

Every Penny Counts® LICENSE AGREEMENT

This License Agreement (“**Agreement**”) is effective this ____ day of _____, 2009 (the “**Effective Date**”), by and between Every Penny Counts, Inc. (EPC), a Delaware corporation, having a principal place of business at 3338 Charles MacDonald Drive, Sarasota, FL 34240 (“EPC”), and _____, having a principal place of business at Address _____, City _____, Zip _____ (“LICENSEE”).

WHEREAS, EPC wishes to grant and LICENSEE wishes to accept a license for the *Every Penny Counts* program under the EPC Licensed Patents (U.S. Patents Nos. 6,112,191 and 7,571,849) owned by EPC on the terms and conditions set forth herein.

WHEREAS, EPC is willing to grant to LICENSEE a non-exclusive license to use the Service Mark in connection with the *Every Penny Counts* program, in accordance with the terms of this agreement

WHEREAS, EPC has for many years used the trademark EVERY PENNY COUNTS in connection with financial services and has established common law rights to said trademark; and

WHEREAS, EPC owns U.S. Trademark Registration Nos. 1,112,034 and 3,404,301 for EVERY PENNY COUNTS in connection with charitable fundraising services; and

WHEREAS, EPC owns U.S. Trademark Registration No. 3,549,085 (for financial services, namely savings accumulation services for travel, automatic accumulation services for gift giving, accumulation services for the purchase of mutual funds, fund accumulations, savings services, and automatic fund accumulation services); and

WHEREAS, EPC’s common law rights to the mark EVERY PENNY COUNTS, EPC’s U.S. Trademark Registration Nos. 1,112,034, 3,404,301, and 3,549,085 shall be collectively referred to herein as “the Service Mark”; and

NOW, THEREFORE, in consideration of the royalty fees set forth in Section 4 of this Agreement and the other rights, covenants and obligations set forth herein, EPC and LICENSEE hereby agree as follows:

1. DEFINITIONS

Unless otherwise stated, all references to “Section” or “Sections” shall mean the section(s) of this Agreement.

1.1 “**Confidential Information**” means any information of a confidential nature included in the *Every Penny Counts* program, the EPC Licensed Patents, and the terms and conditions of this Agreement.

1.2 “**EPC Licensed Patents**” means U.S. Patents Nos. 6,112,191 and 7,571,849.

- 1.3 “*Every Penny Counts*” program means applying U.S. Patents Nos. 6,112,191 and 7,571,849 specifically to the following “Field of Use”.
- 1.4 “**Field of Use**” means that the LICENSEE has the right to name and market the program using as the name *Every Penny Counts*. If the LICENSEE wishes to name the program another name, it is the LICENSEE’s option to do so. The purpose of the program is to round up the face amount of transactions and/or determine a dollar amount to be applied to the number of account entries to their customers’ check/debit/ACH payment transactions and/or credit card transactions and send the excess funds to pre-selected accounts, i.e. savings, money market funds, investing, etc.
- 1.5 Under the program, referred to as *Every Penny Counts* or a name selected by the licensee, within the “Field of Use”, the LICENSEE has the right to:
- (a) Offer the customer the opportunity to have their check/debit and/or credit card transaction rounder to the next dollar and have the rounder amount (the excess funds) apportion to one or more pre-selected bank accounts i.e. savings, money market funds or investment account.
- (b) Allow the customer to apportion the excess funds from a choice of one or more pre-selected bank accounts i.e. savings, money market funds or investment account.
- 1.6 Under the Field of Use, the LICENSEE has the right to have its third party processor or their internal information technology departments make the needed programming changes to perform 1.5 (a) and (b).

