



## TERMS AND CONDITIONS

Version: 2.1

Last Modified: 10-06-2022

### 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's Services are subject to this Agreement, so please read it carefully.

#### 1. Services

The Services are a cloud-based payment system by which Company, Acquirer and Processor enable Merchants to receive payments 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 integrated 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, Acquirer 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 processed by Company and Processor and received by its Acquirer. Merchant hereby appoints Company and Acquirer as its agent for the purposes of processing and 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

Merchant understands and agrees that Company is a payment processor that provides outsourced solutions for its merchant customers using a proprietary cloud-based payment system and accompanying technologies that allows Merchant to receive ACH and Card payments from its Customers. All funds transfers are performed by the Acquirer based on Company's instructions. Any payment amounts received from Merchant's Customers in connection with the Services sponsored by Acquirer shall be maintained in a custodial funding account held by Acquirer. Company's actions in connection with funds transfers are done on behalf of and as an agent of Acquirer and Merchant. At no point during the payment process or otherwise does Company receive, hold or transmit Merchant or Customer funds, and Company does not serve as a money transmitter, nor is Company a bank or money services business. As a technology partner, Company implements functions on behalf the Acquirer and provides ancillary services to Merchant.

8. Merchant Release of Customer upon Payment to Company ON RECEIPT BY COMPANY OR ACQUIRE OF TRANSACTION FUNDS TBY OR ON BEHALF OF A CUSTOMER, 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 Acquirer for each Transaction per Company's instructions. 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 Acquirer. After the initiation

of processing by the Acquirer, 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, Processor and the Rules, Merchant shall cause information concerning Card Transactions to be communicated to the Acquirer or the Processor whereupon, Company shall cause Acquirer to acquire the funds related to such Transactions through the Payment Networks 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, the Processor and the Acquirer.

Merchant further understands that the CRA may not give out information about Merchant to Company without Merchants 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 Merchants 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 Merchants 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. ACH Services. As part of the Services, Company provides for the processing of ACH entries on behalf of Merchant to enable Merchant to receive payments from its customers ("ACH Services"). In connection with the ACH Services, Acquirer is the Originating Depository Financial Institution (ODFI) for electronic funds transfer debit and credit entries requested by Merchant through the ACH network. Merchant agrees to the following with respect to any ACH Services requested by Merchant:

(a) Merchant authorizes Company to instruct Acquirer to originate ACH entries on behalf of Merchant to the Receiver's

account subject to the instructions provided by Merchant to Company.

(b) Merchant agrees to abide by Nacha Rules. In addition, Company may provide Merchant its own standard operating and implementation guidelines for the Services with respect to specific Nacha Rules which will govern and apply to this Agreement as if set forth herein. Company can provide Merchant with excerpted provisions of the ACH Rules upon Merchant request.

(c) Merchant will not request Company to instruct Acquirer to originate ACH entries that violate applicable law.

(d) Merchant agrees that Merchant is only authorized to originate CCD (Corporate Credit or Debit Entry) entries and all ACH entries shall be for commercial purposes only;

(e) Company shall establish from time-to-time maximum permitted return rates and communicate same to Merchant in writing. Merchant understands and agrees that in the event actual returned ACH transactions exceed such established return rates, Company or the Acquirer may suspend the processing of any ACH transactions.

(f) Prior to submitting an ACH entry to Company for processing, Merchant shall secure all authorizations and approvals from its Customer and deliver any notifications pertaining to that entry which are required by the Nacha Rules and/or applicable laws and regulations. Merchant shall retain such consents and authorizations for two (2) years from the termination or revocation of the authorization and provide copies of such authorizations to Company and Acquirer upon reasonable request. Merchant shall be responsible for the accuracy and propriety of all ACH entries submitted to Company for processing.

(g) Merchant acknowledges that Company has specific processing deadlines imposed by the Acquirer. Files received by the deadline will be transmitted that day to the Federal Reserve Bank for settlement on the effective settlement date. Files received after the deadline will be processed the next Banking Day (as that term is defined in the Nacha Rules).

