



## TERMS AND CONDITIONS

Version: 2.0

Last Modified: 06-01-2021

### VyaPay Terms of Service

These terms of service are an agreement (this Agreement) between the entity accepting this Agreement (Merchant) and VyaPay LLC (Company). At the end of this Agreement there is a glossary where the capitalized terms in this Agreement appear.

Company Services are subject to this Agreement, so please read it carefully.

#### 1. Services

The Services are a cloud-based payment system by which Company, Bank and Processor serve as an agent for Merchants to receive payments on their behalf. Company may also, where requested by a Merchant, perform other services on behalf of Merchant as per the terms hereof and the selections of the Merchant made through its Account.

#### 2. Account

So long as Merchant is not in breach of this Agreement, Merchant shall be granted a unique and private Account accessible through the Service. The Account shall be a record of Merchant Transactions and Fees. Company shall provide Merchant with access codes for the Account. Merchant may not disclose such codes or permit any third party to use them on penalty of forfeiting access to the Account. Merchant assumes full responsibility for the use of its Account and the access codes thereto and shall indemnify Company for any and all claims, losses or other liabilities arising therefrom including but not limited to any access provided to a Third Party Servicer. Merchant shall not use any Third-Party Servicer unless it has all necessary Payment Network registrations, as determined by Company. Except as required to deliver the Services or as otherwise required by law, Company shall not grant any third-party access to the Account of Merchant.

Notwithstanding the foregoing, where a Third Party Servicer is indicated on the Site as being intergraded with the Services, Merchant shall have the right to enable an integration of the account with such Third Party Servicer provided, however, that Merchant remains liable for all acts of the Third Party Servicer as if they were performed by the Merchant hereunder.

#### 3. Prohibited Activities

It is forbidden for a Merchant to use the Services to, directly or indirectly, knowingly or unknowingly assist in any illegal activity or any Prohibited Activity (all of which are listed below in the Glossary in Exhibit C to this Agreement). Merchant may not itself or through any other Person: (i) copy, modify, adapt, translate, reverse engineer, decompile, or disassemble, in any way, any portion of the Services and/or content made accessible by Company including any information, pictures, videos, text, graphics, software

programs used by Company in connection with the Services and material and data obtained from or through the Services (collectively, the Content), or publicly display, reproduce, create derivative works from, perform, distribute, or otherwise use such Content, other than as permitted by Company in writing; (ii) make any use of the Content and/or Services on any other website or networked computer environment for any purpose, or replicate or copy the Content without Company's prior written consent; (iii) interfere with or violate any other services or user's right to privacy or other rights, or harvest or collect personally identifiable information about users of the Services without their express consent, including using any robot, spider, site search or retrieval application, or other manual or automatic device or process to retrieve, index, or data-mine; (iv) defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights of others; (v) transmit or otherwise make available in connection with these Services any virus, worm, Trojan Horse, time bomb, web bug, spyware, or any other computer code, file, or program that may or is intended to damage or hijack the operation of any hardware, software, or telecommunications equipment, or any other actually or potentially harmful, disruptive, or invasive code or component; (vi) interfere with or disrupt the operation of the Service, or the servers or networks that host the Services or make them available, or disobey any requirements, procedures, policies, or regulations of such servers or networks; (vii) sell, license, or exploit for any commercial purposes any use of or access to the Services other than permitted by Company; (viii) forward any data generated from the Service without the prior written consent of Company's; (ix) sub-license any or all of the Services to any third party; or (x) transfer or assign the Account password, even temporarily, to a third party.

#### 4. Application

On sign-up and throughout the term of this Agreement, Merchant shall supply, through the Application, and by such other means as Company may require, information concerning the Merchant, its Guarantor, and principals. Merchant shall notify Company of any changes in such information.

#### 5. Prohibited Merchants

All of the following Persons are prohibited from using the Services: (i) Persons who appear on the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals List (SDN); (ii) Persons who are less than 18 years of age; (iii) Persons, or their Affiliates who have been previously terminated for cause by Company or any of its Affiliates; and (iv) Persons who are not both domiciled and resident in the United States.

#### 6. Customers

Company is not party to the Merchant Relationship with Customer that necessitates the Transaction and Company shall have no obligations thereunder or in respect thereof. Merchant shall indemnify and hold harmless Company, Processor, Bank and their respective shareholders, directors, officers and employees harmless from any and all claims, losses or other liabilities arising from or in relation

to the Merchant Relationship or any Product, including any and all costs associated with the legal defense related to such claims. Each Transaction processed hereunder shall be a payment by Customer to Merchant that is received by Company, its Acquirer and Bank as agent on behalf of Merchant. Merchant hereby appoints Company, Acquirer and Bank as its agent for the purposes of receiving payment by Transactions on behalf of the Merchant from its Customers. Company shall have the right, but not the obligation, to issue Receipts to Customers of all Transaction funds received from them.

#### 7. Company Regulatory Status

Company is not a bank, money transmitter or other money services business. Company Service is that of a payment processor, by which Company, Acquirer and Bank act on behalf of Merchants in the receipt of Transaction payments from Customers. Funds received by Company are not insured by Company or any third party, except the Federal Deposit Insurance Corporation, to the extent that an ordinary commercial bank account benefits from its insurance. Company reserves the right to monitor use of the Service to ensure compliance with this Agreement and applicable laws. If Company determines that Merchant is not in compliance with this Agreement or applicable law, Company reserves the right to take appropriate action including, but not limited to suspending or terminating this Agreement or access to the Account. Bank, not Company, settles Transaction funds to Merchant. Company does not at any point hold, own or control funds in connection with the Services, nor does Company transmit money or monetary value. In connection with the Services, Company does not actually or constructively receive, take possession of, or hold any money or monetary value for transmission, and does not advertise, solicit, or hold itself out as receiving money for transmission. The Bank is the party with sole responsibility for conducting the settlement of funds between Customers and Merchants.

8. Merchant Release of Customer on Payment to Company ON RECEIPT BY COMPANY, ACQUIRER OR BANK RECEIVING A TRANSACTION FUNDS FROM A CUSTOMER OR ITS ISSUING BANK OF THE MERCHANT, THE CUSTOMER IS THEREBY RELEASED FROM ANY LIABILITY TO THE MERCHANT IN RESPECT OF THE TRANSACTION FUNDS PAID. THE CUSTOMER OF THE MERCHANT IN EACH TRANSACTION IS NAMED AS A THIRD-PARTY BENEFICIARY UNDER THIS AGREEMENT WITH THE MERCHANT SO THAT THE CUSTOMER CAN ENFORCE THE TERMS HEREOF AGAINST THE MERCHANT. NO DELAY IN PAYMENT BY COMPANY ON A GIVEN TRANSACTION AMOUNT TO MERCHANT, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION SEIZURE OF COMPANY ASSETS OR BANKRUPTCY OF COMPANY, SHALL SERVE TO DIMINISH THE FOREGOING OR ENTITLE MERCHANT TO COLLECT ANY AMOUNT FROM A CUSTOMER IN RESPECT OF WHICH A RECEIPT HAS BEEN ISSUED BY COMPANY.