2. LICENSE

- 2.1 *License Grant to LICENSEE.* EPC hereby grants to LICENSEE a license under the EPC Licensed Patents to operate within the Field of Use the *Every Penny Counts* program. This license does not include the right to grant sublicenses under the EPC Licensed Patents to any third party. In all instances, LICENSEE shall not use the EPC Licensed Patents outside the Field of Use.
- 2.2 If a major financial institution exclusively licenses the *Every Penny Counts* program or if EPC is purchased, the LICENSEE will be “grandfathered” in at the royalty rate as established in 4.2.1 and 4.2.2; thus, be able to continue to operate the *Every Penny Counts* program.
- 2.3 EPC hereby grants to LICENSEE a non-exclusive license to use the Service Mark in connection with LICENSEE’s operation of the *Every Penny Counts* program. Without limitation, EPC grants to LICENSEE the right to advertise and promote the program as the *Every Penny Counts* program. EPC represents and warrants that it owns the Service Mark, and that it has the right and authority to grant such non-exclusive license to LICENSEE.

The term of the aforesaid non-exclusive license to use the Service Mark shall be co-extensive with the term of the License Agreement.

- 2.4 If the LICENSEE elects to use the Service Mark, LICENSEE shall use the service mark with a proper trademark designation, only in accordance with the terms of this agreement, and in a manner consistent with applicable law. Without limitation, LICENSEE shall take no action with respect to the Service Mark which causes or threatens to cause a termination of EPC's registration or ownership of the Service Mark. Prior to using the Service Mark in any promotional or advertising materials, LICENSEE shall provide a draft of such materials to EPC for its approval. If EPC does not communicate its disapproval within forty-eight (48) hours of receipt of such materials, EPC's approval shall be deemed to have occurred, and LICENSEE shall be permitted to use the promotional or advertising materials.
- 2.5 In connection with any LICENSEE controlled advertising, promotion and press releases of the *Every Penny Counts* program, "Every Penny Counts, Inc." must be described as the licensor. Each such form of advertisement, promotion or press release must receive the prior written approval of EPC. LICENSEE shall mark, and shall require the marking of, the patents number of the EPC Licensed Patents issued as reasonably necessary for EPC to obtain the benefits of patent marking.
- 2.6 LICENSEE shall indemnify and hold harmless EPC from any actions, claims, losses, damages or expenses (including reasonable attorney's fees) arising out of or relating to LICENSEE's use of the Service Mark in violation of the non-exclusive license granted herein.
- 2.7 By this agreement, EPC is granting a non-exclusive license to use the *Every Penny Counts* program, U.S. Patents Nos. 6,112,191 and 7,571,849 and the EPC Service Mark to the LICENSEE, and LICENSEE shall use the GRANTS solely as an independent contractor. The relationship between the parties shall not be that of a partnership, joint venture, franchise arrangement, or any other type of relationship which could render one party liable for the actions of the other. EPC shall not control, and shall not have the right to control, LICENSEE's or its operation of the GRANTS, except as expressly set forth herein. The parties acknowledge that EPC has not and will not provide training to LICENSEE's employees in connection with the GRANTS.

3. CONFIDENTIAL INFORMATION

- 3.1 *Confidential Information.* Neither party to this Agreement shall disclose any Confidential Information of the other party to any person or entity, except its employees having a need to know and underwritten obligations of confidentiality. Each party shall use the Confidential Information of the other party only as permitted under this Agreement. Each party agrees to protect the Confidential Information of the other party with the same standard of care and procedures that it uses to protect its own highly sensitive trade secrets and proprietary information, but in no event shall this standard of care be less than reasonable care. Each party shall promptly notify the other party of any unauthorized disclosure or use of the Confidential Information of which it becomes

aware. Each party agrees to cooperate and assist the other party in preventing any such unauthorized use or disclosure.