(h) Merchant shall immediately reimburse Company for any returns or shortfalls related to any ACH transactions and shall authorize Company and Acquirer to initiate ACH debit transfers from its Merchant's Deposit Account or Reserve (if any) in the amount of any such returns or shortfalls. Company reserves the right to delay the availability of funds for deposit without prior written notice to Merchant if Company or Acquirer, in their sole discretion, deems itself at financial or other risk for any of the ACH Services performed under this Agreement.

(i) If Merchant does not comply (or cure non-compliance) with the Nacha Rules, Company or Acquirer may suspend the origination of ACH entries and/or terminate such ACH services; and

(j) Company and Acquirer have the right to audit Merchant's compliance with the terms above.

#### 12. 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 \$60.00 chargeback/retrieval, as well as \$50.00 for each ACH reject.

#### Dispute Resolution

Chargeback Fees \$30.00  
Retrieval Fees \$15.00  
Pre-Arbitration Fees \$15.00  
Arbitrations Fees \$500.00

#### Dispute Prevention (Conditional)

VyaShield Fee \$45  
VyaShield Auto Refund \$45.00  
VyaShield Monthly Fee \$50

#### ACH Services

Ach Rate 1.0%  
Ach Item \$1.00  
Ach Refund \$35.00  
ACH Return Fee \$50.00

#### Other Fees

Gateway Fees \$.25  
Gateway Monthly \$25.00  
Software Monthly \$30  
PCI Monthly \$15.00  
PayLink Monthly \$17.00

### 13. 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.

By agreement to this Agreement, Merchant also agrees to the terms and conditions of the Merchant Services Agreement set forth in Exhibit A which constitutes a legal binding contract between Merchant, on the one hand, and VyaPay's appointed Acquirer and its designated Processor, 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.

### 14. 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 may be required from time to time.

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

Merchant authorizes Company to instruct Acquirer to initiate electronic ACH entries to the Deposit Account and to initiate adjustments for any Transactions credited or debited in error. Merchants 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.

### 15. Merchant Data Consent

Merchant expressly consents for Company, Acquirer, Processor 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.

### 16. Settlement

Each Account must be linked to a verified Deposit Account. Company will instruct Acquirer to transfer funds to the Merchant's bank account according to the schedule the Merchant selects from those available in the Account. If Acquirer 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 Acquirer, Company, Processor 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 Acquirer. Unless otherwise agreed in writing by Company, Transaction settlement shall be by ACH to the Deposit Account.

### 17. Merchant Transaction Disclosure Merchant must not:

a. 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;

b. 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;

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

d. 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;

e. 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;

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

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

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

i. enter into a Transaction that represents collection of a dishonored check; or

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

### 18. Reserve Account

Where deemed necessary or appropriate by Acquirer, Processor, or Company, Company shall instruct Acquirer to create a reserve account (the Reserve) to protect Acquirer, Processor, 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 Acquirer, Processor, 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 Acquirer, Processor, 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. After account closure, the Reserve amount will remain in the reserve account for a period of six months, or longer, past the last Merchant account activity date to cover any rejected fees, fines, penalties and/or chargebacks.

### 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, Processor, and Acquirer 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 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 are 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. Merchants 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 are 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 Company, Acquirer, Processor, 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, Processor, or Acquirer 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, Acquirer, or Processor hereunder, each of Company, Acquirer, and Processor 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 Acquirer. Merchant's failure to pay in full amounts that Merchant owes Company, Acquirer, or Processor on demand will be a breach of this Agreement. Merchant will be liable for each of Company's, Acquirer's, and Processor's 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, each of Company, Acquirer, and Processor 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, Acquirer, and Processor. Such communication may be made by Company, Acquirer, or Processor, or by anyone on behalf of such parties, 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 Acquirer 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.

Company will attempt to correct processing errors that Company discovers by instructing the Acquirer to debit or credit Merchant Account. Company will only correct transactions that are processed incorrectly if and when Merchant notifies 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. None of Company, Acquirer and Processor, shall have any liability to Merchant on account of a termination hereof. This Agreement shall terminate immediately if a Payment Network, Processor, or Acquirer requires Company to terminate 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 Acquirer holds 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. Company may also instruct Acquirer to 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, Acquirer, Processor, or a Payment Network.