Customer will be debited or charged by the Bank for each Transaction. The Merchant agrees that the Customer's obligation to the Merchant is treated as paid at the time of

the release of Transaction information to Company and initiation of processing thereof by the Bank. After the initiation of processing by the Bank, Merchant agrees not to attempt to collect or otherwise seek payment from the Customer, because Merchant agrees Customer's obligation to the Merchant has been satisfied.

Transactions may be disputed at any time up to 90 days from the date of Transaction, regardless of state, by the Customer. Disputes resolved in favor of the Customer may result in reversal of the disputed Transaction, regardless of state. Company reserves the right to limit or restrict Transaction size or volume at any time.

#### 9. Card Services

Subject to Merchant compliance with technical specifications prescribed by Company, Acquirer, Bank and the Rules, Merchant shall cause information concerning Card Transactions to be communicated to Payment Networks and Bank whereupon, Company shall cause Bank to acquire the funds related to such Transactions and settle such funds to Merchant.

Company makes no representation or guarantee with respect to Customer's Card having sufficient available funds, that a Transaction will be authorized or processed, or that the Transaction will not later result in a chargeback or reversal.

If Merchant is a non-profit organization, it shall retain sole and exclusive responsibility for classifying themselves and their Transactions, issuing any required reports and receipts, and making any required tax or other filings. Merchant shall be exclusive to Company and shall not use services of third parties that are similar or competitive with the Services.

#### 10. Credit Card Consent

In connection with Merchant procuring Services from Company, Merchant understands that one or more consumer reports as defined in the Federal Fair Credit Reporting Act as amended (FCRA), 15 U.S.C. 1681 and following, may be obtained by Company from consumer reporting agencies (each a CRA). Merchant (which term shall include its shareholders, officers and Guarantors in this consent) understands that this report may include information with respect to public record information, criminal records, motor vehicle operation history, education records, names and dates of previous employers, reason for termination of employment and work experience, and/or credit worthiness, capacity and standing, character, general reputation, personal characteristics, or mode of living, such information may be used to evaluate whether Merchant is an appropriate candidate for transacting with Company and this determination may be adverse to Merchant. The information obtained will not be provided to any parties other than to designated authorized representatives of Company. Merchant further understands that the CRA may not give out information about Merchant to Company without Merchant's written consent. Merchant hereby authorizes Company now, or at any time while it is party to an agreement with Company or otherwise engaged by Company, to obtain a consumer report on Merchant.

This authorization does not include the release of Merchant's medical information. A copy, fax or scan of this consent shall be considered as effective and valid as the original. Merchant understands that in the event any adverse action is taken against Merchant based in whole or in part on the consumer report, Merchant shall be provided with the name of the CRA and a copy of the report as well as a description of Merchant's rights under the FCRA. On request, California, Minnesota, and Oklahoma residents, can obtain a copy of any consumer credit report requested by Company. On request, New York residents can be informed if a consumer credit report has been requested on them by Company as well as the name of the agency providing the report. Merchant and its Guarantors have read and understand the above and authorize Company to perform the above investigations. Merchant must provide accurate and complete information. If Company cannot verify that this information is complete and accurate, Company may deny Merchant use of Company Service, or close Merchant Account.

#### 11. Fees

Merchant shall pay Fees for the Services. Fees shall be paid to Company by offsets from Transaction fund settlements to the Designated Account, however, if there are insufficient Transaction funds to cover Fees, then Merchant shall pay the Fees no later than the fifth (5) day following the month during which they accrued. Referral Platform may also have provided disclosure to Merchant concerning Fees. In the event of any inconsistency between Fees disclosed to Merchant by Referral Platform and those disclosed by Company, the higher of the two shall apply. Company also charges, as part of Fees, a 1% surcharge for any Transaction on foreign (international) cards, a \$0.35 fee for every successful account updated using the account updater feature, a \$30.00 chargeback/retrieval, as well as \$30.00 for each ACH reject.

#### 12. Direct Merchant Status

If Merchant have either (1) \$1,000,000 or greater in charge volume in a rolling twelve month period, or (2) greater than \$100,000 in American Express charge volume in any three consecutive months, Merchant shall be converted to a direct Card acceptance relationship with American Express and, upon conversion, Merchant will be bound by the then-current American Express Card acceptance agreement and American Express will set the discount and other fees payable by Merchant for American Express Card acceptance.

Merchant shall be bound by the Merchant Services Agreement set forth in Exhibit A to this Agreement if Merchant receives more than \$1,000,000 in payments from Visa or MasterCard in a twelve-month period. By agreement to this Agreement, Merchant also agrees to the terms and conditions of the Merchant Services Agreement, which constitutes a legal binding contract between Merchant, on the one hand, and VyaPay's appointed Acquirer and its designated Bank, on the other hand.

Merchant shall comply with the Rules, including those posted at the following sites and are incorporated herein by

reference: [usa.visa.com](http://usa.visa.com), [www.mastercard.com](http://www.mastercard.com),

[www.americanexpress.com](http://www.americanexpress.com) and [www.discover.com](http://www.discover.com).

Merchant agrees with the specific requirements of the American Express Merchant Regulations, US set out in Exhibit B and Exhibit 1 to this Agreement. We can provide Merchant with excerpted provisions of the ACH Rules upon Merchant request.

#### 13. Transaction Authorizations

Merchant shall not submit Transactions hereunder unless they are submitted in the correct manner including the Merchant being in possession of transaction receipts and not submitting Transactions until they are complete, (i.e. the goods or services are shipped / provided) the Transaction is in the correct currency and within the correct time limit, such as it may be from time to time.

Bank shall hold, receive, disburse and settle Transaction funds on Merchant behalf. Where deemed necessary by Bank, Acquirer of Company, Bank may generate a paper draft or electronic funds transfer to process each Transaction. Subject to this Agreement, Merchant also authorizes Bank to debit or credit any payment card or other payment method Company accepts.

Merchant authorizes Bank to initiate electronic ACH entries to the Deposit Account and to initiate adjustments for any Transactions credited or debited in error. Merchant agrees to be bound by the ACH Rules, and Merchant agrees that all ACH transactions that Merchant initiates will comply with all applicable laws. Merchant's authorization will remain in full force and effect until Merchant notify Company that Merchant revoke it by contacting Company through the Account. Merchant understands that Company requires a reasonable time to act on Merchant's revocation.

#### 14. Merchant Data Consent

Merchant expressly consents for Company, Acquirer, Bank and all third parties that assist in the delivery of the Services to collect, use, store and disclose Company information, including that provided in the Application, information concerning Customers, Transactions and the business of the Merchant in order to supply the Services, generate reports, to reduce fraud, provide customer support, create and share aggregated data concerning the Services and assessing the risk associated with the Merchant. Payment Networks shall have the right to use Merchant name, address, and internet addresses.

