

PaymentVision® Terms of Service

Revised: 12/16/2024

Autoscribe Corporation, a Maryland corporation doing business as PaymentVision ("PaymentVision" or "our"), offers payment processing and information services (referred to either individually or collectively as the "Service"). The PaymentVision web pages, information and processes provided, the Service's coordination and arrangement, and the procedures and documentation for using the Service are all "Proprietary Information." The Service and the Proprietary Information constitute the "Licensed Service" under this Agreement.

THIS TOS DEFINES IMPORTANT RIGHTS, RESPONSIBILITIES, AND LIMITATIONS. IF YOUR ORGANIZATION DOES NOT AGREE TO ALL OF THESE TERMS, DO NOT SIGN THE SERVICE ORDER OR CLICK TO ACCEPT (AS APPLICABLE), AND DO NOT USE THE LICENSED SERVICE.

1. **When this TOS Applies.** Unless one of the two exceptions below applies, this TOS is binding on both PaymentVision and Client. PaymentVision Services are provided under the terms of this TOS. By using the Service, Client expressly accepts and is bound by the then-current version of the TOS. Additional obligations may be imposed by specific third-party services offered through PaymentVision; when the Client uses these third-party services, the Client also accepts and is bound by their posted terms.
 - a. Client's authorized representative will also accept a "Service Order" containing certain terms, specifications, and pricing for the Service. In case of any conflict between the terms of the Service Order and this TOS, the TOS terms take precedence unless the Service Order states explicitly that one of its terms applies "despite the contrary provision in the TOS."
 - b. This TOS does not apply if another agreement with PaymentVision activates one of these exceptions:
 - i. **Legacy Licenses.** For clients that contracted for the use of the Licensed Service under a written agreement executed before September 1, 2011 (a "Legacy License"): the Legacy License agreement will continue in force for its remaining term unless otherwise terminated under its provisions, and this TOS does not apply.
 - ii. **Custom Licenses.** For clients who obtained a custom service contract executed after September 1, 2011, that expressly references this TOS and expressly provides that the terms of the TOS shall not affect, the terms of that custom agreement will govern the service provision, and this TOS does not apply.
2. **Definitions.**
 - a. **Client.** The user of the PaymentVision Services, which is a party to the Service Order.
 - b. **Licensed Services.** The Services provided to Client and the Proprietary Information constitute the "Licensed Service" under this Agreement.
 - c. **Service Order.** The Agreement between Client and PaymentVision.
 - d. **Proprietary Information.** Includes all web pages, information, processes, and documentation provided by PaymentVision for the Service.
 - e. **Agreed Minimums.** Minimum fee that PaymentVision will charge the Client monthly.
 - f. **Reserve.** Reserve of Client funds held by PaymentVision to cover anticipated fees, chargebacks, returns, and any other applicable assessments.
 - g. **ACH.** Stands for Automated Clearing House, the electronic network that processes financial transactions between financial institutions.
 - h. **NACHA** Stands for the National Automated Clearinghouse Association that provides the guidelines for the ACH network.

- iv. The following applicable fees may be charged in addition to those listed on the Client's Service Order
 - 1. Technology Fee
 - 2. Annual Fee
 - 3. Monthly Card Brand Fee Billing
 - 4. Regulatory Assurance Fee
 - 5. PCI Compliance Fees
 - b. **Fee Changes.** PaymentVision may revise the fees at any time. If PaymentVision revises the fees for a service that a Client is using, PaymentVision will provide the Client at least thirty (30) days' notice via statement message, platform notice or email on file prior to the fee change.
 - c. **Taxes.** Each Party shall pay any taxes resulting from its performance under this Agreement, including without limitation, any sales, use, and excise taxes on any services provided by that Party under this Agreement, but not including taxes on the other Party's net income.
 - i. Client acknowledges that, pursuant to Section 6050W of the Internal Revenue Code, PaymentVision is responsible for filing with the IRS annual information returns for all reportable payment transactions to Client for whom PaymentVision processes transactions under this Agreement. Client shall cooperate with PaymentVision and take all reasonable steps to aid its reporting obligations and compliance with Section 6050W, including, but not limited to, provide an accurate and verifiable tax filing name and TIN for each Client account.
 - ii. Client further acknowledges and agrees that if it fails to provide an accurate tax filing name or TIN information, the IRS notifies PaymentVision of a discrepancy between the information provided by Client and the IRS records, or if requested by the IRS for any reason, PaymentVision shall be required to perform backup withholding from Client funding by deducting and withholding income tax in an amount based on the IRS withholding regulations at the time withholding is required from the gross amount of each reportable transaction pursuant to Section 6050W and its corresponding regulations. Client expressly authorizes PaymentVision to withhold from Client's funding or debit Client's Settlement Account (or another account designated by Client if there are insufficient funds in the Settlement Account to cover the required withholding) for any and all backup withholding amounts required by Section 6050W and its corresponding regulations.
- 5. Reserve; Letter of Credit.** As a specifically bargained for inducement for PaymentVision to enter into this Agreement with Client, PaymentVision at its absolute option to reserve the right to establish from amounts payable to Client hereunder, and/or cause Client to pay to PaymentVision, a reserve of funds satisfactory to PaymentVision to cover anticipated fees, chargebacks, returns, and any other applicable assessments and/or require Client to establish an irrevocable standby letter of credit, including additional and/or replacement letters of credit if required by PaymentVision, with a beneficiary designated by PaymentVision, and which are issued from a financial institution that is acceptable to PaymentVision, in a format, with an expiration date, and in an amount acceptable to PaymentVision in its sole discretion.
- a. PaymentVision, in its sole and absolute discretion, may also adjust the amount Client is required to put on reserve from time to time during processing for Client.
 - b. Client acknowledges that any amount held in reserve by PaymentVision shall remain in reserve for a period of up to six (6) months following the last transaction initiated by Client at the sole and absolute discretion of PaymentVision.
 - c. In the event Client fails to establish, for any reason whatsoever, a reserve and/or a letter of credit as required above, this will be considered an event of default, and PaymentVision shall have all of the rights and remedies available to PaymentVision in this TOS and Agreement.
 - d. In the event PaymentVision exercises its right to establish a reserve or require a letter of credit pursuant to this Section, Client may, subject to the following provisions, terminate the Agreement upon thirty (30) days advance written notice to PaymentVision provided PaymentVision receives such
-

written notice from Client of its intention to so terminate within fifteen (15) days of the date on which PaymentVision establishes the reserve or requires the letter of credit.

- e. PaymentVision may fund overdrafts, liabilities, and/or reserve deficits by initiating deductions from Client's subsequent Daily Proceeds or PaymentVision may i) require that Client make a wire transfer to the account within one (1) banking business day of notice; ii) collect under any guaranty; iii) make set-offs against any obligations owed by PaymentVision to Client or any of its affiliates, and iv) take any other action authorized by law. PaymentVision is not obligated to process refunds or chargebacks that will cause an overdraft.
- f. Upon termination, PaymentVision, in its sole and absolute discretion, will require a Reserve in an amount determined by PaymentVision's risk department to reflect the liability of outstanding returns, chargebacks, and fees due. Reserve funds will be held for up to six months after the termination date unless PaymentVision determines earlier release is warranted based on Client's processing history. Any fees remaining in the reserve will be paid out to Client by way of ach to the account on file or as directed by Client during the termination process.

6. Term.

- a. **Effective Date.** This Agreement takes effect on the Effective Date specified in the Service Order or, if no Effective Date is stated, on the date Client first uses the Licensed Service.
- b. **Term.** This Agreement has an Initial Term as stated on the Service Order. Unless specifically mentioned in the Agreement otherwise, the Term will renew automatically for an additional one (1) year Renewal Terms unless (i) a Party gives written notice of termination at least sixty (60) days prior to the expiration of the current Term, or (ii) the Agreement is otherwise terminated as provided herein.