**Liquidated Damages.** Notwithstanding any other provision of this Agreement or any other remedy provided hereunder, in the event that Company reasonably believes Merchant is violating or has violated any applicable Network Rule, ACH Rule, Regulation E, or any other applicable Law, rule or regulation, or is in breach of any of its representations and warranties made in this Agreement relating to Merchant's compliance with all applicable Network Rules, ACH Rules, Regulation E, or any other applicable laws, rules or regulations, Merchant shall pay to Company, as liquidated damages, an amount up to, but not exceeding, 30% of any Reserve Account funds at the time of termination of the Agreement. Additionally, Company shall be entitled to Liquidated Damages, as provided in this Paragraph, upon Merchant's termination for cause for any of the following reasons:

- i. Merchant has violated any provision of this Agreement or Company is otherwise entitled to terminate this Agreement pursuant to any provision of this Agreement;
- ii. any information which Merchant provided to Company, including in the Merchant Application, was false, incomplete or misleading when received;
- iii. at any time during the Term, Merchant has had a monthly ratio in any single month of Chargebacks to total Transactions exceeding Card Network requirements or one percent (1%), or Chargebacks exceed three percent (3%) of any monthly dollar amount of total Transactions; v5.02.18 13
- iv. Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from illegal, fraudulent or otherwise unauthorized Transactions;
- v. Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable Law or the Network Rules;
- vi. any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given;
- vii. Merchant has defaulted on any agreement it has with Company;
- viii. if any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Network;
- ix. Merchant appears on any Card Network's security reporting;
- x. Merchant engages in any activity that causes Company to be in breach of Company's policies and procedures, the Network Rules, or any applicable Laws, rules, or regulations;
- xi. Company has evidence or has reached the conclusion, in its sole and absolute discretion, but based upon reasonable facts, that Merchant has engaged in fraudulent activity to include failure to deliver goods and services as advertised or promised, or Merchant has engaged in fraudulent advertising practices; or
- xii. Company becomes aware that Merchant is accepting payments for goods or services not approved in advance by Company and where Company, any Card Network, the

Network Rules, or applicable Laws, rules, or regulations specifically prohibits the sale of such, or where Merchant accepting payments for such unapproved goods or services creates a risk of legal, financial, operational, reputational, or any other harm to Company. The parties agree that calculating Company's damages for Merchant's violation of any applicable Network Rule, ACH Rule, Regulation E, or any other applicable Law, rule or regulation, or breach of Merchant's representations and warranties regarding Merchant's compliance with all applicable Network Rules, ACH Rules, Regulation E, or any other applicable Laws, rules or regulations, would be uncertain and difficult to ascertain, that the liquidated damages described in this Paragraph are reasonably related to Company's actual damages, and are a reasonable estimate of the damages which Company would in fact suffer in the event of Merchant's failure to comply with all applicable Network Rules, ACH Rules, Regulation E, or any other applicable Laws, rules or regulations, or Merchant's breach of Merchant's representations and warranties regarding Merchant's compliance with all applicable Network Rules, ACH Rules, Regulation E, or any other applicable Laws, rules or regulations. The parties agree that the liquidated damages set forth in this Section are intended to compensate Company for its injuries and damages suffered and are not a penalty imposed against Merchant. The liquidated damages described above are cumulative of Company's other remedies available under the Agreement, and are not Company's exclusive remedy or damages. Company may either, in the alternative, or as arising out of different breaches of the Agreement, Network Rules, or violations of any applicable Laws, rules, or regulations, seek to recover Company's actual or other damages against Merchant.

#### 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, Acquirer, Processor, Payment Networks and all third parties that 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's 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's violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (v) Merchant's 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 represents and warrants 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 and the Rules; (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 or illegal 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 MERCHANTS 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.

a. Limitation of Liability 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.

b. COMPANYS 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. ACQUIRER AND PROCESSOR SHALL HAVE NO LIABILITY TO MERCHANT UNDER THIS AGREEMENT.

c. 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) COMPANYS NEED TO MODIFY PRACTICES, CONTENT, OR BEHAVIOR, OR MERCHANT DIMINISHED ABILITY TO DO BUSINESS, AS A RESULT OF CHANGES TO THIS AGREEMENT OR COMPANYS 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.

d. 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.