#### 15. Settlement

Each Account must be linked to a verified Deposit Account. The Bank will transfer funds to the Merchant's bank account according to the schedule the Merchant selects from those available in the Account. If Bank cannot transfer the funds to the Merchant's bank account (due to inaccurate or obsolete bank account information entered by the Merchant, or for any other reason), Company may refund the funds to the Customer or escheat them as provided below. None of Bank, Company or the Customer will have any liability to Merchant for funds so refunded. Settlements to a bank account shall be limited or delayed based on Merchant perceived risk and history with Company as determined by the sole and absolute discretion of Company

or Bank. Unless otherwise agreed in writing by Company, Transaction settlement shall be by ACH to the Deposit Account.

#### 16. Merchant Transaction Disclosure

Merchant must not:

16.1 require a Cardholder to complete a postcard or similar device that includes the Cardholders Account Number, Card expiration date, signature, or any other Card account data in plain view when mailed;

16.2 add any tax to Transactions, unless applicable law expressly requires that a Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the Transaction amount and not collected separately;

16.3 request or use an Card account number for any purpose other than as payment for its goods or services;

16.4 disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from that Merchant (being Product);

16.5 disburse funds in the form of cash, unless the Merchant is dispensing funds in the form of travelers cheque, Travel Money cards, or foreign currency. In this case, the Transaction amount is limited to the value of the traveler's cheques, Travel Money cards, or foreign currency. Plus any commission or fee charged by the Merchant, or the Merchant is participating in the Cash Back service;

16.6 enter into interchange any Transaction for a Transaction that was previously charged back to the Bank and subsequently returned to the Merchant, irrespective of Cardholder approval. Merchant may pursue payment from the Customer outside the system of the Services;

16.7 accept a Visa Consumer Credit Card or Commercial Visa Product, issues by a U.S. Issuer, to collect or refinance an existing debt;

16.8 accept a Card to collect or refinance an existing debit that has been deemed uncollectable by the Merchant providing the associated goods or services;

16.9 enter into interchange a transaction that represents collection of a dishonored check; or

16.10 change any aspect of what goods or services it sells or how they are sold without prior written consent of Company.

#### 17. Reserve Account

Where deemed necessary or appropriate by Bank or Company, Bank shall create a reserve account (the Reserve) to protect Bank or Company from actual or potential liabilities hereunder. The Reserve will be in an amount determined by Company in its sole and absolute discretion to cover anticipated chargebacks, returns, unshipped

Product and/or unfulfilled services or credit risk based on Merchant processing history. The Reserve may be raised, reduced, or removed at any time by Bank or Company. Where the Reserve is not adequately funded, Merchant shall pay all amounts requested by Company for the Reserve within one (1) business day of a request for such amounts and Bank and Company may build the Reserve by off-sets from Transaction settlements or by debiting the Designated Account, or any other account of the Merchant, by ACH.

Merchant grants Company a security interest in and lien on any and all funds held in any Reserve, and also authorize Company to make any withdrawals or debits from the Reserve, without prior notice to Merchant, to collect amounts that Merchant owes Company under this Agreement, including without limitation for any reversals of deposits or transfers. Merchant will execute any additional documentation required for Company to perfect Company security interest in any funds in the Reserve. This security interest survives for as long as Company hold funds in Reserve; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. Merchant irrevocably assigns to Company all rights and legal interests to any interest or other earnings that accrue or are attributable to Merchant Reserve.

#### 18. Financial Information

Upon request, you will promptly provide us with any necessary permissions or consents, financial statements or other information reasonably requested by us to perform credit risk, security, qualification, and other reviews related to the provision of Services, transactions submitted, fulfillment of obligations to us or Cardholders, or your financial condition. You authorize us and our processor to obtain information from third parties when performing credit risk, security, qualification, and other reviews. We, our processor or Bank may perform a reasonable audit of your records related to its performance under this Agreement with 30 days' advanced written notice to you, during normal business hours. Financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

#### 19. Cardholder Data Security and Compliance

If Merchant collects, stores, uses, or discloses any Cardholder Data, Merchant shall comply with the Payment Card Industry Data Security Standards (PCI DSS) and shall certify such compliance when requested by Company. Merchant shall use only PCI DSS compliant Third Party Servicers in connection with the storage, processing, or transmission of Cardholder Data and shall be exclusively liable for any security breaches of its systems or any other PCI-DSS violations.

Merchant has exclusive responsibility for security of Cardholder Data and other information on Merchant systems or those under its control. Merchant is aware of and shall comply with all applicable laws, Rules, and rules in

connection with Merchant collection, security, and dissemination of any personal, financial, or transaction information. Without limitation, Merchant shall maintain policies and procedures to reduce the risk of loss from illegal and Payment Network brand-damaging transactions, which may pose significant fraud, regulatory, or legal risk, or may cause reputational damage to Company or any third party. Merchant shall adhere to MasterCard Business Risk Assessment and Mitigation (BRAM), which shall be deemed part of the Rules.

Merchant shall maintain adequate security to prevent a breach of Customer or Cardholder data. In the event of any actual or suspected breach of data in possession or control of Merchant or one of its Third Party Services, Merchant shall immediately notify Company thereof and also comply with all applicable laws and Rules concerning the breach. Merchant shall obtain from each Customer all consents required under the Rules and applicable law for the collection, use, storage and disclosure of any and all information provided by Customers or obtained by Merchant or its agents or Third Party Servicers under the Merchant Relationship or otherwise. Merchant shall indemnify and hold Company and Bank harmless from and against any liability arising on account of or in relation to the failure by Merchant to obtain consents from Customers related to their information or Cards.

Company reserves the right, at its sole but reasonable discretion, without prior consent of Merchant, to make reasonable changes to the Services or implement other risk management controls deemed necessary by Company or its suppliers to manage risk. Merchant shall comply with all such changes.

#### 20. Taxes

Merchant has the exclusive responsibility to calculate, charge, collect and remit state and other taxes applicable to Product sales. Company or the Bank may have tax reporting responsibilities in connection with the Service such as an Internal Revenue Service (IRS) on Form 1099-K.

#### 21. Merchant Product

Merchant is solely responsible for its Product and all customer service issues related thereto including pricing, order fulfillment, order cancellation by Merchant or the customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with Merchant personnel, policies or processes. Merchant shall post its customer service telephone number on its website.

#### 22. Refunds and Returns

Merchant agrees to process returns of and provide refunds and adjustments for goods or services in accordance with this Agreement and the Rules. The Rules require that Merchant will: (i) maintain a fair return, cancellation or adjustment policy; (ii) disclose Merchant return or cancellation policy to Customers at the time of purchase; (iii) not give cash refunds to a Customer in connection with a payment card sale, unless required by law; and (iv) not accept cash or any other item of value for preparing a

payment card sale refund. Merchant's refund policies must be the same for all payment methods.