- 3.2 *Equitable Relief.* The parties understand and acknowledge that violations of obligations under this Section 3 will cause irreparable harm and damage, which may not be recovered by any remedy available in law. The parties agree that remedies for breach of the confidentiality provisions of this Section 3 may include injunctive relief and any other relief available, whether in law or in equity.
- 3.3 *Return of Materials.* Each party agrees that upon termination of this Agreement, at the request of the other party, it shall return or destroy all tangible embodiments of the other party's Confidential Information as specified by the other party. EPC may retain all audit reports and Payment Reports.
- 3.4 *Exceptions.* Notwithstanding the other provisions of this Section 3, these obligations of confidentiality shall not extend to the party that wishes or is required to disclose or use the Confidential Information of the other party (such first mentioned party hereinafter referred to as the "**Recipient Party**"), which Confidential Information (i) through no fault of the Recipient Party, becomes generally available or known to the public, (ii) is not otherwise the subject of obligations of confidentiality to the other party or to any third party, and was already in the possession of the Recipient Party prior to having obtained the information from such other party or such third party, (iii) is independently developed by the Recipient Party, or (iv) is required to be disclosed by subpoena, law or other directive of a court, administrative agency or arbitration panel (in which event the Recipient Party agrees to provide the other party prompt notice of such request or requirement in order to enable the other party to (a) seek an appropriate protective order or other remedy, (b) consult with the Recipient Party with respect to taking steps to resist or narrow the scope of such request or requirement, or (c) waive compliance, in whole or in part, with the terms of this Section 3). EPC shall be permitted to disclose the terms of this Agreement, under terms of a non-disclosure agreement, to a prospective assignee or a purchaser of EPC's business to which this Agreement pertains.

4. ROYALTY FEES

- 4.1 *Signing Payment.* LICENSEE shall pay to EPC an initial non-refundable fee per schedule below on the Effective Date of the signing of this agreement.

\$3,000 for banks with 1 – 49 branches
\$5,000 for banks with 50 - 99 branches
\$8,000 for banks with 100 – 149 branches
\$10,000 for banks with 200 or more branches

- 4.2 *Royalty Fees.* Commencing on the Effective Date and until the expiration date of the EPC Licensed Patents, LICENSEE shall pay to EPC royalty fees as follows:

4.2.1 With respect to program arrangements between LICENSEE and EPC, for the life

of this agreement the LICENSEE shall pay to EPC a \$1.00 royalty fee per month per checking and/or credit card account, as long as such account is in the *Every Penny Counts* program; and

4.2.2 In the event that EPC assigns this agreement to another party, the \$1.00 per month royalty fee must be honored by the new operating entity.

4.2.3 For clarity, if a customer doesn't use the *Every Penny Counts* program for a month(s), the \$1.00 per monthly fee will be applied. Only when the customer elects to terminate the *Every Penny Counts* program will the monthly fee cease.

5. RECORDS AND REPORTS

5.1 *Monthly Reports and Payments.* Within fifteen (15) days after the close of each month, LICENSEE shall submit to EPC a check totaling the number of checking accounts enrolled in the Every Penny Counts program that month.

5.2 *Maintenance of Records; Audits.* LICENSEE shall maintain at its principal office the proper books of account and records showing its actions under this Agreement. Upon reasonable notice, such books and records shall be open to inspection and copying by an independent auditor, during usual business hours, for three (3) years after the closing of the quarter, to which they pertain, for purposes of verifying the accuracy of the reports and amounts paid by LICENSEE under this Agreement. LICENSEE shall permit such an independent auditor to conduct such inspection each year. In the event that royalties due for any time period are determined by the independent auditor to be at least five percent (5%) greater than the royalties paid for that time period, LICENSEE shall pay the difference plus prime-rate interest and shall reimburse EPC for the reasonable costs of the audit within twenty (20) days of receiving the auditor's report.

6. REPRESENTATION AND DISCLAIMERS

EPC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND RELATING TO THE EPC LICENSED PATENTS.

7. LIMITATIONS OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOSS OF PROFITS, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. TERM: TERMINATION

8.1 *Term.* The term of this Agreement shall be from the Effective Date until the expiration date of U.S. Patents Nos. 6,112,191 and 7,571,849, the EPC Licensed Patents, unless earlier terminated in accordance with the terms of this Agreement (“**Term**”).