7. Termination.

- a. **Default Termination.** A Party may terminate this Agreement by written notice upon the default of the other Party (the "Defaulting Party") in the event that
 - i. the Defaulting Party materially breaches a term of this Agreement, which if remediable, has not been corrected within thirty (30) calendar days after written notice by the non-defaulting Party; or
 - ii. Client is more than sixty (60) days late on any given months' invoice; or
 - iii. PaymentVision reasonably believes that there has been a material deterioration in Client's financial condition; or
 - iv. any standby letter of credit, if and as may be required, will be canceled, will not be renewed, or is not in full force and effect; or
 - v. Client ceases to do business as a going concern, or there is a change in ownership of Client which changes the identity of any person or entity having, directly or indirectly, more than 30% of either the legal or beneficial ownership of Client; or
 - vi. the Defaulting Party suffers from a Business Failure. A "Business Failure," subject to applicable law, means when:
 - 1. a Defaulting Party files a voluntary petition in bankruptcy provided that such petition is not withdrawn or dismissed within sixty (60) days of filing;
 - 2. any pleading seeking any reorganization, liquidation, or dissolution under any law is filed against the Defaulting Party, and the Defaulting Party admits or fails to contest the material allegations of any such pleading filed against it;
 - 3. an order for relief is entered against the Defaulting Party under the US Bankruptcy Code;
 - 4. a receiver is appointed for a substantial part of the assets of the Defaulting Party;
 - 5. an assignment for the benefit of creditors or similar disposition of assets of the Defaulting Party is made; or
 - 6. the Defaulting Party ceases to conduct business operations generally.

- b. With limiting any of its other rights under this TOS and Agreement, PaymentVision may immediately cancel the Client's Agreement and suspend all processing and use of Licensed Services, without advance notice, upon the request of an ODFI or any applicable Federal, state or banking regulatory authority ("Agency") for any reason, or if PaymentVision reasonably believes that Client is violating or has previously violated any applicable Federal, state or local laws or regulations governing the Client's transactions or the Operating Rules or Guidelines.**
- c. Effect of Termination.** Upon termination of this Agreement:
- i. Client shall immediately discontinue use of the Licensed Service, destroy or delete all materials, software, and any backup databases or other information provided to Client in connection with this Agreement
 - ii. PaymentVision will either:
 1. promptly destroy or delete all of Client's Confidential Information, including customer information, held by PaymentVision; or
 2. Upon Client's written request, provided no later than sixty (60) days from the notice of termination, once Client's account is deemed paid in full (including full payment of all termination fees as agreed to below), PaymentVision will deliver in a reasonable amount of time all of Client's information to a service provider designated by Client, which service provider is certified no less than a Level I PCI Compliant service provider . PaymentVision may delay or refuse any request if PaymentVision believes that the service provider that Client identifies does not have systems or controls in place that are sufficient to protect Client's information containing payment account data, Client agrees that it will be responsible for any professional fees incurred to complete such transfer.
 - iii. Notwithstanding the preceding, each Party may maintain a secured, archival copy of relevant records for a period pursuant to the Party's document retention policy deemed reasonably necessary for forensic, regulatory, and evidentiary purposes.
 - iv. **Reserve at Termination.** Please refer to Section 5 for reserve requirements.
 - v. **Termination Fee.** Upon early termination of this Agreement by Client, excluding any Client termination for PaymentVision Default under Section 7 above, the Client shall pay PaymentVision an Early Termination Fee in the form of liquidated damages. If a fee is not specified in the Client Service Order, the Early Termination Fee will be equal to the greater of:
 1. \$1,000.00,
 2. a total of twelve (12) months minimum payments
 3. for convenience fee clients a total of three months of the convenience fee in the amount of the expected minimum
 4. the sum of the three (3) calendar months in which such Client billing was the highest during the preceding twelve (12) calendar months, or such shorter period if this Agreement has not been in effect for twelve (12) months.
 - a. Parties acknowledge and agree that because of the unique nature of the Licensed Services, it is difficult or impossible to precisely determine the amount of damages that would or might be incurred by PaymentVision due to Client's early termination. It is understood and agreed by the Parties that PaymentVision would be damaged by the Client decision to terminate the agreement early, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) any sums which would be payable under this Section are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (d) represents a reasonable

estimate of fair compensation for the losses that may reasonably be anticipated from each such failure.

- vi. In addition to the Early Termination Fee, Client shall pay any fees, fines, third-party costs, or penalties which PaymentVision may be assessed due to Client's breach of this Agreement and/or early termination. To the extent that applicable state law mandates lesser termination fees, the Early Termination Fee shall be the maximum allowed by applicable law. Client will not owe the Early Termination Fee if Client elects not to renew the Agreement upon the expiration of the then-current term by providing written notice in accordance with the Section above. All rights and obligations of the Parties existing as of the termination date will survive termination.

8. Notification of Business Changes; Credit Inquiries. Client and Client Guarantor(s) acknowledge that all documents submitted in conjunction with this Agreement are being submitted to induce a federally insured financial institution to extend them credit and that submission of any false information may subject them to criminal prosecution, fine, and imprisonment. Accordingly:

a. Business Changes. Client shall provide PaymentVision with immediate notice if Client intends to:

- i. transfer, sell, or liquidate any substantial part of its total assets or equity;
- ii. change the basic nature of its business, including changes that would affect Client's intended use for payments;
- iii. change ownership or transfer control of its business; enter any joint venture, partnership, or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Client's business; or
- iv. modify Client's monthly processing volume or average ticket size as approved by PaymentVision

1. (collectively known as "Business Changes").

- v. Notice to PaymentVision must be made in accordance with the Notice Section of this Agreement. Failure to provide notice of Business Changes may result in termination of this Agreement. In event of Business Changes, PaymentVision Company may, in its discretion, terminate this Agreement. Client acknowledges that it is responsible for promptly notifying PaymentVision in connection with the sale or assignment of its business or any change of control or in beneficial ownership, and expressly agrees that PaymentVision shall be entitled to rely on the statements of any party purporting to be a successor or purchaser of all or any of Client's business, business interests, and/or any rights in connection with Client's business under this Agreement or any other agreement, including if such reliance results in changing any deposit accounts.

b. Change in Financial Condition. Client shall notify PaymentVision, within one business day, in the event bankruptcy, receivership, insolvency, or similar condition or action is identified by or initiated by or against PaymentVision or any of its principals and shall immediately cease Merchant Processing acceptance. Merchant shall include PaymentVision as creditors in Client's bankruptcy proceedings if Client has funds due to PaymentVision for any reason including fees, Chargebacks, or ACH rejects.

c. Financial Information. Client, its signing officers, owners, partners, and principals, and any Guarantors, authorize PaymentVision to make, from time to time, any business and/or personal credit and other inquiries PaymentVision considers necessary to review the acceptance and continuation of this Agreement. Client authorizes persons or entities contacted by PaymentVision in relation to this Agreement to release the credit information requested by PaymentVision. By executing this Agreement, Client, its signing officer/owner/partner/principal and any Personal Guarantor acknowledge that PaymentVision has a legitimate business need for the information contained in any business and/or personal credit report that may be obtained in connection with this Agreement, and that this Agreement is a business Transaction that was initiated by the Client and any Personal Guarantor identified in the Service Order. The authority granted in this Section survives the termination of this

Agreement. Such inquiries shall include a credit check of the business, its proprietor, principal owners, and/or officers. If requested to do so by Autoscribe, Client shall provide the written consent of any individual for whom an inquiry has been or is to be made if such individual did not sign the Service Order.