#### 23. Chargeback Liability

The amount of a payment may be charged back to Merchant if: (i) it is disputed by a Customer; (ii) it is reversed for any reason; (iii) it was not authorized or Company have any reason to believe that the transaction was not authorized; or (iv) it is unlawful, suspicious, or in violation of the terms of this Agreement. Merchant is responsible for all chargebacks, whether or not the chargeback complies with the Rules.

Merchant shall immediately pay Company the amount of all chargeback and related Fees, fines, or penalties assessed by the Bank, Company Acquirer or the Payment Networks. If Merchant do not have sufficient funds in Merchant Account, Company can offset the amounts thereof from other Transaction amounts owing to Merchant hereunder, debit the amount by ACH from the Deposit Account or oblige Merchant to make immediate payment thereof.

If Company determines that Merchant is incurring an excessive amount of Chargebacks, Company or the Bank may establish controls or conditions governing Merchant Account, including without limitation, by: (i) assessing additional Fees; (ii) creating a Reserve in an amount reasonably determined by Company to cover anticipated chargebacks and related fees; (iii) delaying payment; and (iv) terminating or suspending the Service or closing the Account.

Merchant shall assist in the investigation of any and all chargebacks or other actual or potential Transaction disputes and shall timely provide such information to Company as Company may request.

#### 24. Recoupment of Funds Owing to Company

Where amounts are owing from Merchant to Company hereunder, Company shall have the right to immediately, without prior consent or notice, offset or debit such amounts from funds: (i) deposited by Merchant; (ii) due to Merchant under this Agreement; (iii) the Reserve; or (iv) available in Merchant bank account, or other payment instrument registered with the Bank. Merchant's failure to pay in full amounts that Merchant owes Company on demand will be a breach of this Agreement. Merchant will be liable for Company costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and interest at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by applicable law. In its discretion, Company may make appropriate reports to credit reporting agencies and law enforcement authorities and cooperate with them in any resulting investigation or prosecution. Merchant hereby expressly agree that all communication in relation to delinquent accounts will be made by electronic mail or by phone, as provided by Merchant to Company. Such communication may be made by Company or by anyone on its behalf, including but not limited to a third-party collection agent.

#### 25. Escheatment

If there is no activity in an Account for the period of time set forth in the applicable unclaimed property laws, and Merchant have a credit, Company may notify Merchant by sending an email to Merchant registered email address. Company may also notify Merchant by U.S. mail. Company will give Merchant the option of keeping the Account open, withdrawing the funds, or requesting a check. If Merchant does not respond to Company notice within the time period specified in the notice, Company may close the Account and the Bank will escheat Merchant funds in accordance with applicable law.

#### 26. Recordkeeping

Merchant shall have exclusive responsibility for: (i) compiling and retaining permanent records of all transactions and other data, and (ii) reconciling all transaction information that is associated with Account. If Merchant believe that there is an error or unauthorized transaction activity associated with Merchant Account, Merchant shall immediately notify Company.

We will attempt to correct processing errors that Company discover by instructing the Bank to debit or credit Merchant Account. Company will only correct transactions that are processed incorrectly if and when Merchant notify Company of such an error in a timely fashion.

#### 27. Privacy

Merchant shall post a privacy policy to its website and shall honor the terms thereof.

Company shall comply with its own privacy policy posted on the Site.

#### 28. Term

The initial term of this Agreement shall begin as of when it is accepted by both parties hereto and shall end three (3) years thereafter after which it shall renew for additional and successive one (1) year terms. Either party can terminate this Agreement at the end of the then current term on not less than ninety (90) days' notice.

#### 29. Termination by Company

Company has the right to terminate this Agreement at any time for any reason or for no reason. On any termination hereof, Merchant shall immediately cease using the Services and the Account. Company shall have the right to delete all Account information on any termination hereof, but it also has the right to retain copies thereof for up to five (5) years. Company shall not have any liability to Merchant on account of a termination hereof. This Agreement shall terminate immediately if a Payment Network requires Company to terminate this Agreement. Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us are intended to survive termination of this Agreement.

If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement.

The Networks often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Networks for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by the Networks. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

In the event we provide notice to you of an increase in the fees for Services, you may terminate this Agreement without further cause or penalty by providing us 30 days advance written notice of termination. You must terminate within 30 days after we provide notice of the fee increase. However, maintaining your account with us or your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

#### 30. Termination by Merchant

Merchant may terminate this Agreement by closing Merchant Company Account at any time. When Merchant closes the Account, any pending Transactions will be cancelled. Any funds that the Bank holding in custody for Merchant at the time of closure, less any applicable Fees and other liabilities of Merchant, will be paid out to Merchant according to Merchant payment schedule. Bank may also withhold such funds pending investigation of Merchant Transactions or potential liabilities hereunder.

#### 31. Liabilities on Termination

On any termination hereof, Merchant shall remain liable hereunder for any and all Fees or costs accrued prior to or following termination and any other amounts owed by Merchant to Company, Bank, or a Payment Network.

#### 32. IP

Company reserves all rights not expressly granted to Merchant in this Agreement. Company owns the title, copyright and other worldwide intellectual property rights in the Service and all copies of the Service. This Agreement does not grant Merchant any rights to Company's trademarks or service marks, nor may Merchant remove, obscure, or alter any of Company's trademarks or service marks included in the Service. All comments and suggestions concerning the Services provided to Company shall be the property of Company and Merchant shall not have any rights therein.

#### 33. Indemnification

Merchant shall indemnify, defend and hold Company, Bank, Payment Networks and all third parties shall assist in providing the Services, as well as Customers and their

respective employees, directors, agents harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a third party person or entity that arises out of or relates to: (i) any actual or alleged breach of Merchant representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of Company policies or the Rules; (ii) Merchant wrongful or improper use of the Service; (iii) any transaction submitted by Merchant through the Service (including without limitation the accuracy of any product information that Merchant provide or any claim or dispute arising out of products or services offered or sold by Merchant); (iv) Merchant violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (v) Merchant violation of any applicable law; or (vi) any other party's access and/or use of the Service with Merchant's access code.

#### 34. Merchant Statements

Merchant states that: (i) Merchant is eligible to register and use the Service and has the authority and capacity to enter into and perform under this Agreement; (ii) the name identified by Merchant when Merchant registered is Merchant name or business name under which Merchant sells goods and services; (iii) any sales transaction submitted by Merchant shall represent a bona fide sale by Merchant; (iv) any Transactions submitted by Merchant will accurately describe the Product sold and delivered to a Customer; (v) Merchant shall fulfill all of Merchant obligations to each Customer for which Merchant submit a Transaction and will resolve any consumer dispute or complaint directly with the Customer; (vi) Merchant and all transactions initiated by Merchant shall comply with all applicable laws; (vii) except in the ordinary course of business, no Transaction submitted by Merchant through the Service will represent a sale to any principal, partner, proprietor, or owner of Merchant entity; and (viii) Merchant will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service.