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

f. 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.

g. 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 Merchants 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.

h. 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.

i. 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: [corporate@vyapay.com](mailto:corporate@vyapay.com), 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.

j. 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.

k. 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.

l. 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).

m. 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.

n. 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.

o. 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 and shall check its 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.

p. 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.

q. 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.

r. 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.

s. 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.

t. 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.

u. 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.

v. Third-Party Beneficiaries. Each of Acquirer and Processor shall be an express third-party beneficiary of this Agreement and shall be entitled to rely on and directly enforce Sections 11, 31, 33, 35 and Exhibit A of this Agreement. Other than as stated in the preceding sentence, this Agreement shall not be construed as giving any Person other than the parties to this Agreement (if different from Merchant), their successors and permitted assigns, and, to the extent set forth in this Agreement, Indemnitees, any legal or equitable rights, remedies or claims under or in respect of this Agreement.

## Exhibit A: Sub-Merchant Processing Agreement

Company, First Data Merchant Services LLC (as **Processor**), and Pathward, National Association (as **Bank**) (Company, Processor and Bank collectively **we, us** or **our**) will provide Merchant (**Sub-Merchant, you** or **your**) with certain Card processing services. Capitalized terms used in this Sub-Merchant Processing Agreement are referred to in Appendix 1 and Exhibit C: Glossary.

By entering into this Sub-Merchant Processing Agreement (the **Agreement**), you agree to comply with the (1) Rules as they pertain to Card information you receive through the Company service and (2) Your Payments Acceptance Guide.

Bank and Processor are party to this Agreement for the purpose of facilitating funding of amounts owed for properly submitted transactions, less amounts owed to us under this Agreement. As such, you waive any and all claims for damages against Bank and Processor arising from or related to this Agreement. Nothing in this paragraph will limit the rights and remedies available to Bank or Processor in this Agreement.

### **Acceptance of Cards**

You agree to comply with Your Payments Acceptance Guide and all Rules, as such may be changed from time to time. You understand that we may be required to modify Your Payments Acceptance Guide and the Agreement from time to time in order to comply with requirements imposed by the Payment Networks.

In offering payment options to your customers, you may elect any one of the following options: (1) Accept all types of Visa and Mastercard cards, including consumer credit and debit/check cards, and commercial credit and debit/check cards; (2) Accept only Visa and Mastercard credit cards and commercial cards (If you select this option, you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards); or (3) Accept only Visa and Mastercard consumer debit/check cards (If you select this option, you must accept all consumer debit/check card products (but not business debit/check cards) and refuse to accept any kind of credit cards). The acceptance options above apply only to domestic transactions.

If you choose to limit the types of Visa and Mastercard cards you accept, you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products).

For recurring transactions, you must obtain a written request or similar authentication from your customer for the goods and/or services to be charged to the customer's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made.

### **Settlement**

Upon our receipt of the Transaction Data for Card transactions, we will process the Transaction Data to facilitate the funds transfer from the various Payment Networks for the Card sales. After we receive credit for such Transaction Data, subject to our other rights under this Agreement, we will provide provisional credit to your Settlement Account.

You must not submit transactions for payment until the goods are delivered shipped, or the services are performed. If the Cardholder disputes being charged for merchandise or services before receiving them, a Chargeback may result.

### **Chargebacks**

Sub-Merchant is solely responsible to pay the amount of any Chargebacks resulting from Transactions submitted by Sub-Merchant under this Agreement. Chargebacks can be received for a number of reasons. The following are some of the most common reasons for Chargebacks: (1) a refund is not issued to a customer upon the return or non-delivery of goods or services; (2) an authorization/approval code was required and not obtained; (3) the transaction was allegedly fraudulent; (4) the customer disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense or counterclaim; or (5) The customer refuses to make payment for a Card sale because in the customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner. It is unusual for Company to enter into an Arbitration plea on Merchant's behalf, however if merchant insists on going through Arbitration on a charged back transaction, a minimum \$500 fee would be assessed upfront depending on the Card Brand.

### **Reserve**

You acknowledge that in addition to any other rights afforded us hereunder, we may establish a reserve account to satisfy your obligations or potential obligations under this Agreement (the **Reserve**), which may be funded by: (i) our demand and your immediate payment for such amounts; (ii) our debiting the account identified as the Settlement Account; (iii) our withholding your settlement payments until all amounts are paid, (iv) our delaying presentation of your refunds until you make a payment to us of a sufficient amount to cover the Reserve; and (v) our pursuit of any remedies we may have at law or in equity.