9. Intellectual Property Rights.

- a. No Intellectual Property Rights Conveyed.** The Licensed Service is licensed, not sold, and is the Intellectual Property of PaymentVision. Client shall secure the Licensed Service in a manner consistent with industry norms for similar licensed information and shall use reasonable efforts to keep PaymentVision's rights in the Licensed Service in good stead. Any Intellectual Property which is owned or controlled by either Party prior to the Effective Date of this Agreement or which is acquired by a Party independently of this Agreement shall at all times continue to be owned and/or controlled by said Party.
- b. No Further Licenses Granted.** Other than the limited licensed use explicitly permitted herein, this TOS does not provide any express or implied rights in PaymentVision's Intellectual Property. Client shall not attempt to copy, create derivative works, reverse engineer, download, or otherwise duplicate or modify the Intellectual Property. Client shall secure the Licensed Product in a manner consistent with industry norms for similar licensed information and shall use reasonable efforts to keep PaymentVision's rights in the Licensed Product in good stead. Any application in which Client may be authorized hereunder to include the Licensed Product shall encrypt or otherwise protect the information from being accessed outside the intended use, which shall never include a complete view of, or plain text list access to, the Database. Other than the limited license rights explicitly granted herein, this TOS does not provide any express or implied rights in PaymentVision's trademarks, copyrights, or other intellectual property; as a non-limiting example, no rights of any kind are granted under US Patents
 - i. Automated payment system: US 5504677 A
 - ii. Automated payment system and method: US 5727249 A
 - iii. Automated payment system and method: US 5966698 A
 - iv. Automated payment system and method: US 6041315 A
 - v. System and method for registering financial accounts: US 9576279 B2
 - vi. System and method for registering financial accounts: US 10423940 B2
- c. Press Release and Logo.** Client authorizes PaymentVision: (i) to use Client's name and logo to promote PaymentVision's business on PaymentVision's website and in marketing materials, and (ii) to issue a press release announcing this Agreement, in both cases subject to Client's review and reasonable approval.

10. Confidentiality.

- a. Definitions.** "Confidential Information" includes any proprietary or confidential information of a Party, disclosed by such Party (the "Disclosing Party") to the other Party (the "Receiving Party"), in whatever form provided. Confidential information includes, without limitation, the Disclosing Party's business plans, scientific knowledge, Intellectual Property, know-how, designs, samples, processes, inventions, techniques, formulae, products, equipment, computer data, plans, business operations, vendor and customer lists, pricing and profitability information, sales and marketing plans, financial information, and other information of business importance to the Disclosing Party. Confidential information does not include information and documentation that:
 - i. is or becomes publicly available other than through a breach of this Agreement by the Receiving Party or any wrongful act by any other Party;
 - ii. the Receiving Party can show it already knew or had possession of at the time of disclosure;
 - iii. is lawfully received by the Receiving Party from a third party without misappropriation or breach of this Agreement or any other agreement, provided that the Receiving Party is not obligated to hold such information in confidence;

- iv. is independently developed by or for the Receiving Party by persons who have not had access to or received any Confidential Information under this Agreement; or
 - v. the Receiving Party has received written permission from the other Party to disclose
- b. Treatment of Confidential Information.** All Confidential Information shall remain the property of the Disclosing Party solely, and the recipient shall maintain and protect such Confidential Information with the same degree of care used to protect its own confidential and proprietary information, but in any event, no less than a reasonable degree of care. Each Party shall also cause its agents, contractors, employees, and any other persons who come into contact with the Confidential Information to maintain it in the strictest confidence and use it only as permitted under this Agreement.
- c. Non-Public Information.** In providing Services hereunder, PaymentVision, its affiliates, employees, agents, and contractors, and/or third parties may come into contact with Client's customer's Non-Public Information as defined in the Gramm-Leach-Bliley Act, 15 USC 6801 et seq., which may also be subject to the "Identity Theft" provisions of the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act. Names, addresses, and other individually identifiable information or non-public personal information as defined by 12 CFR 40.3 that PaymentVision, its affiliates, employees, agents, and contractors may come into contact with as the result of providing Services hereunder will be treated as confidential by PaymentVision, its affiliates, employees, agents, and contractors, except where necessary to carry out the terms and conditions of this Agreement or to comply with the law or legal process.
- d. HIPAA Compliance.** The Parties agree to comply with all applicable laws and regulations, including HIPAA and the HITECH Act, in meeting their obligations under this Agreement.
- e. Required Disclosures.** Nothing contained herein will prevent either Party from complying with any applicable law, regulation, or court order, provided that prior to any required disclosure in accordance with such applicable law, regulation, or court order, a written notice will be provided to the Party whose Confidential Information may be disclosed. Such notice shall be given as soon as possible but in no event less than five (5) business days before disclosure of such Confidential Information. The Party making such disclosure shall disclose only such Confidential Information as is required by such law, regulation or court order and shall use commercially reasonable efforts to obtain confidential treatment for such Confidential Information from such court, regulatory agency or other governmental body

11. Restrictions.

- a. General.** Except as explicitly permitted by this Agreement, Client may not do, or permit others to do, any of the following:
- i. Make copies of all or part of the Licensed Service, except as required for installation. However, Client can make a backup copy of the Licensed Service for system recovery purposes.
 - ii. Provide access to, disclose, sell, lease, license, lend, distribute, assign, or otherwise transfer or allow the transfer of the Licensed Service, any part thereof, or any copies thereof to any third party.
 - iii. Use all or part of the Licensed Service to earn income or otherwise receive benefits in a third-party service capacity or market any part of the Service in the information providing capacity.
 - iv. Modify, translate, or create a derivative work of part or all of the Licensed Service.
 - v. Directly or indirectly attempt to recompile, manipulate, or reverse engineer the Licensed Service, in whole or in part.
 - vi. Remove, alter, or tamper with copyright, trademark, patent, or other intellectual property markings for the Licensed Service.
 - vii. Retain, store, compile or aggregate data received from a Licensed Service to (1) create a database or electronic collection of such data or (2) that provides access to data received from

a Licensed Service for use in a future decision, determination, or other inquiry outside the specific inquiry for which the data was originally provided.

12. Account Verification Services ("AVS")

- a. The AVS service provided by PaymentVision utilizes information from a national bank database that to verify the status of a bank account offered for payment. AVS data is time-sensitive, and responses are for use in connection only with the specific inquiry for which the response was provided. Client will comply with all provisions herein and expressly obligate anyone accessing the AVS through Client's account to comply with these provisions.
- b. Client's account to comply with these provisions.
- c. **NACHA Rule Compliance.** As required below, all Clients who process ACH payments must comply with National Automated Clearinghouse Association ("NACHA") Rules. To ensure such compliance, PaymentVision has added an AVS tool to its PayWeb portal. AVS must be used when accepting payment from an account for the first time when such payment is processed as a web transaction. This includes payments accepted on methods other than PayWeb if such payments are sent to PaymentVision for processing with the WEB Standard Entry Class Code.
 - i. **As applicable, unless provided otherwise in the Client's Agreements, the AVS per transaction fees will be billed to Client at a rate of \$0.50.**
- d. **Permitted Uses.** An Inquiry may be submitted only: (1) regarding a payment presented to Client in exchange for goods or services (these inquiries must specify the actual dollar value of the payment) or (2) to determine whether to allow the customer account to be enrolled for use in connection with future transactions (these inquiries cannot specify a dollar value).
- e. **Requirements.** Client represents and warrants that:
 - i. Each Inquiry shall accurately represent the data obtained by Client in connection with the payment or enrollment.
 - ii. Client shall accurately report all information associated with each Inquiry and Response.
 - iii. Client shall not use a Response in a manner that alters the technical accuracy of the Response information.
 - iv. Client shall not use or rely on the Responses for any purpose other than allowed under "Permitted Uses" above.
 - v. Client shall not cache, store, or otherwise retain a Response, in whole or in part, except for use solely as a record of the transaction to which the Response relates, as required by applicable law or as authorized in writing by PaymentVision.
 - vi. Client shall use each Response solely in accordance with the federal Fair Credit Reporting Act, 15, USC § 1681 et seq. ("FCRA"), for a permissible purpose under section 604(a) of the FCRA, and in conformance with all other applicable federal, state and local laws, rules, and regulations.
 - vii. **FCRA Notification.** Client shall provide PaymentVision's contact information to consumers with inquiries arising from the decline of payment or enrollment that was based, in whole or in part, on a response received from PaymentVision. For PaymentVision PayWeb clients, such disclosure will be presented to the customer as part of the PayWeb process.
- f. **PaymentVision Limited Warranty for Account Verification Services.** PaymentVision provides a limited warranty, subject to the Claim of Warranty provisions below, that a payment that automatically and without any manual intervention by Client clears PaymentVision's Account Verification Tool shall not be returned for a Warranted Return Reason and if such payment is returned, PaymentVision will reimburse the Processing Costs of such payment not to exceed \$5.00 per return. This warranty does not apply to scheduled recurring payments.

