

PAYRIX SUB-MERCHANT AGREEMENT

Version: 4.11

Last Modified: 02-18-2021

This Agreement is a binding written agreement between Sub-Merchant and the Payrix. Capitalized terms used in this Agreement not otherwise defined herein are defined in the [Glossary](#). Payrix Services are subject to this Agreement, so please read it carefully.

1. Payrix Services

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

2. Account

So long as Sub-Merchant is not in breach of this Agreement, Sub-Merchant shall be granted an Account accessible through the Payrix Services. The Account shall include a record of Sub-Merchant Transactions and Fees. Payrix shall provide Sub-Merchant with credentials for access to the Account. Sub-Merchant may not disclose such codes or permit any third party to use them other than Third Party Servicers pursuant to a binding written agreement with Sub-Merchant. Sub-Merchant assumes full responsibility for the use of its Account and the access credentials thereto and shall indemnify Payrix for any and all claims, losses or other liabilities arising therefrom. Except as required to deliver or receive the Payrix Services or as otherwise required by law, Payrix shall not grant any third party access to the Account.

3. Prohibited Merchants

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

4. Prohibited Activities

It is forbidden for a Sub-Merchant to use Payrix Services to assist in any illegal activity or any Prohibited Activity. Without any limitations on any other Prohibited Activity, Sub-Merchant hereby affirms that no payments whatsoever for firearms or ammunition or any parts or accessories that could modify the performance or action of any actual firearms (e.g., bump stocks) will be made

through the Account. Payments for these items will be taken via alternate means only. Sub-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 Payrix Services and/or content made accessible by Payrix including any information, pictures, videos, text, graphics, software programs used by Payrix in connection with the Payrix Services and Content, or publicly display, reproduce, create derivative works from, perform, distribute, or otherwise use such Content, other than as permitted by Payrix in writing; (ii) make any use of the Content and/or Payrix Services on any other website or networked computer environment for any purpose, or replicate or copy the Content without Payrix'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 Payrix 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 Payrix 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 Payrix Services, or the servers or networks that host the Payrix Services or make them available, or violate 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 Payrix Services other than permitted by Payrix; (viii) forward any data generated from the Payrix Services without the prior written consent of Payrix; (ix) sublicense any or all of the Payrix Services to any third party; or (x) transfer or assign the Account password, even temporarily, to a third party.

5. Application

On sign-up and throughout the term of this Agreement, Sub-Merchant shall supply, through the Application and by such other means as Payrix may require, information concerning the Sub-Merchant, its Guarantor (if required by Payrix) and principals. Sub-Merchant shall notify Payrix of any changes in such information. Federal Regulations enacted pursuant to the USA Patriot Act and other applicable laws require financial institutions to verify the identity of every person who seeks to open an account with a financial institution.

Sub-Merchant shall provide documentary verification as requested from time to time by Payrix in a manner acceptable by Payrix. Payrix, Processor, and Bank reserve the right to verify Sub-Merchants identity through other non-documentary methods as deemed appropriate in their sole discretion. Payrix, Processor, and Bank may retain a copy of any document it obtains to verify Sub-Merchants identity.

6. Customers

Payrix is not party to any Sub-Merchant relationship with its Customer that necessitates the Transaction and Payrix shall have no obligations thereunder or in respect thereof. Sub-Merchant is solely responsible for its Product and all customer service issues related thereto including pricing,

order fulfillment, order cancellation by Sub-Merchant or the Customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with Sub-Merchant personnel, policies or processes. Sub-Merchant shall post its customer service telephone number on its website. Sub-Merchant shall indemnify and hold harmless Payrix, Processor, Bank and their respective shareholders, directors, officers and employees harmless from any and all claims, losses or other liabilities arising from or in relation to Sub-Merchants relationship with its Customer 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 Sub-Merchant that is received by Payrix and its Processor on behalf of Sub-Merchant. Payrix and Bank make no representation or guarantee with respect to Customer funds availability, that a Transaction will be authorized or processed, or that a Transaction will not later result in a chargeback or reversal. If Sub-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.

7. Payrix Regulatory Status

Payrix is not a bank, money transmitter or other money services business. Payrix Services are payment processing services, by which Payrix, Processor and Bank facilitate Transaction payments between Customers and the Sub-Merchant pursuant to this Agreement. Funds received by Payrix are not insured by Payrix, Processor, Bank or any third party. Payrix reserves the right to monitor use of the Payrix Services by Sub-Merchant and its Customers to ensure compliance with this Agreement and applicable laws. If Payrix determines that Sub-Merchant is not in compliance with this Agreement or applicable law, Payrix reserves the right to take appropriate action including, but not limited to suspending or terminating this Agreement or access to the Account. Bank, not Payrix, settles Transaction funds to Sub-Merchant. Payrix does not at any point hold, own or control funds in connection with the Payrix Services, nor does Payrix transmit money or anything of monetary value. In connection with the Payrix Services, Payrix does not actually or constructively receive, take possession of, or hold any money or anything of monetary value for transmission, and does not advertise, solicit or hold itself out as receiving money for transmission. The Bank is the party with sole responsibility for conducting the settlement of funds between Customers and Sub-Merchants.