The Reserve will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. We may (but are not required to) apply funds in the Reserve toward, and may set off any funds that would otherwise be payable to you against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve will not bear interest, and you will have no right or interest in the funds in the Reserve; provided that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve. Any funds in the Reserve may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve, you irrevocably grant to us a security interest in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents that we may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive termination of this Agreement.

### **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 the 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 the Bank may perform a reasonable audit of the your records related to its performance under this Agreement with 30 days' advance written notice to you, during your 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.

### **Data Security and Privacy**

You represent to us that you do not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and you will not request access to such Card information from us. In the event that you receive such Card information in connection with the acceptance or submittal of Card Transactions provided under this Agreement, you agree that you will not use it for any fraudulent purpose or in violation of any Rules, including but not limited to Payment Card Industry Data Security Standards (**PCI DSS**) or applicable law. If at any time you believe that Card information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must ensure your compliance and that of any third party service provider utilized by you, with all security standards and guidelines that are applicable to you and published from time to time by Visa, Mastercard or any other Payment Network, including, without limitation, the Visa U.S.A. Cardholder Information Security Program (**CISP**), the Mastercard Site Data Protection (**SDP**), and (where applicable), the PCI Security Standards Council, Visa, and Mastercard PA-DSS (**Payment Application Data Security Standards**) (collectively, the **Security Guidelines**). If any Payment Network requires an audit of you due to a data security compromise event or suspected event, you agree to cooperate with such audit. You may not use any Card information other than for the sole purpose of completing the Transaction authorized by the customer for which the information

was provided to you, or as specifically allowed by Rules, Your Payments Acceptance Guide or required by law.

### **Term; Events of Default**

This Agreement shall be in effect upon acceptance of each document by all parties and shall remain effective through the initial term of 3 years and shall thereafter automatically continue until terminated by either party upon the provision of thirty (30) days' notice to the other party.

If any of the following events shall occur (each an **Event of Default**):

- (i) a material adverse change in your business, financial condition, business procedures, prospects, products or services; or
- (ii) any assignment or transfer of voting control of you or your parent; or
- (iii) a sale of all or a substantial portion of your assets; or
- (iv) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, of any Payment Network, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or
- (v) any of your conditions, covenants, obligations or representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
- (vi) you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (vii) a violation by you of any applicable law or Payment Network Rule or our reasonable belief that termination of this Agreement or suspension of services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of your requirement to comply with all applicable laws.

then, upon the occurrence of (1) an Event of Default specified in subsections (iv), (vi), (vii), or (viii) we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

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 Payment 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 Payment 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 Payment 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.

We may terminate this Agreement at any time and for any or no reason upon the provision of thirty (30) days prior notice. We may also temporarily suspend or delay payments to you during our investigation of any issue and/or designate an amount of funds

**Important Member Bank Responsibilities**

- (a) The Bank is the only entity approved to extend acceptance of Visa and Mastercard products directly to a merchant.
- (b) The Bank must be a party to the Sub-Merchant Agreement.
- (c) The Bank is responsible for educating Sub-Merchants on pertinent Visa and Mastercard Rules with which Sub-Merchants must comply; but this information may be provided to you by Company.
- (d) The Bank is responsible for and must provide settlement funds to the Company, for distribution to the Sub-Merchant.
- (e) The Bank is responsible for all funds held in reserve at Bank that are derived from settlement.

**Acknowledge receipt of Visa and Mastercard Disclosures:**

\_\_\_\_\_  
**(Sub-Merchant)**

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

Name:

Title:

Date:

that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks arising under this Agreement or other amounts that may be owing to us under this Agreement.

**Warranties; Exclusion of Consequential Damages; Limitation on Liability**

This Agreement and any addenda is an agreement for services and except as expressly provided in this Agreement, and any addenda, we and our affiliates disclaim all representations or warranties, express or implied, made to merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any services or any goods provided incidental to the Services provided under this Agreement.