i. **Claim of Warranty.** Client may request a reimbursement of the direct Processing Cost incurred for processing a payment that is returned for a Warranted Return Reason, not to exceed \$5.00 per return, so long as payment meets the terms outlined above.

1. **Written Request.** A reimbursement request must be made by sending a written request within sixty (60) days of the return date of the Warranted Payment to:

AVS Warranty Request
PaymentVision
12276 San Jose Blvd, Suite 624
Jacksonville, FL 32223

2. **Required Information.** The request must include the following payment information:

- a. Clients Name
- b. Client Account/MCID Number
- c. PaymentVision's Transaction Reference Code
- d. Payers last name
- e. Routing number
- f. Last four digits of the account number
- g. Payment Amount
- h. Customers Reference Code
- i. Reimbursement amount requested
- j. Proof of Warranted Return Reason
- k. Proof of bank fees if requesting a refund of bank fees outside of PaymentVision's services.
- l. Processing Costs
- m. PaymentVision's Account Verification Fee, gateway fee, and origination fee, as well as any Bank fee incurred by Client.

ii. **Warranted Return Reason.** An ACH/check item returned for one of the following return reasons; R02/ Account Closed, R03/No Account/Unable to Locate Account, R04/Invalid Account Number Structure, R13/Invalid ACH Routing Number, R16/Account Frozen, R20/Non-Transaction Account, and R28/Routing Number Check Digit Error.

13. **PASSTIME Service.** PaymentVision may choose, at its option, to provide clients who have an active service agreement with PASSTIME USA™ ("PassTime") with access to PaymentVision's automated interface to notify PassTime of selected payments. PassTime is a third-party service, and PaymentVision disclaims all responsibility and liability for the Service. The PassTime Reporting interface is provided as-is without warranty, subject to availability, and will incur a transaction fee for PassTime Reporting in addition to the regularly scheduled fees for processing the payment as specified in the Service Order. PaymentVision is not responsible for any direct, indirect, incidental, or consequential damages arising from failed PassTime Reporting transactions; liability for failed PassTime Reporting transactions is limited to refund of the reporting fee for that transaction.

14. **PaymentVision PaybyText.**

a. **Compliance.** Client must familiarize with and abide by all applicable local, state, national, and international laws and regulations pertaining to your use of the Service. Client is solely responsible for all acts or omissions that occur under your account, including without limitation, the content of the messages that are created and sent. Such laws, guidelines and rules include but are not limited to:

- i. Federal Trade Commission, <http://www.ftc.gov>
- ii. Federal Communications Commission, <http://www.fcc.gov>
- iii. National Do Not Call (DNC) Registry, <http://www.donotcall.gov>
- iv. CAN-SPAM, <https://www.fcc.gov/general/can-spam>

- v. Cellular Telecommunications Industry Association (CTIA) Messaging Principles, <https://www.ctia.org>
- vi. U.S. Consumer Best Practices Guidelines" ("MMA Guidelines"), <http://mmaglobal.com/policies/consumer-best-practices>

PaymentVision is in no way attempting to interpret any laws, rules, or regulations. This information is provided merely as a courtesy, and it is not intended to replace your responsibility to familiarize yourself with and abide by the legal requirements pertaining to your messages. PaymentVision is not responsible for reviewing the contents of any communication you transmit using the Services, nor is it responsible for obtaining any necessary consents or permissions from Client's message recipients. The Client is content provider and message sender and is required to obtain and retain proper consumer consent prior to sending messages. Consent requirements may vary based on the type of message and/or campaign initiated..

- b. Prohibited Uses** Client agrees that your use of our Services shall not include:
- i. Sending unsolicited marketing messages or calls
 - ii. Sending a message without the necessary consent and/or opt out option as required
 - iii. Sending advertising messages, without prior PaymentVision consent or without legal customer consent
 - iv. Sending any content that is not consistent with standards imposed by mobile carriers and aggregators
 - v. Number Cycling
 - vi. Snowshoe Sending
 - vii. Harvesting, or otherwise collecting, information about others without their consent;
 - viii. Misleading others as to the identity of the sender
 - ix. Using any misleading subject lines or other false information
 - x. Transmitting, associating, or publishing any unlawful, racist, harassing, defamatory, abusive, threatening, demeaning, immoral, harmful, vulgar, obscene, pornographic, or otherwise objectionable material of any kind.

In the event PaymentVision discovers or suspects non-compliance with these terms, PaymentVision may in its own absolute discretion immediately block Client's access. Setup fees will not be refunded.

- c. Mobile Network.** PaymentVision will facilitate the sending and receiving of text messages to Client's designated recipients. PaymentVision does not send or cause to be sent any text messages, which is the responsibility of the applicable mobile network operator or telecommunications provider. While PaymentVision shall use all commercially reasonable efforts to transmit text messages to the applicable mobile network operator or telecommunications provider quickly, final delivery of all text messages to designated recipients is the responsibility of such operator or provider. PaymentVision does not accept liability, if final delivery does not succeed due to an action, omission or any other failure of the relevant mobile network operator or telecommunications provider.
- d. Carrier Restrictions.** Client understands that the Carriers restrict text abilities by business type. The Carrier restrictions can change at the Carrier's sole discretion. PaymentVision does not guarantee Carrier approval.
- e. High Optout Rates.** If at any time the rate of optouts is deemed high by a Mobile Network carrier or by PaymentVision, which determination is of the party's own discretion, Client's account may be suspended, limited or terminated.

15. PaymentVision Sponsored MSP Processing.

- a. Sponsor Bank Terms.** Client must adhere to the Sponsor Banks terms of Service found at <https://www.paymentvision.com/legal/terms%20of%20service>.
- b. Card Acceptance.** When accepting any Card and completing any Card transaction, Client shall follow all procedures and rules in the Bank Rules and the Card Brand Operating Regulations. In the event PaymentVision for whatever reason is unable to obtain, or due to system delays chooses not to wait to

obtain, authorization from an Association, PaymentVision may at its option "stand-in" for such entities and authorize the sales transaction based on criteria established by PaymentVision, and Client remains responsible for such sales transaction in accordance with this Agreement. Client has identified to PaymentVision the products and/or services for which it intends to accept Cards as payment. Client agrees that it shall only complete and deliver to PaymentVision sales transactions produced as the direct result of bona fide sales made by Client to Cardholders for such identified products and/or services unless otherwise agreed by PaymentVision in writing.