- 8.2 *Licensee Termination.* Licensee shall have the right to terminate this Agreement at its discretion by providing EPC with written notice. Termination shall become effective at 5:00 p.m. C.S.T. on the sixty (60) day after mailing of the notice.
- 8.3 *Breach.* Either party may terminate this Agreement if the other party materially breaches any provision of this Agreement and fails to correct the breach within twenty (20) days following receipt of written notice of the breach. Without limiting that which may be considered a material breach, LICENSEE's failure to make reports and payments in full and in accordance with Section 5 shall be deemed a material breach.
- 8.4 *Unauthorized Transfer.* If LICENSEE attempts to assign, license, sublicense or otherwise convey any rights under this Agreement, EPC may immediately terminate this Agreement by providing written notice to LICENSEE.
- 8.5 *Insolvency.* EPC may immediately terminate this Agreement if LICENSEE should commit any act of bankruptcy, become insolvent, file a petition under any bankruptcy or insolvency act or have any such petition filed against it, make a general assignment for the benefit of creditors, and/or a receiver is appointed to take charge of all or part of LICENSEE's property.
- 8.6 *Invalidity.* In the event that each of the claims of the EPC Licensed Patents are held in a non-appealable order from a court of competent jurisdiction to be invalid, LICENSEE may terminate this Agreement upon thirty (30) days written notice to EPC, subject to satisfaction of outstanding payment obligations incurred prior to such termination.
- 8.7 Nothing in this Section 8 shall limit any other remedy that EPC or LICENSEE may have for default by the other party under this Agreement.

9. ASSIGNMENT

This Agreement and the rights and obligations of LICENSEE hereunder are personal to LICENSEE and shall not be assigned or otherwise transferred by LICENSEE, whether by merger, acquisition, consolidation or otherwise, without the prior written consent of EPC; *provided, however,* that LICENSEE may transfer this Agreement in its entirety in connection with an internal reorganization of LICENSEE, subject to EPC's prior written consent which shall not be unreasonably withheld; *provided further* that a change of control of LICENSEE shall not in itself be deemed an assignment or other transfer by LICENSEE. This Agreement and EPC's rights and obligations herein may be freely assigned or otherwise transferred by EPC. Any attempted assignment, sublicense, transfer or other conveyance by LICENSEE of this Agreement or any of LICENSEE's rights, liabilities, covenants or obligations under this Agreement in derogation of this Section shall be void *ab initio*.

10. NOTICES

All notices under this Agreement shall be in writing and may be sent via email with required confirmation by United States Postal Service, Certified Mail, Return Receipt Requested, postage prepaid or other receipt verifiable delivery, and addressed as follows:

To EPC:

Every Penny Counts, Inc.
3338 Charles MacDonald Drive
Sarasota, FL 34240

Attn: Bertram V. Burke
bvburke@everypennycounts.com

To LICENSEE:

Company: _____
Address: _____

Attn: _____
Email: _____

11. GENERAL

- 11.1 *Disclosure of Transaction.* EPC and LICENSEE and their respective officers, directors, employees, agents and affiliates shall not make any public announcement or issue any press release or other publicity in respect of this transaction without the prior written consent of both parties.
- 11.2 *No Waiver.* The parties agree that either party's failure to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted hereunder shall not be construed as waiving any such provision, and the same shall continue in force.
- 11.3 *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior understandings, communications, and agreements, whether verbal or written. No amendment to or modification of this Agreement shall be valid or binding unless in writing and executed by authorized representatives of the parties.
- 11.4 *Binding Agreement.* This Agreement shall be binding upon and inure solely to the benefit of each of the parties hereto and their permitted successors and assigns, and no other person or entity shall be a beneficiary hereunder or have any right to enforce any part of this Agreement.
- 11.5 *Severability.* If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.
- 11.6 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles.
- 11.7 *Section Headings.* The headings of all Sections of this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- 11.8 *Survival.* The provisions of Sections 3, 6, 7, 8 and 9 shall survive the expiration or termination of this Agreement for any reason.

IN WITNESS WHEREOF, the persons signing below warrant that they are duly authorized to sign for and on behalf of, the respective parties. This Agreement has been executed in duplicate originals.

AGREED AND ACCEPTED AS ABOVE:

Every Penny Counts, Inc.

By:

By:

Bertram V. Burke
Chairman & CEO

Print Name
Title_____

Date

Date

Upon request, EPC will send the above Licensing Agreement in a Microsoft Word Document.