Notwithstanding anything in this in this Agreement and any addenda to the contrary, in no event shall we or our affiliates be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

Notwithstanding anything in this Agreement and any addenda to the contrary, we and our affiliates' cumulative liability, in the aggregate (inclusive of any and all claims made by Sub-Merchant against us and/or our affiliates, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement any addenda) and regardless of the form of action or legal theory shall not exceed the lesser of (i) \$100,000; or (ii) the amount of fees received by us pursuant to any addenda attached and incorporated herein for services performed in the immediately preceding 12 month

**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 Important Sub-Merchant Responsibilities

- (a) In the event Sub-Merchant obtains Card Information, ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and chargebacks below Payment Network thresholds.
- (c) Review and understand the terms of the Agreement.
- (d) Comply with Rules.
- (e) Retain a copy of this Disclosures Page.

**VyaPay, LLC  
(Company)**

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

Name:

Title:

Date:

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.

**Visa and Mastercard Disclosure**

Member Bank Name: Pathward, National Association  
Bank mailing address: 5501 S. Broadband Lane, Sioux Falls, SD 57108  
Bank Phone Number: 1-866-550-6382

**Miscellaneous**

**Compliance with Laws.** Each party agrees to comply with all laws, regulations and Rules applicable to it and each are responsible for their own costs and compliance of such.

**Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to

the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

**Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing, if to Sub-Merchant, by any electronic means, including but not limited to the e-mail address you have provided to us, if to Company at Corporate@vyapay.com and if to Bank, to the address provided above. Notice shall be deemed to have been given, if sent by mail or courier, when received and if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner, including by electronic means, shall be effective when delivered.

**Indemnification.** You agree to indemnify us from and against any losses, actions, causes of action, claims, demands, costs, liabilities, expenses, damages, sanctions fines, legal fees or penalties arising from: (i) your misrepresentation or breach of warranty, covenant, or any provision under this Agreement; or (ii) a you or your employees'/agents' fraud, gross negligence, willful misconduct or failure to comply with this Agreement and the Rules.

**Publicity.** No party shall make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).

**Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**Severability.** The parties intend every provision of this Agreement and any addenda to be severable. If any part of this Agreement and any addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

Each of Company and Sub-Merchant have caused this Agreement to be executed by their duly authorized officers.

**With respect to each of the Processor and Bank, performance of such party's obligations set forth in this Agreement constitutes such party's acceptance of the terms of this Agreement.**

\_\_\_\_\_  
(Sub-Merchant)

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

Name:

Title:

Date:

**VyaPay, LLC  
Company)**

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

Name:

Title:

Date:

## Appendix 1 to Exhibit A: Definitions

**"Reserve"** means an account established and funded at our request or on your behalf, pursuant to the Reserve section of the Agreement.

**"Retrieval Request"** is a request for information by a customer or Payment Network relating to a claim or complaint concerning a Transaction.

**"Settlement Account"** is an account or account(s) at a financial institution designated by Sub-Merchant as the account to be debited and credited by Company or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**"Transaction Data"** is the written or electronic record of a Transaction.

**"Your Payments Acceptance Guide"** mean our operating rules and regulations, attached hereto and incorporated herein by reference, as may be changed by us from time to time.

## Exhibit B: American Express OptBlue® Program Terms and Conditions

**1. Amex Services.** These American Express OptBlue Program Terms (**Amex Terms**) describe some of the requirements for your acceptance of American Express Cards under the American Express OptBlue Program (**OptBlue Program**). You agree that your acceptance of American Express Cards will comply with the Agreement and with the American Express Merchant Operating Guide (**Amex Guide**) which are the Rules for American Express Card Transactions. The Amex Guide applies only to American Express Card Transactions and the American Express OptBlue Program. Capitalized words and phrases that are used but not defined under **Certain Definitions** below or elsewhere in the Agreement are defined in the Amex Guide, which is available to you at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide). If these Amex Terms conflict with any other part of the Agreement with respect to American Express Card Transaction, these Amex Terms will control. The acquiring services (including Authorization, processing, and settlement) that you receive for your American Express Card Transactions (**Amex Services**) are provided by Payment Facilitator through a separate agreement with a third party processor and not by Bank.

**2. Definitions.** The defined words and phrases below apply only to these Amex Terms and American Express Card Transactions. Any terms not defined here or in the Amex Guide will have the meaning given to them in the Agreement.