- c. Transaction Processing.** PaymentVision will initiate payment to Client of the total face amount of each sale transaction acquired and accepted hereunder, subject to the terms and conditions of this Agreement, the Bank Rules, the Operating Regulations, and applicable law, after PaymentVision receives payment for such sales transactions. Unless otherwise agreed to in writing by PaymentVision, Client shall electronically deliver to PaymentVision and in a format acceptable to PaymentVision all credit vouchers and sales transaction records within two (2) business days after the applicable transaction date (or such shorter period as determined by the applicable Association), except (i) in the case of a delayed merchandise delivery, when the sales transaction record shall be delivered within two (2) business days of the merchandise delivery or (ii) as specified otherwise in the Bank Rules. Client agrees that it shall deliver sales transaction records to PaymentVision at least every business day. The preparation and delivery to PaymentVision by Client of sales transactions shall constitute an endorsement to PaymentVision by Client of each sales transaction, and Client authorizes PaymentVision or its representative to place Client's endorsement on any sales transaction at any time. PaymentVision may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Client pursuant to this Agreement if it had acquired the sales transaction or claim. Client acknowledges and agrees that PaymentVision is not responsible for any action or inaction taken by the financial institution or other entity that issued the Card(s) to the Cardholder or the PaymentVision of such Card(s). Client agrees that PaymentVision may set off any amounts due to PaymentVision from amounts owed to Client, including but not limited to any amounts owed to Client from PaymentVision and/or any of its affiliate(s).
- i. Exception Items.** Client agrees to reacquire and pay PaymentVision the amount of any sales transaction, and PaymentVision shall have the right at any time to charge Client's Account therefore with notice in accordance with PaymentVision's standard operating procedure, for any return (whether or not a credit voucher is delivered to PaymentVision), chargeback, compliance case, any other Association action, or if the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local or otherwise; or if PaymentVision has not received payment for any sales transaction, notwithstanding PaymentVision's prior payment to Client for such sales transaction pursuant to the above or any other section. Not limiting the generality of the foregoing, Client agrees that any operational and/or other services performed on behalf of Client, including but not limited to, production of facsimile drafts in response to copy requests, response to compliance cases, augmentation of Client data for interchange, transaction stand-in, digital draft storage and retrieval, etc. shall in no way affect Client's obligations and liability in this Agreement including those in the foregoing sentence. Client may instruct PaymentVision in defense of chargebacks, compliance cases, and similar actions, and Client agrees that it will promptly provide any such instructions to PaymentVision.
- d. Card Fee Billing Frequency**
- i. Billing Options.** PaymentVision can process card brand fees daily or monthly. Client billing that is processed monthly may incur a monthly fee.
- e. Lack of Productivity or Product Availability.** Should Client not process sales transactions through PaymentVision's system for a period of one (1) year or more, PaymentVision may remove Client from

PaymentVision's systems as an event of Default, without notice, without relieving Client from any of Client's obligations under this Agreement. Should PaymentVision decide to no longer offer the Service, PaymentVision shall provide Client ninety (90) day notice prior to the date Service will no longer be offered and will assist the Client in finding an alternative provider at a reasonable cost. PaymentVision agrees that such notice shall specifically describe the nature of such action by PaymentVision, specify the date that such action will occur, and specifically reference this Section.

- f. Surcharges.** If Client chooses to impose a surcharge on Card payments, Client may do so only after meeting specific considerations, limitations, and requirements as defined by the Card Associations. Requirements and limitations include:
- i. Client may impose a surcharge only if permitted by, and is compliant with, state and local law;
 - ii. Client shall notify PaymentVision no less than 45 days in advance of imposing any surcharge;
 - iii. Client shall publicly disclose its surcharge practices at the store entry point and point of sale; and
 - iv. Any surcharge imposed by Client shall not exceed 4% of the underlying Transaction amount.
 - v. For information on, and further links to, surcharge considerations, requirements, limitations, and Card Association surcharge registration pages, visit www.mastercard.us/merchants/support/surcharge-rules.html and www.visa.com/merchantsurcharging.
- g. Excessive Activity.** Client's presentation of Excessive Activity will be a breach of this Agreement and may result in immediate termination of this Agreement. "Excessive Activity" means, during any monthly period for any one of Client's terminal identification numbers or merchant identification numbers:
- i. the dollar amount or number of chargebacks and retrieval requests in excess of 1% of the average monthly dollar amount or number of Card Transactions.
 - ii. sales activity that exceeds by 25% or more the dollar volume indicated on the Merchant Application; or
 - iii. the dollar amount of returns equals 3% of the average monthly dollar amount of Card Transactions. Client authorizes, upon the occurrence of Excessive Activity, PaymentVision may take any action deemed necessary including but not limited to suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

16. PaymentVision Sponsored ACH Processing. The term Financial Institution, as used in this Section, refers to collectively to any bank or Service Provider with which PaymentVision (hereinafter "PaymentVision") has an Agreement. Therefore, Client and PaymentVision acknowledge that such Financial Institution is an express and intended third-party beneficiary to this Agreement and has all the rights under this Agreement as if it were a party thereto, including, without limitation, the right to enforce any terms of the Agreement or assert claims against Client for breach of the Agreement.

- a. Authorization.** As a duly authorized representative for the Client named above, I authorize the account designated by Client to be debited and/or credited by PaymentVision according to the terms of this Agreement. I further authorize PaymentVision to process electronic funds transfers through the account listed within this Application/Agreement. This authorization is also applicable for any new account information provided by Client at a future date. I agree to be bound by the ACH Agreement Terms and Conditions, as stated elsewhere in this Agreement. Client agrees to provide new account information to PaymentVision at least ten days prior to closing or changing the above account. This authorization shall continue in perpetuity until all obligations to PaymentVision are met, and the authorization shall survive termination of this Agreement.
- b. Authentication.** Client agrees that PaymentVision may adjust processing fees and/or add authentication services without notice if Client experiences a return rate outside the standard return

rates for Client's industry (as determined solely by PaymentVision) or if PaymentVision deems the authentication process employed by Client is not adequate based upon standards determined by PaymentVision. PaymentVision, at its sole and absolute discretion, will determine the standards of authentication and the rate of return acceptable for Client.

- c. **Client Representations for Authorization.** Client warrants that for each such ACH Entry submitted for processing, Client has obtained all authorizations as required by the Rules, by Regulation E or other applicable law, and this Agreement; confirmed that all authorizations are not inoperative nor ineffective by operation of law, nor has it been terminated by operation of law; that the Entry is timely; has provided all written disclosures required under applicable law, rule or financial institution guidelines; has verified the amounts in the Entry. Client will maintain copies of the authorizations for a period of two years from the date the record was created. Client represents and warrants with respect to all Entries originated by Client and processed by PaymentVision for the Client that (1) each Receiver has authorized the debiting and/or crediting of its account, (2) each Entry is for an amount agreed to by the Receiver, and (3) each Entry is in all other respects properly authorized.
- d. **Selected Standard Entry Classes.** At any time, the only SEC codes that Client is able to process under are as follows:
 - i. CCD Corporate Credit or Debit Entry
 - ii. PPD Prearranged Payment and Deposit Entry
 - iii. TEL Telephone-Initiated Entry
 - iv. WEB Internet-Initiated Exchange
- e. **Identifying Numbers.** Client understands that PaymentVision may rely solely on identifying numbers provided by the Client to determine the Bank and account of a Receiver even if the numbers identify a bank or account holder different from the one identified by the Client by name.
- f. **Notice of Erroneous Unauthorized Transfers.** Client agrees to promptly and regularly review all Entries and other communication received from PAYMENTVISION and to immediately notify PAYMENTVISION if there are any discrepancies between Client's records and those provided by PAYMENTVISION, the ODFI or Client's Bank, or with respect to any transfer not authorized by Client. If Client fails to notify PAYMENTVISION within seven days of the date PAYMENTVISION mails or otherwise provides a statement of account or other reports of activity to Client, then the Client will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer.
- g. **Accepting Transactions.** PaymentVision will only be responsible for processing Entries that have arrived in proper format and on a timely basis. PaymentVision will advise Client of any applicable cut-off time. Client does not have the right to cancel or amend any Entry after submission.
- h. **Originating Transactions.** PaymentVision will use the information provided by the Client to originate Entries to the ACH. Client acknowledges its understanding that PaymentVision may reject Entries for any reason permitted or required by the Rules or applicable Regulations. Client also understands that Entries or files may be rejected, which exceeds the threshold parameters identified and set for the Client. Client also understands that an Entry may be rejected if the Entry would cause PaymentVision to violate any Federal Reserve or other regulatory risk control program, any other applicable Rule or Regulation, or PaymentVision's Agreement with its Originating Bank or Financial Institution. At Client's request, PaymentVision will make reasonable efforts to reverse, modify, or delete an Entry but will have no responsibility for the failure to comply with that request. All such requests must be made in writing to PaymentVision.
- i. **Returned Entries.** PaymentVision will apply returned Entries to Client's account when they are received. PaymentVision will create and make available to the Client a report containing detailed information about returned Entries. If the Client requests that the returned entries be provided electronically, PaymentVision may do so according to the Rules and Regulations regarding those transactions. Client is solely responsible for payment of any and all returned Entries. Client