#### 35. No Warranties

THE SERVICES ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS. USE OF THE SERVICE IS AT MERCHANT'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

#### 36. Limitation of Liability

35.1 COMPANY SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF SALES, GOODWILL, PROFITS OR REVENUES.

36.2 COMPANY'S LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY MERCHANT HEREUNDER DURING THE THREE (3) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

36.3 COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY: (I) AN ACT OR OMISSION OF MERCHANT OR ITS AFFILIATES OR ANY CUSTOMER; (II) MERCHANT USE OF OR MERCHANT INABILITY TO USE THE SERVICES; (III) DELAYS OR DISRUPTIONS IN THE SERVICES, (IV) VIRUSES OR OTHER MALICIOUS SOFTWARE OBTAINED BY ACCESSING THE SERVICES; (V) BUGS, ERRORS, OR INACCURACIES OF ANY KIND IN THE SERVICES; (VI) ACT OR OMISSIONS OF THIRD PARTIES; (VII) A SUSPENSION OR OTHER ACTION TAKEN IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT WITH RESPECT TO MERCHANT ACCOUNTS; (VIII) COMPANY'S NEED TO MODIFY PRACTICES, CONTENT, OR BEHAVIOR, OR MERCHANT DIMINISHED ABILITY TO DO BUSINESS, AS A RESULT OF CHANGES TO THIS AGREEMENT OR COMPANY'S POLICIES OR SERVICES MADE IN ACCORDANCE WITH THIS AGREEMENT OR APPLICABLE LAW; (IX) BREACHES BY MERCHANT OF THIS AGREEMENT; (X) INCORRECT OR INCOMPLETE TRANSACTION INFORMATION; (XI) ACTS OR OMISSIONS OF THIRD PARTY SERVICERS, INCLUDING BUT NOT LIMITED TO THE REFERRAL PLATFORM; OR (XII) COMPANY OR ONE OF ITS BANKING OR OTHER SUPPLIERS ELECTING TO SUSPEND PROVIDING SERVICES IN RESPECT OF MERCHANT OR A CUSTOMER ON THE BASIS OF ITS LEGAL, COMPLIANCE, OR RISK POLICIES.

36.4 Confidentiality. Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this Agreement, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors, representatives and Affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this Agreement). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party or (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, if receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party unless prohibited by law or court order.

365 Arbitration. Merchant and Company shall settle all disputes relating in any way to this Agreement or arising from or in respect of this Agreement exclusively by binding arbitration.

ANY ARBITRATION UNDER THIS AGREEMENT WILL BE ONLY BE ON A INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND MERCHANT ARE WAIVING MERCHANT RIGHTS TO HAVE MERCHANT CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST COMPANY. All Disputes shall be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association ([www.adr.org](http://www.adr.org)) (AAA) according to this provision and the applicable arbitration rules. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court

of competent jurisdiction. Arbitration shall take place not more than 50 miles from the office of the Company before a single arbitrator who is a lawyer practicing commercial law.

In the event that Merchant or Company are not able to resolve a Dispute with American Express, or a claim against Company or any other entity that American Express has a right to join, Exhibit 1 will apply.

36.5 Governing Law. This Agreement and any dispute arising hereunder shall be governed by New York law without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction.

36.6 Limitation on Time to Initiate a Dispute. Unless otherwise required by law, an action or proceeding by Merchant relating to any dispute or claim by Merchant hereunder must commence within one year after the cause of action accrues failing which Merchant foregoes any rights in respect thereof.

36.7 Electronic Signature. When provided to Merchant for execution in electronic form, this Agreement, and all related electronic documents, shall be governed by the provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign). By pressing Submit, Accept or I Agree, Merchant agrees (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that Merchant has the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize Company to conduct an investigation of Merchant's credit history and that of its principals with various credit reporting and credit bureau agencies for the sole purpose of determining acceptance of this Agreement and ongoing performance hereunder.

36.8 Third Party Services. Company is not liable for Third Party Servicers or their services even if the Site contains links to them or the Services are integrated with them. The inclusion of any link or integration to a Third-Party Servicer does not imply an approval, endorsement, or recommendation by Company. Merchant agrees that Merchant access any such website at Merchant own risk.

36.9 Notices. All notices and other communications required or permitted hereunder to be given to a party to this Agreement shall be in writing and shall be sent by electronic mail to the following addresses, if to Company, if to Merchant to the e-mail address indicated on the Application. Any notice sent in accordance with this Section shall be effective upon transmission and electronic confirmation of receipt, or if transmitted and received on a non-business day, on the first business day following transmission and electronic confirmation of receipt. Any notice of default of Company sent to Company shall also be



sent by courier to the address of Company appearing on the Site with proof of delivery.

36.10 Amendment of Agreement. Company reserves the right to modify the Services or change or add to the terms of this Agreement at any time with electronic notice through the Account, or by such other means as it may select, in a manner and at such time as Company deems reasonable. If Merchant does not terminate this Agreement following any such change, then Merchant shall be deemed to have accepted the change. This Agreement may also be amended by written agreement between the parties hereto.

36.11 Independent Contractors. The relationships of the parties to this Agreement shall be solely that of independent contractors, and nothing contained in this Agreement shall be construed otherwise. Nothing in this Agreement or in the business or dealings between the parties shall be construed to make them joint ventures or partners with each other. Neither party shall do anything to suggest to third parties that the relationship between the parties is anything other than that of independent contractors.

36.12 Guarantee. The individual executing this Agreement on behalf of Merchant personally guarantees performance by the Merchant hereunder and shall be joint and severally liable with Merchant for all liabilities of the Merchant hereunder (the Guarantee).

36.13 Assignment. The Merchant may not assign or otherwise transfer any or all its rights or obligations under this Agreement without Company's prior written consent, and any assignment without such prior written consent will be null and void. Company may assign any of its rights or obligations hereunder to a third party on electronic notice to Merchant through the Account.

36.14 Performance by Company Affiliates. Notwithstanding anything in this Agreement, Merchant agrees and acknowledges that Company may provide some of the Services through its Affiliates or other third-party service providers. Merchant agrees and acknowledges that providing the Service through any third party or Affiliate shall not be considered an assignment of this Agreement unless agreed upon in writing and Company shall be the sole entity liable for any provisions in this Agreement which apply to Company including to the performance of the Services and execution of the Agreement.

36.15 Electronic Communication. Merchant agrees to receive all communication under this Agreement by electronic means, including but not limited to agreements and policies, such as this Agreement and Company Privacy Policy, including updates thereto; (i) annual disclosure; (ii) transaction receipts or confirmations; (iii) communication in relation to delinquent accounts (which may also be by phone, and may be made by Company or by anyone on its

behalf, including a third party collection agent); (iv) Account statements and history; and (v) tax statements. Merchant shall make sure that its primary email address is up to date in the Account

it shall check that email periodically and not less than once per week. If any email from Company or other communication is blocked by a spam filter or other issue outside of the control of Company, Merchant shall be deemed to have received the communication all the same. If Merchant prefers written forms of tax forms, it shall notify Company of such preference via the contact information on the Site and in the Account.

