royalty costs and expenses arising from such license.

4.1 IP Ownership. All patents, copyright or other intellectual property owned or created by any Member of PayCircle shall remain the property of that Member. Such right, title and interest or ownership shall not be affected in any way by the Member's participation in PayCircle, unless the Member specifically agrees otherwise, such agreement to be provided by executed written instrument signed by duly authorized executive of the Member company.

4.2 Contributions. However, if a Member makes a Contribution to a Specification, the Member grants to PayCircle a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, create derivative works, distribute, display, publish, perform and sublicense the rights to reproduce, distribute, display and perform the Contribution of the Member, incorporated into the specification, solely for the purpose of developing, publishing and distributing Specifications and related materials once the specification has been approved. Contributions not incorporated into PayCircle Specifications remain the property of the Contributor and no copyright license is granted herein.

4.3 Approved Contributions. If and to the extent PayCircle decides to include a Contribution of a Member into a Specification, the Member hereby agrees to grant to the other Members, based on reciprocity, an irrevocable, nonexclusive, nontransferable, worldwide license to reproduce, display, perform, distribute, sublicense and implement the Contribution included in the Specification, except for patent licenses which are addressed by Sections 4.5 and 4.6 herein.

4.4 Review Period. Prior to adoption of a Specification by the PayCircle Board of Directors, all members with voting privileges shall be provided a 60-day review period. The PayCircle Board of Directors shall announce the review period for the pending Specification to all members with voting rights. PayCircle members must use the 60-day review period to identify any necessary claims, and to provide written notice to the PayCircle Board of Directors of those claims prior to the close of the review period.

If a Necessary Claim is made by a Member with a Contribution to the pending Specification during the review period, they must also declare their intent to either agree to grant a no-fee, royalty-free, nonexclusive, nontransferable license to other members, remove the IP with Necessary Claims from the pending Specification, or withdraw from PayCircle membership. Any other voting Member with a Necessary Claim during the review period must also declare their intent to grant a no-fee, royalty-free, nonexclusive, nontransferable license, remove the disputed IP from the pending Specification, or withdraw from PayCircle membership. Failure to identify a Necessary Claim during the review period acknowledges the grant of a royalty free license.

4.5 Necessary Claims. Upon adoption of a Specification by the PayCircle Board of Directors, each Member that has Necessary Claims, hereby covenants - insofar as they lawfully may - to offer under its Necessary Claims to any other party a no-fee, royalty-free, nonexclusive, nontransferable license to allow such party to implement the Specification in a fully compliant manner, and to make, have made, use, sell, promote or otherwise distribute the resulting implementation. Such license may be made subject to the condition that those who seek licenses from a Member pursuant to this Section 4.5 agree to grant reciprocal, no-fee, royalty-free, non-exclusive, nontransferable licenses under their Necessary Claims to such Member and all other parties necessary to implement the Specification in a fully compliant manner, and to make, have made, use, sell, promote or otherwise distribute the resulting implementation, which also may be subject to the condition of reciprocity described herein. Except as set forth herein, the negotiation of licenses pursuant to this section 4.5 shall be left to the Members and other parties concerned. Additionally, in no event shall any Member be required to grant a license pursuant to this section 4.5 with respect to technology that is not required to implement a Specification.

4.6 Necessary Claim Withdrawal. Any Member may withdraw from membership in PayCircle pursuant to this section 4.6 if that Member determines that the Specification contains Necessary Claims which that Member is unwilling to license to the other Members pursuant to section 4.5. A Member wishing to exercise the right to withdraw must deliver notice of withdrawal to the Board of Directors no later than five (5) calendar days after the close of the review period.

5. Withdrawal. At any time a Member may give notice of its intent to terminate its membership in PayCircle. A Member shall have no right to a refund of any dues, fees or assessments paid prior to the termination of its membership. Upon withdrawal, this Agreement shall be automatically terminated with respect to Member; however the withdrawal of Member shall not affect any rights or obligations, which by their nature survive such withdrawal, either under this Agreement or any other agreement between Member and PayCircle or any of its members.

6. General

6.1 No Implied Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Members nor an obligation to develop, make available, use, license, buy, sell or provide any information, product, services or technology.

6.2 Costs. All costs and expenses incurred by any party in carrying out its obligations under this Agreement shall be paid by the party that incurred the expense. Each party shall possess or obtain at its own expense all necessary licenses or permits.

6.3 Enforceability and Interpretation. If any provision of this Agreement is unenforceable at law, the rest of the provisions remain in effect. The headings in this Agreement are for reference only. They will not affect the meaning or interpretation of this Agreement.

6.4 Transferability of Membership. Member may transfer its membership without the express written consent of a majority of the Board of Directors in connection with a merger, acquisition, consolidation, reorganization – especially the sale of the business unit to which this Agreement materially pertains or internally is attributed to – or transfer of all or a substantial part (more than fifty percent) of its assets. In all other cases Member may not transfer its membership without the express written consent of a majority of the Board of Directors.