**American Express Card or Card** means (a) any card, account access device, or payment device or service bearing American Express or American Express Affiliates' Marks and issued by an Issuer, or (b) a Card number issued by an Issuer which can be used to purchase goods or services from you.

**American Express** means American Express Travel Related Services Company, Inc., a New York corporation.

**American Express Brand** means the Marks of American Express and its affiliates.

**Amex Transaction Data** means all information required by American Express evidencing one or more transactions, including information obtained at the point of sale, information obtained or generated during authorization and submission, and any Chargeback.

**Applicable Law** means (a) any law, statute, regulation, ordinance, or subordinate legislation in force from time to time to which you or Processor is subject, (b) the common law as applicable to them from time to time, (c) any court order, judgment, or decree that is binding on them, and (d) any directive, policy, rule, or order that is binding on them and that is made or given by a regulator or other government agency of the United States (or any of its territories) or any other federal, commonwealth, state, provincial, or local jurisdiction. References to "Law" elsewhere in the Agreement include this definition but only for purposes of the Amex Services and American Express Card Transactions.

**Card Member** means an individual or Entity (a) that has entered into an agreement establishing a Card account with an Issuer, or (b) whose name appears on the Card. References to a "cardholder" elsewhere in the Agreement include this definition but only for purposes of the Amex Services and American Express Card Transactions.

**Charge** means a payment or purchase made on the Card.

**Establishments** means any or all of your (or your Affiliates') locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future. References to "locations" elsewhere in the Agreement include this definition but only for purposes of the Amex Services and American Express Card Transactions.

**Transaction** means a Charge or Credit completed by the means of a Card.

### **3. Amex Services: Qualification Criteria and Merchant Operating Guide.**

3.1. If you meet the criteria below and elect to accept American Express Transactions, we will provide Amex Services to you under the terms and settlement time frames provided in your Agreement.

3.2. To qualify for the Amex Services, you must meet the following criteria: (a) your Total Annual American Express volume is less than \$1,000,000; (b) your business is not of a merchant category type prohibited by American Express; and (c) you are not a franchisee of any franchise excluded by American Express from eligibility for the OptBlue Program.

After initial qualification, you must continue to meet American Express's criteria for the OptBlue Program. Currently, these criteria (each, a **Continuing Qualification Threshold**) are: (a) the total volume of American Express Card Transactions in any rolling 12 month period for all your Establishments is not more than \$1,000,000, and (b) the total monthly volume of American Express Card Transactions for all your Establishments for any 3 consecutive months does not exceed \$100,000 per month.

3.3. If you fail to meet the Continuing Qualification Thresholds, we may notify you of your conversion to a direct American Express Card acceptance relationship with American Express. In this event, you agree that once this conversion occurs (a) you will be bound by American Express's then-current Card Acceptance Agreement with respect to American Express Transactions, (b) American Express will set pricing and other fees payable by you for American Express Card acceptance, and (c) you will no longer be able to participate in the OptBlue Program through us. However, we may continue to provide authorization and processing services, but not settlement services, to you for your American Express Card Transactions

**4. Fees for Amex Services.** [IC+ all American Express Card fees on a straight pass-thru basis plus see Fees Section on Application].

**5. American Express Transaction Data.** The Amex Transaction Data you are required to collect in connection with a Transaction must be provided directly to you by the American Express Card Member. You must not accept Amex Transaction Data from, nor are you permitted to provide Amex Transaction Data to, any third parties other than your covered parties (as defined in the Data Security Operating Policy). If you fail to comply with this requirement, in addition to other rights and remedies regarding "monitoring," you may be charged a fee as indicated in the American Express Program Pricing Guide, and we may suspend Card acceptance privileges at your Establishments or terminate the Agreement. For Card Member Transactions involving payment or "e-wallet" accounts (which Card Member created by providing their information when the account was established), the necessary Amex Transaction Data has already been provided directly by the Card Member, and you are not required to have the Card Member re-enter the Amex Transaction Data.