36.16 Whole Agreement. This Agreement and its schedules the entire understanding and agreement between the parties and supersedes any and all prior discussions, agreements, promises and correspondence, whether oral or written, with regard to the subject matter hereof or otherwise, including (without limitation) any memorandum of understanding between the parties.

36.17 Headings. Headings in this Agreement are included for reference purposes only and are not to be used in interpreting this Agreement. The recital and schedules to this Agreement constitute an integral part thereof.

36.18 No Waiver. No failure, delay of forbearance of either party in exercising any power or right hereunder will in any way restrict or diminish such party's rights and powers under this Agreement or operate as a waiver of any breach or nonperformance by either party of any terms of conditions hereof.

36.19 Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and the unenforceable provision shall be enforced to the maximum extent permissible under law. Nothing in this Agreement shall be construed or be deemed to create any rights or remedies in or for the benefit of any third party.

36.20 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. A scanned or faxed version of this Agreement shall be deemed as an acceptable original thereof.

36.21 Survival. Any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement shall survive and remain in effect in accordance with its terms upon the termination of this Agreement. For greater certainty but without limitation, the indemnification, limitation of liability and confidentiality clauses shall survive termination hereof.

This Merchant Services Agreement for Sub-Merchants (Merchant Agreement) is made among First Data Merchant Services LLC (First Data), 5565 Glenridge Connection NE, Atlanta, Georgia 30342, and its designated Merchant Bank (collectively Acquirer) and the Merchant as defined in, and in connection with, the Terms of Service between VyaPay and the User (herein referred to as Sub-merchant). Capitalized terms not otherwise defined herein have the respective meanings given them in the Company Terms of Service. Acquirer will provide Sub-merchant with certain payment processing (the Services) in accordance with the terms of this Merchant Agreement. In consideration of Sub-merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with Visa, MasterCard, Discover, and certain similar entities (collectively, Associations), Sub-merchant is required to comply with the Rules as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operation Regulations or an Association or the Rules otherwise require, Sub-merchant may be required to enter a direct relationship with an entity that is a Merchant of the Associations. By agreeing to the Company Terms of Service to which this Merchant Agreement is an exhibit (by click through agreement or otherwise), Sub-merchant has fulfilled this requirement, if applicable. However, Acquirer understands that Sub-merchant may have contracted with Company to obtain certain processing services and that Company may have agreed to be responsible to Sub-merchant for all or part of Sub-merchant's obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

Certain Sub-merchant Responsibilities. Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant's agent (Agents) to comply, with the Associations' and other payment networks' by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively, Rules). Sub-merchant may review the VISA, MasterCard, and Discover websites for a copy of the Visa, MasterCard and Discover regulations. The websites are: <http://usa.visa.com/merchants/>; and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sub-merchant's

software providers and/or equipment providers.

If so indicated in the Company Terms of Service, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Rules and applicable law as they may relate to limited acceptance. Sub-merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Sub-merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 - Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand. Sub-merchant Prohibitions. Sub-merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, Travel Money cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, Travel Money

cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Rules including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

**Settlement.** Upon receipt of Sub-merchant's sales data for card transactions, Acquirer will process Sub-merchant's sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-merchant directly to Sub-merchant's designated demand deposit account (Sub-merchant-Owned Designated Account) or, at Sub-merchant's request, to a third-party check writer's account. Any dispute regarding amount of settlement shall be between Company and Sub-merchant. Any dispute regarding the receipt of settlement shall be between Acquirer and Sub-merchant. Acquirer will debit the Company Reserve Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit the Sub-merchant-Owned Designated Account for funds owed to Acquirer as a result of the Services provided hereunder. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or the Company reserve account.

**Term and Termination.** This Agreement shall be binding upon Sub-merchant upon Sub-merchant's acceptance (by click through agreement or otherwise). The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Agreement by issuing a merchant identification number and shall be coterminous with Company's Terms of Service with Sub-merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) Sub-merchant or Company fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sub-merchant or Company may be a violation of the Rules or any Laws, (iii) Acquirer believes that Sub-merchant has violated or is likely to violate the Rules or the Laws, (iv) Acquirer determines Sub-merchant poses a financial or regulatory risk to Acquirer or an

Association, (v) Acquirer's agreement with Company terminates, (vi) any Association deregisters Company, (vii) Acquirer ceases to be a Merchant of the Associations or fails to have the required licenses, or (viii) Acquirer is required to do so by any of the Associations.

**Limits of Liability.** Sub-merchant agrees to provide Acquirer, via a communication with Company, with written notice of any alleged breach by Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. In the event that Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Agreement, Sub-merchant shall proceed against Company and not Acquirer, unless otherwise specifically set forth in the Rules. In no event shall Acquirer have any liability to Sub-merchant with respect to this Agreement or the Services. Sub-merchant acknowledges Acquirer is only providing this Agreement to assist in Company's processing relationship with Sub-merchant, that Acquirer is not liable for any action or failure to act by Company, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Company. If Company is unable to provide its services to Sub-merchant in connection with this Agreement and Acquirer elects to provide those services, directly, Sub-merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sub-merchant, will govern Acquirer's relationship with Sub-merchant. If Company subsequently provides its services to Sub-merchant in connection with this Agreement, Acquirer will cease to provide such services after receipt of notice from Company and this Agreement will govern Acquirer's relationship with Sub-merchant.

**Miscellaneous.** This Agreement is entered into, governed by, and construed pursuant to the laws of the New York without regard to conflicts of law provisions. This Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees, and assignees. This Agreement is for the benefit of, and may be enforced only by, Acquirer and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Agreement upon notice to Sub-

merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement. Merchant Bank as used in this Agreement shall mean a Merchant of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Merchant Bank shall be MetaBank, National Association, a South Dakota Banking Corporation, 5501 South Broadband Lane, Sioux Falls, South Dakota, 57108. The Merchant Bank is a party to this Agreement. The Merchant Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sub-merchant.

## **Exhibit B: American Express Card Acceptance and Brand Requirements**

In the event Merchant accepts American Express, the Merchant agreement must contain the following terms and conditions.

The following will only apply to Merchant's participation in the American Express Program. Capitalized terms in this Exhibit are defined in the American Express Merchant Requirements.

Merchant hereby authorizes Processor to submit Transactions to, and receive settlement from, American Express on behalf of the Merchant. If Merchant is placed in the American Express Program, Merchant shall be responsible for complying with the provisions set forth in Exhibit 1 attached hereto and the Merchant Requirements (located at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide)).