6.5 Dispute Resolution. The following provisions apply in the event of disputes arising out of Members' participation in PayCircle:

(a) Mediation. The parties agree to first submit any controversy or claim arising out of or relating to this Agreement, or the breach thereof, to non-binding mediation in San Francisco, California, by a mediator to be selected by the parties from among the San Francisco chapter of the American Arbitration Association (“AAA”) mediation or commercial arbitration panelists. The parties agree to mediate in good faith for a minimum period of thirty (30) days.

(b) Arbitration. Any controversy or claim not resolved by mediation, arising out of or relating to this Agreement, or the breach thereof, or any rights or materials licensed hereunder, shall be settled by binding arbitration in accordance with the International Arbitration Rules (the “Rules”) of the AAA, and the procedures set forth below. Judgment upon the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof.

(c) Location. The location of the mediation and arbitration shall be in San Francisco, California.

(d) Intellectual Property Rights. Notwithstanding the arbitration or mediation clause above, any issues relating to intellectual property rights shall not be subject to the arbitration or mediation clauses above. Any other issue shall remain subject to the arbitration panel's decision. The parties agree that jurisdiction over intellectual property rights disputes will be in the country where that intellectual property right was created (i.e. if it is a German patent then jurisdiction is in Germany or if it is a United States patent then jurisdiction is in the United States).

(e) Confidentiality. Except as set forth below, the parties shall keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the parties may disclose information about the arbitration to persons who have a need to know, such as directors, trustees, management employees, witnesses, experts, investors, attorneys, lenders, insurers, and others who may be directly affected. Additionally, if a party has stock which is publicly traded, the party may make such disclosures as are required by applicable securities laws. Further, if a party is expressly asked by a third party about the dispute or the arbitration, the party may disclose and acknowledge in general and limited terms that there is a dispute with the other party which is being (or has been) arbitrated. Once the arbitration award has become final, if the arbitration award is not promptly satisfied, then these confidentiality provisions shall no longer be applicable.

6.6 Governing Law: Venue: Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States and the State of California without regard to its conflict of laws provisions.

6.7 Liability. No party shall bear any responsibility or liability for any losses arising out of any delay or interruption of its performance of obligations under this Agreement due to any act of God, act of governmental authority, or due to war, flood, civil commotion, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party delayed. All documents, software and any other materials submitted by a Member to PayCircle, or to another Member under this agreement, are provided on an "AS IS" basis, and NO MEMBER MAKES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE. NONE OF THE MEMBERS, NOR PAYCIRCLE, INC., WARRANT OR ASSUME ANY LIABILITIES IN CONNECTION WITH THE RIGHTS GRANTED, NOR THE ACTIONS ANTICIPATED OR TAKEN UNDER THIS AGREEMENT. IN NO EVENT SHALL ANY MEMBER BE LIABLE TO ANY OF THE OTHER MEMBERS OR TO PAYCIRCLE, INC., NOR SHALL PAYCIRCLE, INC. BE LIABLE TO ANY MEMBER, FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OF DATA, INTERRUPTION OF BUSINESS, OR FOR DIRECT, INDIRECT, SPECIAL OR EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

6.8 Waiver. No approval, consent or waiver will be enforceable unless signed by the granting party. Failure to insist on strict performance or to exercise a right when entitled does not prevent a party from doing so later for that breach or a future one.

6.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

6.10 Effectiveness. This Agreement shall come into effect, when the Acting Secretary of PayCircle has received a signed copy of this Agreement from Member. At such time, the Acting Secretary of PayCircle shall write promptly to Member to inform Member of this fact. This Agreement shall come into effect in relation to future members as of the date that they sign a copy of this Agreement.

6.11 Integration. This Agreement constitutes the entire agreement between the Member and PayCircle concerning its subject matter. No addition to or modification of any provision of this Agreement shall be binding upon the Member unless made by a written instrument signed by a duly authorized representative of each of the Member and PayCircle.

ACCEPTED AND AGREED TO:

PayCircle

By: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Member: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Company Representative

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Appendix 1 to PayCircle Member Agreement**

### **PayCircle Member Tiers / Benefits**

<b>Member Benefits</b>	<b>Full Member</b>	<b>Member</b>	<b>Participant</b>
Annual Member Dues (USD)	<b>\$ 35,000</b>	<b>\$ 15,000</b>	<b>\$ 1,500</b>
Eligible for Board of Director Seat (7)	✓		
Eligible for Officer Positions	✓		
Vote in Board of Director Elections	✓		
Propose/Approve Committees	✓		
Vote on Final Specification Approval	✓		
Chair Committees	✓		
Participate in Committees	✓	✓	
Vote on Committee Recommendations	✓	✓	
Propose Work Items	✓	✓	
Contribute IP/Propose Specification Changes	✓	✓	
Access/Comment to Draft Specifications	✓	✓	✓
Named Recognition on Web Site	✓	✓	✓
Access to Member's Only Section of Web Site	✓	✓	✓
Recognition in Press Releases	✓	✓	✓
Participate in E-mail Reflectors	✓	✓	✓
Participate in Marketing Events	✓	✓	✓
Attend Annual and Member Meetings	✓	✓	✓
Utilize Membership Logo	✓	✓	✓
Access to Final Specifications	✓	✓	✓
Access to Final Technical Reports	✓	✓	✓