acknowledges that PaymentVision has the right to establish return rate thresholds, which may be changed from time to time. At PaymentVision's sole discretion, PaymentVision has the right to immediately implement front end controls at a cost to the Client to assist with reducing return rate for known bad accounts to included closed, revoked, and fraudulent; require a reserve, suspend Client's processing or terminate this Agreement if returns exceed the established threshold.

- i. If at any time the number of ACH Returns exceeds NACHA's published return rate thresholds, Client may be charged an additional monthly fee and will be billed until the monthly rate is below NACHA's return rate thresholds. Additionally, an ACH compliance tool may be necessary to assist in reducing and maintaining ACH return rates. Any associated fees for this product will be charged to the Client.
 - j. Settlements and Finality.** Funds representing collected ACH Payments shall settle to Client's Designated Bank Account on a schedule determined by PaymentVision based upon an evaluation of the risk and credit exposure imposed by Client. The settlement cycle will be communicated to Client upon notice of account approval or account activation. PaymentVision reserves the right, at its sole and absolute discretion, to adjust the settlement cycle based upon account performance and changes in estimated credit exposure. If any Entry is returned after settlement, PaymentVision will, at PaymentVision's sole and absolute discretion, either apply the debit to the current day's settlement or debit the Client's account for the amount of the returned Entry plus associated fees. If sufficient funds to cover returned Entries is not available in the Client's account, the Client shall immediately remit payment to PaymentVision to fully cover the amount of all returned Entries
 - i. Client acknowledges receiving notice of the NACHA Rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited, and neither PaymentVision nor the ODFI shall be deemed to have paid the Receiver the amount of the Entry.
 - k. Volume Analysis.** PaymentVision routinely analyzes Client origination and return activity. In the event the Client exceeds a return rate outside the standard return rates for its industry (as determined by PaymentVision in its sole and absolute discretion), PaymentVision determines Client's business is operating or previously operated in a manner that PaymentVision believes in its sole and absolute discretion could cause it financial or legal risk, or ceases to do business with PaymentVision, PaymentVision shall have the right at any time to place all of the provisional or final credit provided to Client for each Debit Entry originated by it in an account held by PaymentVision for a period of two (2) years from the last Debit Entry.
 - i. The above determining factors are at the sole and absolute discretion of PaymentVision.
PaymentVision.
- 17. Revisions to TOS and Operating Policies.** PaymentVision's goal is to provide state-of-the-art services and satisfy each Client. From time to time, in its discretion, PaymentVision may revise element(s) of the TOS and its posted formal operating policies in response to market or regulatory developments. The following procedures and client protections apply to all such revisions:
- a.** If PaymentVision determines a change in the TOS is required to comply with a law, regulation, rule, or other government or industry directive, these changes will take effect on a date specified in an email notice to the email designated by the Client on the Order Form. PaymentVision will endeavor to provide as much notice as possible of any change in operations and to minimize the impact of any change on Client's operations. However, PaymentVision must comply with applicable regulations, regardless of whether we received as much advance notice as we would like.
 - b.** As service offerings evolve, PaymentVision reserves the right to make other modifications to the TOS with statement or email notice to the address designated by the Client on the Service Order. If Client objects to such modifications and notifies PaymentVision of its objection, PaymentVision (in its sole, absolute discretion) shall work with Client to resolve the change within sixty (60) days of notice of objection; if a resolution cannot be made, PaymentVision will either waive such modification until the

next renewal date of Client's contract or release Client from this Agreement without penalty sixty (60) days after receiving Client's objection.

18. Security Compliance.

- a. PaymentVision is a Level I PCI Compliant service provider and will maintain this compliance during the Term of this TOS. Controls placed in operation and tests of operating effectiveness were conducted in the current period and approved by independent auditors in accordance with the American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements (SSAE) No. 16. Upon request, PaymentVision will provide Client with copies of current compliance certificates.
 - i. PaymentVision will maintain its status as a PCI DSS validated Level 1 Service Provider.
 - ii. PaymentVision will continue to undergo an annual PCI DSS onsite ROC assessment by a Qualified Security Assessor Company.
 - iii. As part of its recurring compliance-related tasks, PaymentVision performs monthly ASV vulnerability scans plus additional internal and external security vulnerability scans.
 - iv. PaymentVision will process, store, and transmit Client's cardholder data in compliance with all PCI DSS security controls.
 - v. PaymentVision will provide secure storage for saved payment tokens for a period five years after the date of last use. PaymentVision will purge payment tokens after this period.
- b. Client shall adopt and implement commercially reasonable policies, procedures, and systems to receive, store, transmit and destroy ACH and credit card data (as applicable and to the extent Client possesses such data) in a secure manner and to protect against data breaches; and (ii) implement commercially reasonable policies, procedures, and systems to detect the occurrence of a data breach within its organization. Client agrees to provide information on such policies, procedures, and systems upon request by PaymentVision.
- c. Client PCI Compliance. Clients that utilize PaymentVision-sponsored merchant processing shall at all times be in full compliance with any rules, regulations, guidelines, and procedures adopted by any Card Brand relating to the privacy and security of Cardholder and Card Transaction data, including the most up-to-date version of the Payment Card Industry Data Security Standard (PCI-DSS), as amended from time to time by the Payment Card Industry Security Standards Council. Detailed information pertaining to these requirements may be found at <https://www.pcisecuritystandards.org>.
 - i. To confirm the Client required PCI Compliance,
 - ii. To confirm the Client required PCI Compliance, such Clients will be required to enroll on PaymentVision's PCI compliance platform. Client will be charged a platform fee and, if applicable, a non-compliance fee for any month Client does not certify the PCI compliance needed with the system.