Acquirer may disclose Transaction Data, Merchant Data, and other information about the Merchant to American Express; and American Express may use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes within the parameters of the Agreement. American Express may use the information from the Agreement at the time of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.

Merchant may be converted from the American Express Program to a direct Card acceptance relationship with American Express if and when Merchant has either (i) greater than \$1,000,000 in Charge Volume in a rolling twelve (12) month prior or (ii) greater than \$1,000,000 in Charge Volume in any three (3) consecutive months (hereinafter High CV Merchant). Upon conversion, (i) the Merchant will be bound by American Express then-current Card Acceptance Agreement; and (ii) American Express will

set pricing and other fees payable by the Merchant for Card acceptance.

Merchant shall not assign to any third party any payments due to it under the Agreements, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the Merchant may sell and assign future Transaction receivables to Acquirer, its affiliated entities and/or any other cash advance funding source that partners with Acquirer or its affiliated entities, without consent of American Express.

Third-party beneficiary rights may be conferred to American Express, but not obligations to the Merchant Processing Agreement, providing American Express the ability to enforce the terms of the Agreement against the Merchant in association with the American Express Program only.

Merchant may elect to opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept other payment products by notifying Acquirer.

Acquirer may terminate the Merchant's right to accept American Express Cards if it breaches any of the provisions in this Section or Exhibit 1.

Acquirer has the right to immediately terminate a Merchant from the American Express Program for cause, fraudulent or other activity, or upon American Express request.

Merchant may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless Chargeback has been exercised, the Merchant has fully paid for such Charge, and it otherwise has the right to do so.

Upon termination of the Agreement or termination of Merchant's participation in the Program, Merchant must remove any and all American Express Licensed Marks from the Merchant's Website and wherever else the American Express Marks are displayed.

Exhibit 1

American Express Program General Merchant Requirements

A. Card Acceptance

Merchant must accept the Card as payment for goods and services (other than those goods and services prohibited under Section 3.3, Prohibited Uses of the Card of the Merchant Requirements) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's Establishments under the Agreement.

B. Treatment of The American Express Brand

Except as expressly permitted by Applicable Law, Merchant must not:

indicate or imply that it prefers, directly or indirectly, any Other Payment Products over the Card, try to dissuade Card Members from using the Card, criticize or mischaracterize the Card or any of American Express services or programs, try to persuade or prompt Card Members to use any Other Payment Products or any other method of payment (e.g., payment by check), impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check, suggest or require Card Members to waive their right to dispute any Transaction, engage in activities that harm the American Express business or the American Express Brand (or both), promote any Other Payment Products (except Merchant's own private label card that Merchant issues for use solely at Merchant's Establishments) more actively than Merchant promote the Card, or convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by Applicable Law): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant's customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this Section B., Treatment of the American Express Brand.

#### C. Treatment of The American Express Marks

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the Card and display our Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from Processor) indicate that American Express endorse Merchant's goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using our Marks upon termination of the Agreement.

#### D. Treatment of American Express Card Member Information

Any and all Card Member Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Card Member Information, nor use nor store it, other than to facilitate Transactions at Merchant's Establishments in accordance with the Agreement.

#### E. Arbitration Agreement (As to Claims Involving American Express)

In the event that Merchant or Processor is not able to resolve a Claim against American Express, or a claim against Processor or any other entity that American Express has a right to join, this section explains how Claims may be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator.

If arbitration is elected by any party, neither Merchant nor Processor nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, Processor, and American Express will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator's decisions are final and binding, and the arbitrator's final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights Merchant, Processor, or American Express would have in court may also not be available in arbitration.

i. Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organizations rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express selects the organization and Merchant selects the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. 1-16 (FAA). Any arbitration hearing will take place in the federal judicial district where Merchant's headquarters is located or New York, NY, at Merchant's election.

ii. Limitations on Arbitration. If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between Merchant, Processor, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Processor or American Express and cannot be used in any other case except to enforce the award as between Merchant, Processor and

American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that Merchant, Processor, and American Express do not waive the right to appeal that decision.

iii. Previously Filed Claims/No Waiver. Merchant, Processor, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Processor, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the Honor All Cards, non-discrimination, or no steering provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement that was filed against American Express prior to the Effective Date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

iv. Arbitrators Authority . The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this arbitration agreement.

v. Split Proceedings for Equitable Relief. Merchant, Processor, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary, to preserve the status quo pending completion of the arbitration. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an award of reasonable attorney's fees and costs to be paid by the party against whom enforcement is ordered.

vi. Small Claims. American Express will not elect arbitration for any Claim Merchant properly files in a small claim court so long as the Claim seeks individual relief only and is pending only in that court.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable

to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If Merchant Claim is for \$10,000 or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where Merchant's headquarters or Merchant's assets are located.

viii. Confidentiality. The arbitration proceeding and all information submitted, relating to, or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a claim in court. American Express will be responsible for any additional arbitration fees. At Merchant's written request, American Express will consider in good faith making a temporary advance of Program Merchant's share of any arbitration fees or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrators award will include: (1) any money to which Merchant is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorney's fees, costs and expert and other witness fees incurred by Merchant.

xi. Definitions. For purposes of this section xii. only, (i) American Express includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of

any of the foregoing, (ii) Merchant includes Merchant's Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against Processor or any other entity that American Express has the right to join, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.

#### F. Establishment Closing

If a Merchant closes any of its Establishments, Merchant must follow these guidelines:

Notify payment processing company immediately.

Policies must be conveyed to the Card Member prior to completion of the Charge and printed on the copy of a receipt or Charge Record the Card Member signs. See Section 4.8, Return and Cancellation Policies of the Merchant Requirements for additional information.

If not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Charge Record and on websites and catalogs).

Return and cancellation policies must be clearly disclosed at the time of sale.

For Advance Payment Charges or Delayed Delivery Charges, delivery of the goods or services which have already charged to the Card Member is required or Credit must be issued for any portion of the Charge for the goods or services not delivered.