**Disclosure and Use of Data Collected Under Agreement.** We may disclose to American Express all data and information you provide that we collect as part of performing any Amex Service or any other Service related to your American Express Card Transactions (**Collected Data**). American Express may use and share Collected Data (a) to screen and/or monitor you in connection with Card marketing and administrative purposes, (b) to perform its responsibilities in connection with your acceptance of American Express Cards, (c) to promote the American Express Network, (d) to perform analytics and create reports, and (e) for any other business purpose, including marketing, as permitted by Applicable Law. American Express uses reasonable administrative, technical, and physical security measures to protect your information, consistent with the sensitivity of the information.

**6. Consent for American Express to Contact You by Phone, e-Mail, Text, or Fax.** American Express may use the information under **About You** (or that you update from time to time) to call you or send you communications or materials via email, text, fax, or

other electronic means about American Express services and resources available to you. You consent to receive auto-dialed, automated, or pre-recorded calls or communications (including text messages) at the telephone number(s) you have provided. If you provide a fax number, you consent to receive fax communications from American Express. You acknowledge that by giving these consents, the calls made to you or the communications sent to you by American Express may be subject to charges or fees by your telecommunications or other applicable service First Data, and you agree that any charges or fees are your responsibility to pay. You also acknowledge that these consents are not a condition of receiving Amex Services.

**7. Opt-Out.** You may opt out of receiving marketing-related communications and materials from American Express by providing notice to Provider as set forth in Section 18 of the Agreement in the Agreement. If you have opted out, you may still receive messages or communications from American Express related to important information about the Amex Services or other American Express products, services, and resources available to you.

**8. No Assignment of Payments.** You agree not to assign to any third party any payments due to you under the Agreement as the result of American Express Card Transactions, and all indebtedness arising from Charges will be for bona fide sales of goods and/or services at your Establishments free of liens, claims, and encumbrances (other than ordinary sales taxes). You may, however, sell and assign future Transaction receivables to Processor or to any other funding source that partner with Processor.

**9. Third Party Beneficiary Rights.** American Express is a direct and intended third party beneficiary of the Agreement (including these Amex Terms) and may enforce any terms of the Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against you.

**10. Your Right to Opt Out of American Express Card Acceptance.** You may opt out of accepting American Express Cards at any time without affecting your right to accept any other payment type Processor supports.

**11. Collections from American Express Card Members.** You may not bill or collect from any American Express Card Member for any purchase or payment on the American Express Card unless Chargeback has been exercised, you have fully paid for the Charge, and you otherwise have the right to do so.

**12. American Express Excessive Disputes.** You may be subject to various fees and assessments as set forth in the **Schedule of Fees** or in the American Express Program Pricing Guide, including fees for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance with American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing the non-compliance.

**13. American Express Right to Modify or Terminate Agreement.** American Express has the right to modify the Network Rules with respect to American Express Card Transactions or to terminate your acceptance of American Express Card Transactions and to require us or the Provider to investigate your activities with respect to American Express Card Transactions. Upon termination for any reason, you must immediately remove American Express licensed marks from your website and wherever else they are displayed upon termination or upon your termination from the Amex Services.

### **Exhibit C: Glossary**

"ACH" means the Automated Clearing House;

"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, which includes Bank in its capacity as Acquirer and as ODFI for ACH transactions. The Bank is the Acquirer for ACH transactions and Card Transactions acquired through Visa, MasterCard, and debit transactions. American Express is the Acquirer for Card Transactions acquired through American Express. Discover is the Acquirer for the Card Transactions acquired through Discover.

"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" means the bank that has contracted with Company to provide bank services in support of the ACH and certain acquiring payment processing services offered under this Agreement.

"Card" is an account, or evidence of an account, authorized and established between a customer and a Payment Network, or representatives or members of a Network that is accepted from customers. Cards include, but are not limited to, other Card brands and debit cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

"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, NACHA 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, Acquirer, Processor, or Payment Networks 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, Nacha 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 the ACH and Card acquiring payment processing services of Company, Processor, Acquirer, 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>; An Acquirer other than Bank provides all services for transactions that are initiated with Cards issued by Payment Networks other than Visa and Mastercard and the debit networks, including acquiring services for Cards issued by American Express and Discover.

"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;

"Transaction" is a transaction conducted between a Customer and Merchant utilizing a Card in which consideration is exchanged between the Customer and Merchant.

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

---