19. Warranties and Limitations of Liability

- a. **Warranties of Parties.** Each Party represents and warrants to the other that as of the Effective Date of this Agreement: (i) it is an ongoing business operation, duly organized, validly existing and in good standing in the place of its incorporation or recognition; (ii) it has all requisite power and authority to enter into and perform its obligations under this Agreement; and (iii) the person(s) signing or accepting the Service Order, this TOS, and any click-through agreements required to access third party services are authorized to bind the Client to the terms and conditions of such agreements. PaymentVision represents and warrants that: (i) the Licensed Service is provided to Client free and clear of any claim of ownership by others; and (ii) the provisions of this Agreement do not violate or infringe upon the rights of any third party with regard to copyrights, patent or other intellectual property rights.
- b. **Actions by Client Employees and Client Administrator.** Client acknowledges that the actions of its officers, directors, employees, affiliates, agents, administrators, consultants, or independent contractors ("Client Administrator") will be deemed actions by Client hereunder, and Client accepts full responsibility and liability for such acts and/or omissions of said Client Administrator

- c. **Malware Prohibited.** PaymentVision warrants that no virus, Trojan horse, bomb, back door, worm, or other disabling or harmful device or malicious code designed to alter, erase, or render unusable any computer data, hardware, or software; to purposely disrupt the normal operation of a computer system or designed to permit unauthorized access by third parties, or disable, erase or otherwise harm the Licensed Service, Client data, other Client software or Client hardware (collectively "Malware") will be introduced into any Client system or individual computer by the Licensed Service.
- d. **Acceptance As-Is. NO WARRANTY.** Client acknowledges and agrees that PaymentVision does not have control over the conditions under which Client uses the Licensed Services and does not and cannot warrant the results obtained by such use.
- i. **Warranty Disclaimer. PAYMENTVISION DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PROCESSING AND/OR PAYMENTVISION'S SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES AGAINST INFRINGEMENT OF THIRD- PARTY RIGHTS OR THE IMPLIED WARRANTIES OF CLIENTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PAYMENTVISION DOES NOT WARRANT THAT OPERATION OF THE LICENSED SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. CLIENT ACKNOWLEDGES THAT THE LICENSED SERVICES ARE PROVIDED FOR USE BY CLIENT "AS IS." CLIENT FURTHER ACKNOWLEDGES THAT PAYMENTVISION BEARS NO RESPONSIBILITY FOR THE CLIENT WEB SITE(S). CLIENT ACKNOWLEDGES THAT AN AUTHORIZATION FOR PAYMENT IS NEITHER A WARRANTY THAT THE PERSON PRESENTING THE AUTHORIZATION IS THE RIGHTFUL ACCOUNT HOLDER NOR A PROMISE OR GUARANTEE BY PAYMENTVISION THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO CLIENT FOR THE AUTHORIZED TRANSACTION. CLIENT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT REVERSAL OF A PREVIOUSLY AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.**
 - ii. PaymentVision will not accept responsibility for errors, acts, or failure to act by others (whether directly or indirectly), including but not limited to Financial Institutions, banks, communication providers, common carriers, or clearinghouses through which Entries may be passed and or originated. PaymentVision is not responsible for any loss, liability, or delay caused by fires, earthquakes, war, civil disturbances, power surges or failures, acts of governments, labor disputes, failures in communication networks, intervening criminal or tortious acts of third parties who are not within PaymentVision's control or employ, legal constraints or other events beyond the control of PaymentVision. PaymentVision shall not be liable to Client for any delays in receipt or transmittal of funds or errors in credit or debit Entries caused by third parties, including, without limitation, the Automated Clearing House, any depository financial institution, or any agent of Client.
- e. **Disclaimer of Liability.** If a transaction fails to process, upon Client's written request, PaymentVision will credit Client for the applicable PaymentVision transaction fee. It is agreed that neither PaymentVision nor any of its employees, directors, contractors, or third-party providers, shall be otherwise liable to Client, Client's employees, contractors, consumers, customers or agents, or to any person claiming any loss or injury arising out of or caused by Client's use of the Licensed Service. If despite the comprehensive disclaimer above, PaymentVision is found liable for damages arising from the Licensed Service, its total liability is limited to PaymentVision's total invoices to Client for the Service in the three-month period before the claim arose. This provision is a key element in PaymentVision's pricing.

- f. **Liability not Excluded.** Nothing in this Agreement shall limit or exclude either Party's liability for fraud, death or personal injury caused by negligence or any other liability which by law cannot be excluded.
- g. **No Special Damages.** EXCEPT FOR DAMAGES ARISING FROM EITHER PARTY'S BREACH OF CONFIDENTIAL INFORMATION OR EITHER PARTY'S OBLIGATIONS UNDER INDEMNIFICATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY FOR ANY LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.
20. **Indemnification by Client.** Client will indemnify PaymentVision, including its directors, officers, employees, and affiliates, for any claims, demands, losses, liabilities, costs, fines, or expenses suffered or incurred (including attorneys' fees and costs) relating to, arising out of, or involving any breach of representations and warranties or failure to comply with any applicable Rule, Regulation or Financial Institution or Agency requirement. Client's indemnity obligation survives the termination of this Agreement.
- a. Client (i) shall ensure that it employs disclaimers of warranty, damages, and liability to its customers (and where applicable, persons transacting through its customers) substantially similar to those set forth in this Agreement, and (ii) shall not use the Licensed Service or permit its customers to use the Licensed Service in a manner which could cause a meaningful loss to any third party and/or generate a claim for damages by a third party against PaymentVision, and (iii) shall not assert or suggest to any customer or third Party that PaymentVision is financially responsible for their loss arising out of the use of the Licensed Service. If a third party claim arises due to Client's failure to comply with these provisions, Client shall indemnify and hold PaymentVision and its contractors, agents, officers, directors, and employees harmless from any and all costs, damages, losses, and expenses, including reasonable attorneys' fees, that they incur as a result of such third party claim.
21. **Indemnification by PaymentVision.** Notwithstanding any other provisions of this Agreement, PaymentVision will defend, indemnify and hold Client harmless against any and all claims, actions, costs, losses, or expenses (including reasonable attorneys' fees, court costs, and related legal expenses, whether incurred in defending against such claim or enforcing this Section) arising from any third party claim that the Licensed Service infringed, misappropriated or violated a patent right, copyright, trade secret, or other intellectual property rights, or a contractual obligation of PaymentVision to a third party licensor of intellectual property rights included in the Licensed Service. The foregoing indemnity obligations shall not apply to the extent such claim arises due to the Licensed Service being modified (or used in a manner inconsistent with this Agreement) by anyone other than PaymentVision, where such claim would not have arisen but for the modification to and/or misuse of the Licensed Service.
22. **Mutual Indemnification.** Notwithstanding any other provisions of the Service Order or this TOS, each Party shall indemnify the other against any and all costs, losses, or expenses (including reasonable attorney's fees) arising from any breach of a Party's confidentiality obligations under Section 5
- a. **Indemnification Procedures.** If either Party claims indemnification pursuant to this TOS, such Party shall promptly notify the other Party in writing and provide full details. If the indemnification claim arises from the claim or demand of a third party, the indemnifying Party shall have the right, with the indemnified Party's prior consent, not to be unreasonably withheld, to compromise or, if appropriate, conduct and defend at the indemnifying Party's own cost and through counsel of its own choosing, reasonably acceptable to such Indemnified Party, the claim or demand of any third party giving rise to such claim for indemnification. The opportunity to compromise or defend shall be a condition precedent to any asserted indemnification liability. After the assumption of the defense by the indemnifying Party and as long as the indemnifying Party diligently pursues the defense, the indemnifying Party shall be liable only for its own legal expenses, and the indemnified Party may participate at its own expense if desired. Each Party shall reasonably cooperate with the other Party in the defense or compromise of the claim. The indemnifying Party shall not consent to a judgment or settlement that does not unconditionally release the Indemnified Party from liability, does not make

arrangements reasonably satisfactory to the indemnified Party for performance by the indemnifying Party, or that involves an admission of wrongdoing, payment, or performance by the indemnified Party.

23. Auditing and Due Diligence

- a. Initial Due Diligence.** Client represents that all information supplied by Client in connection with its request for services to PaymentVision which shall include but is not limited to a copy of any and all government or Agency inquiries or complaints regarding Client or any of its subsidiaries, predecessors, principals, officers or managing members; corporate ownership information; authorizations; corporate reports; financial statements, and any other documentation provided by Client pursuant to this Agreement are correct, accurate, and complete and do not contain any untrue or misleading statement of fact.
- b. Ongoing Audit and Compliance Documentation Requests.** Client acknowledges that PaymentVision is subject to oversight and review and that such review may encompass the Licensed Services provided to Client. Therefore, upon PaymentVision's written request with reasonable notice, Client shall grant PaymentVision access to Client's knowledgeable personnel, physical premises, and/or provide documentation as requested on the Client's processes and procedures and overall business, including financial stability. Any audit performed by PaymentVision shall be conducted during normal business hours and in a manner so as not to disrupt the normal operations of the Client.
 - i. These requests may include but are not limited to Financial Statements. If at any time Client is not a publicly-traded company, Client shall provide PaymentVision with an audited financial statement for Client's most recent fiscal year-end and/or quarterly financial statements prepared and certified by Client's chief financial officer within fifteen (15) days of PaymentVision's request,.
- c. Client-Requested Audit Questionnaire.** PaymentVision will provide a copy of its annual security and compliance audit to Client, upon request. Client agrees and acknowledges that PaymentVision may charge Client up to \$2,000 per individualized audit questionnaire requested. This fee will be included in the invoice issued in the month following submitted information.