#### Exhibit C: Glossary

"ACH" means the Automated Clearing House;

"Account" means a unique and private account provided by Company accessible through the Service;

"Affiliate" means, with respect to any party, any corporation, company, partnership or other entity which is directly or indirectly controlled by such party or is directly or indirectly controlled by a person or entity that is the same as that which controls the party. For the purposes of this definition, control shall mean ownership of half or more of the voting interests in an entity;

"American Express" means American Express Travel Related Services Company Inc.;

"Application" means an electronic or paper form completed by the Merchant in relation to procuring the Services which shall form a part hereof and constitute representations by the Merchant hereunder;

"Bank" or "Acquirer" means a member of a Payment

Network that has sponsored Company as a payment services provider, payment facilitator or otherwise to supply the Services and that acquires Card Transaction funds through Payment Networks. Bank shall also include Processor;

"Card" means a payment card or account number issued by a Payment Network member to a Cardholder pursuant to a valid agreement between the Cardholder and the Issuing Bank;

"Cardholder Data" means information associated with a Card, such as account number, expiration date, and CVV2;

"Deposit Account" means a deposit account of Merchant at a financial institution in the U.S. identified for use in conjunction with this Agreement by the Merchant through the Site or the Application;

"Fees" means the fees of Company for which Merchant is liable in exchange for the Services. Fees are set out in the Application or the Site. Fees are subject to change on thirty (30) days prior notice through the Account only; if Merchant continues to use the Services after such thirty (30) days it shall be deemed to agree to the change in Fees. Fees may also change, with or without prior notice, if Payment Networks or other third parties impose additional fees on Company for the supply of the Services or on amendments to applicable law that require Company to amend the Fees;

"Issuing Bank" means a member of a Payment Network that issues Payment Network-branded Cards pursuant to the Rules;

"MasterCard" means MasterCard International Incorporated;

"Merchant Relationship" means the commercial or legal relationship between Merchant and Customer by which Merchant supplies Product to Customer giving rise to the Transaction;

"Payment Network" means Visa, MasterCard, American Express and such other payment networks as Company indicates are compatible with the Services;

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

"Processor" means a payment processor that has contracted with Company to assist Company in delivering the Services;

"Product" means any product or service offered for sale or sold by Merchant;

"Prohibited Activity" means any adult content; airlines, including charter airlines; alimony, child support, or other court-ordered payments; bidding fee auctions, including penny auctions; brand or reputation damaging, potential or otherwise, including bestiality, child pornography, escort services, mail order brides, and occult; buyers' clubs, discount clubs or membership clubs; check cashing, or payment for a dishonored check or for an item deemed uncollectible by another merchant; computer repair or maintenance services; commodity trading or security trading; cruise lines; credit counseling or credit repair agencies; credit protection or identity theft protection services; counterfeit or possibly counterfeit goods, or products that infringe on the intellectual property rights of others; debt collection, consolidation, or reduction services; deceptive, unfair, predatory products, services or activities, or prohibited by the card payment networks; digital currency; discount medical or dental plans including discount insurance; discount coupon merchants or online sites; distressed property sales and marketing; door to door sales; drugs, alcohol, or drug paraphernalia, pseudo-pharmaceuticals, substances designed to mimic illegal drugs, or items that may represent them; factoring, liquidators, bailiffs, bail bondsmen; financial services or instruments, such as cash advances, bill payment, loans or loan payments, money orders, money transfers, prepaid cards, wire transfers, or sales of money orders or foreign currency; gambling or betting, including lottery tickets, casino gaming chips, off-track betting, sports forecasting or odds making, fantasy football, memberships on gambling-related internet sites and wagers at races, contests, sweepstakes, and offering prizes as an inducement to purchase goods or services; hate, violence, racial intolerance, or the financial exploitation of a crime; high interest rate non-bank consumer lending including payday lending and title loans; infomercial merchants; internet pharmacies or pharmacy referral sites; inbound or outbound telemarketing businesses including lead generation businesses; investment or get rich quick merchants, businesses or programs; licensed or franchised goods or services, such as apple products; marijuana dispensaries and related products or services; marketing activities involving pay only for shipping and/or free trial periods; medical equipment; multi-level marketing businesses, pyramid or Ponzi schemes; merchants offering special incentives; negative option, renewal, or continuity subscription practices; obscene or pornographic items; pawn shops; pharmaceuticals, including medical marijuana; prepaid phone cards or phone services; prostitution, escort services, massage parlors, and other potentially sexually related services; real estate or motor vehicle sales; rebate or upsell programs; scrip-dispensing terminal; selling of mobile minutes; selling or sales of social media activity; stored value or quasi-cash; timeshares, timeshare resales and related marketing; tobacco, cigarettes, or e-cigarettes;

unlawful activities or items, or activities or items that encourage, promote, facilitate or instruct others regarding the same; violent acts towards self or others, or activities or items that encourage, promote, facilitate or instruct others regarding the same; virtual currency or credits that can be monetized, re-sold or converted to physical or digital goods or services or otherwise exist in the virtual world; weapons, including replicas and collectible items, or ammunition or other accessories; weight loss programs; if merchant fall within the following exclusions, merchant will not accept the American Express card; equities (including stocks, bonds, or any other ownership position in a corporation); goods or services to be delivered more than two (2) months in the future, with an intention of gaining return on investment; internet auctions; political parties; telecommunications (including wireless, cable and internet); travel industry (including car rental, lodging, and other travel tour operators); in addition, merchant may not use the service for; impersonating any person or entity or falsely claiming an affiliation with any person or entity; collecting, or attempting to collect, personal information about merchants or third parties without their consent, or using such information except as necessary to use the service; sending unsolicited offers, advertisements, proposals, or junk mail or spam to others. this includes, but is not limited to, unsolicited advertising, promotional materials, or other solicitation materials, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, and petitions for signature; accepting payments for goods or services provided by someone other than merchant; providing merchant itself or others with a cash advance from a credit card; any illegal purpose, or violating any local, state, national, or international law, statute, or regulation, including, without limitation, laws governing intellectual property, taxation, and data collection and privacy; defaming, harassing, abusing, threatening, or defrauding others; posting, transmitting, or distributing content that is false, misleading, unlawful, obscene, indecent, lewd, pornographic, hateful, abusive, inflammatory, or that violates the rights of others (including rights of publicity or privacy); damaging, disabling, overburdening, or impairing Company, including without limitation, using the service in an automated manner; interfering with another merchant's enjoyment of the service, by any means, including by uploading or otherwise disseminating viruses, adware, spyware, worms or other malicious code; competing with Company or Company's business partners; sending or receiving what Company considers to be funds for something that may have resulted from fraud or other illegal behavior; abusing the payment card system or violating the rules, in the reasonable opinion of the card payment networks or Company; operating outside the united states; acting as a money services business or money transmitter; transferring funds between bank accounts held in the same name; creating an account that is linked to another account that has engaged in any of the foregoing activities. Company may use evidence other than merchant account information to determine whether



merchant control an account in someone else's name, including but not limited to internet protocol addresses, common business names, phone numbers, and mailing addresses; or any activity deemed by Company to be unauthorized, illegal, or criminal;

"Referral Platform" means a Third Party Servicer (i) that referred Merchant to Company; and (ii) with which Merchant has an agreement pursuant to which it provides certain services.

"Rules" means Payment Network and other payment networks' by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Payment Networks or other private or public associations or organizations applicable to the Services.

"Service" means payment processing services of Company and its processor and acquiring bank, the Site, any software, programs, services, documentation, tools, hardware, internet-based services, components thereto provided directly or indirectly to Merchant by Company  
Site means <http://www.vyapay.com>;

"Third Party Servicer" means a third party that provides a product or service that Merchant wishes to procure which product or service may or may not be compatible or integrated with the Service;

"Visa" means Visa U.S.A., Inc., Visa International;