24. Legal and Regulatory Compliance.

- a. Compliance will all applicable legal requirements.** In performing their obligations under the Service Order and TOS, both Parties warrant that they will comply and cause their representatives and permitted contractors to comply with all applicable federal, provincial, state, local laws, regulations, and guidelines, including any licenses, permits, or registrations necessary for the Party to fulfill its obligations under the Service Order and TOS, which shall include all privacy laws and data protection laws, regulations and guidelines.
 - i. Applicable regulations shall include as applicable but are not limited to
 1. Fair Credit Reporting Act, 15 USC § 1681 et seq. ("FCRA")
 2. Unlawful Internet Gambling Enforcement Act (31 USC §§ 5361, et seq.) and accompanying regulations (12 CFR 233; 31 CFR 132FTC Act (15 USC §§ 41, et seq.);
 3. TSR (16 CFR 310, et seq.);
 4. Electronic Fund Transfer Act (15 USC §§ 1601, et seq.)
 5. Regulation E (12 CFR 205, et seq.), if applicable;
 6. Uniform Commercial Code Article 4-A
 7. Federal Reserve Board Regulation J,
 8. the rules and sanctions laws of the Office of Foreign Assets and Control ("OFAC"); 7));
 9. PACT Act (15 USC §§ 376, et seq.,
 10. Jenkins Act (15 USC §§ 375, et seq. and accompanying regulations;
 11. Title X of the Dodd-Frank Act and accompanying regulations;

12. Guidelines, rules and standards of VISA, MasterCard, Discover, American Express (Card Brands) and/or Other Networks, including but not limited to PCI, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations
 - a. Client acknowledges that Card Brand guidelines can be assessed at the applicable Association website.
 - ii. Should any regulation(s) not be publicly available or otherwise made available to the Client, such unavailability shall not alter or limit Client's obligation to comply with the Operating Regulations.
 - iii. Notwithstanding PaymentVision's assistance in understanding any and all applicable rules and regulations, Client expressly acknowledges and agrees that it is assuming the risk of compliance with all provisions of any applicable rule or regulations regardless of whether Client has possession of those provisions.
- b. Client Compliance.** Client bears the final responsibility to ensure that the Client's policies and procedures meet the requirements of the Rules and all applicable Regulations. Client is encouraged to consult counsel regarding compliance with the Rules and Regulations whenever there is any doubt about compliance.
- 25. Survival and Severability.** Any provision, which by its reasonable nature extends beyond this Agreement shall survive the termination or expiration of this Agreement, **In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision; provided, however, that no such severability shall be** effective if it materially changes the economic benefit of this Agreement to either Party.
- 26. Assignment.** Client may not assign or transfer this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of PaymentVision, which consent shall not be unreasonably withheld or delayed, provided Client understands that such assignment may be dependent on the submission of due diligence items as needed to secure PaymentVision approval of the Assignor and PaymentVision may terminate this Agreement or limit in its sole discretion based on its review of such information. Any assignment in violation of this Section is null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns. No assignment or delegation hereof should relieve the assignor of its obligations under this Agreement.
- 27. General Provisions.**
 - a. Each of the terms and conditions in Client's Agreement and this TOS is material.
 - b. Each Party reserves the right to pursue all legal and/or equitable remedies upon a breach or violation of this Agreement.
 - c. Any breach of Sections **9, 10 or 11** of this Agreement will cause irreparable injury, for which money damages are an inadequate remedy. Any actual or threatened breach in these Sections shall entitle the injured Party, without waiving any additional rights or remedies, to equitable relief. Each Party waives the posting of a bond for enforcement of injunctive remedies.
 - d. This Agreement is not intended to benefit any third party.
 - e. For notice purposes, the mailing addresses and email addresses of the Parties are as listed on the Service Order. Any Party hereto may change its mailing or notice email address by giving written notification thereof to the other Party. All notices given pursuant to this Agreement shall be in writing and shall be delivered in person, by registered or certified United States mail return receipt requested, by express courier or via email transmission. All such notices shall be deemed effectively given and delivered three (3) days after mailing such notice, or when received if delivered personally or with a read receipt via email. Rejection or other refusals to accept or the inability to deliver because of a changed address for which no notice was given constitutes receipt of the notice. However, a change of address is effective only if received.

- f.** Other than for the purposes specifically set forth in this Agreement, neither Party hereto will be deemed to be the agent or legal representative of the other for any purpose whatsoever, and each Party will act as an independent contractor with regard to the other in its performance under this Agreement. Nothing herein will authorize either Party to create any obligation or responsibility whatsoever, express or implied, on behalf of the other or to bind the other in any manner, or to make any representation, commitment, or warranty on behalf of the other. No partnership, joint venture, or other entity shall be deemed to be created by this Agreement or otherwise by the Parties' actions with respect to the PaymentVision services.
- g.** Except as set forth herein, this Agreement may not be amended, modified, superseded, or canceled, and none of the terms, provisions, covenants, representations, warranties or conditions may be waived, except by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance. No waiver is binding unless written and signed by the Party making the waiver. No waiver of any provision of this Agreement, whether by conduct or otherwise, creates a continuing waiver of the provision or of another provision.
- h.** Parties shall make a good faith effort to settle any disputes that may arise with respect to the terms and conditions, or any subject matter referred to in or governed by this Agreement within thirty (30) days from the date the dispute is first discussed between the parties.
- i.** This Agreement is governed by and will be construed in accordance with the laws of the State of Florida, exclusive of its choice of law provisions. The Parties agree that, unless otherwise agreed to in writing by the Parties, the exclusive venue for any and all disputes arising out of or related to this Agreement or pertaining to any provision herein shall be in Jacksonville, FL. Each Party to this Agreement waives any objection it might have to the personal jurisdiction of or venue in any state or federal court located in Duval County, Florida.
- j.** PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED HEREBY.
- k.** If any action is necessary to enforce the terms of this Agreement, the prevailing Party will be entitled to reasonable fees of attorneys, accountants, and other professionals, and costs and expenses of litigation, in addition to any other relief granted. This provision includes Client's obligation to reimburse PaymentVision for any third-party collection fees incurred due to Client's failure to pay timely.
- l.** The captions and headings of this Agreement are included for reference only and will be disregarded in interpreting or construing this Agreement.
- m.** If the performance of any part of this Agreement by either Party is prevented or delayed by flood, riot, fire, judicial or governmental action, labor disputes, an act of God or other causes beyond the control of either Party, that Party shall be excused to the extent that it is prevented or delayed from performance by such causes; provided, however, that a Party subject to any such force majeure shall promptly give the other written notice thereof and shall use reasonable efforts to remove or rectify any such force majeure condition as expeditiously as is commercially reasonable. If a force majeure event prevents performance for more than thirty (30) days, the other Party may elect to terminate immediately upon notice, without penalty.
- n.** This TOS, together with any referred TOS and the Service Order, constitutes the complete and exclusive statement of the Agreement between the Parties with respect to the Service and the Licensed Service, supersedes all other communications, written or oral, between the Parties, and may be amended only in writing.

END