8. Platform Services and Third Party Servicers

Payrix assists in enabling Platforms to help Sub-Merchant administer its Account with Payrix and provides services directly to Sub-Merchant or its Customers. When Sub-Merchant opens an Account through a Platform, Sub-Merchant authorizes Payrix to permit the Platform to (i) access Sub-Merchants Account with Payrix and any data contained in such Account; (ii) assist Sub-Merchant in creating and managing Transactions with Customers; and (iii) deduct Platform Fees from funds payable to Sub-Merchant. Sub-Merchant agrees to pay all Platform Fees in addition to the Fees as set forth in this Agreement. Payrix does not assume any responsibility with regard to the connectivity between Sub-Merchant and any Platform or Third Party Servicer. It is ultimately Sub-Merchants responsibility to insure that Sub-Merchant Transactions reach Payrix, Processor and the Bank in order to receive Payrix Services. Sub-Merchant shall not use any Third Party Servicer unless it has all

necessary Payment Network registrations, as determined by Payrix. Payrix is not liable for Third Party Servicers or their services even if the Site contains links to them or the Payrix 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 Payrix. Sub-Merchant agrees that Sub-Merchant accesses any such website at Sub-Merchants own risk.

9. Credit Check Consent; Financial Information

In connection with Sub-Merchant procuring Payrix Services from Payrix, Sub-Merchant understands that one or more consumer reports as defined in the FCRA may be obtained by Payrix from consumer reporting agencies. Sub-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 Sub-Merchant is an appropriate candidate for transacting with Payrix and this determination may be adverse to Sub-Merchant. Upon written or verbal notice at any time, Sub-Merchant agrees to furnish to Payrix its recent and/or historical financial statements and other financial information. From time to time, Payrix may request credit and other financial information concerning Sub-Merchant, its owners, Guarantors (if any) and principals, and Sub-Merchant agrees to furnish the information in a timely manner. Further, Sub-Merchant agrees to provide Payrix with prompt written notice of any adverse change in Sub-Merchants financial condition that includes but is not limited to: any planned or anticipated liquidation; any significant change in the nature of Sub-Merchants business; and any material judgment, writ, warrant of attachment, levy or adverse decision against Sub-Merchant affecting its financial condition. The information obtained will not be provided to any parties other than to designated authorized representatives of Payrix. Sub-Merchant further understands that a consumer reporting agency may not give out information about Sub-Merchant to Payrix without Sub-Merchants written consent. Sub-Merchant hereby authorizes Payrix now, or at any time while it is party to an agreement with Payrix or otherwise engaged by Payrix, to obtain, either directly or through an Affiliate or other third party, a consumer report on Sub-Merchant. This authorization does not include the release of Sub-Merchants medical information. A copy, fax or scan of this consent shall be considered as effective and valid as the original. Sub-Merchant understands that in the event any adverse action is taken against Sub-Merchant based in whole or in part on the consumer report, Payrix shall (i) provide notice to Sub-Merchant of the adverse action; (ii) disclose Sub-Merchants credit score; (iii) provide Sub-Merchant with the name, address and telephone number of the consumer reporting agency; and (iv) provide notice of Sub-Merchant's rights under the FCRA. On request, California, Minnesota and Oklahoma residents, can obtain a copy of any consumer credit report requested by Payrix. On request, New York residents can be informed if a consumer credit report has been requested on them by Payrix as well as the name of the agency providing the report. Sub-Merchant and its Guarantors have read and understand the above and authorize Payrix to perform the above investigations. Sub-Merchant must provide accurate and complete information. If Payrix cannot verify that this information is complete and accurate, Payrix may deny Sub-Merchant use of Payrix Services, or close the Sub-Merchant Account.

10. Fees

Sub-Merchant shall pay Fees for the Payrix Services. Fees shall be paid to Payrix by offsets from Transaction fund settlements to the Sub-Merchants bank account(s), daily ACH billing against Sub-Merchants bank account(s), monthly ACH billing against Sub-Merchants bank account(s), or any other billing method chosen by Payrix. If there are insufficient Transaction funds to cover Fees, or if any ACH billing is rejected due to insufficient funds in the Sub-Merchants bank account(s), then Sub-Merchant shall pay the Fees immediately. Platform may also have provided disclosure to Sub-Merchant concerning Fees. In the event of any inconsistency between Fees disclosed to Sub-Merchant by Platform and those disclosed by Payrix, the higher of the two shall apply.

11. Transaction Authorizations

Sub-Merchant shall not submit Transactions hereunder unless they are submitted in the correct manner, including the Sub-Merchant being in possession of Transaction receipts and not submitting Transactions until they are complete, (i.e. the goods or services are shipped/provided) and the Transaction is in the correct currency and within the correct time limit, as applicable. Bank shall hold, receive, disburse and settle Transaction funds on Sub-Merchants behalf. Subject to this Agreement, Sub-Merchant also authorizes Bank to debit or credit any payment card or other payment method Payrix accepts. Sub-Merchant authorizes Bank to initiate electronic ACH entries to Sub-Merchants bank account(s) and to initiate adjustments for any Transactions credited or debited in error. Sub-Merchant agree to be bound by the Rules, and Sub-Merchant agree that all ACH transactions that Sub-Merchant initiates will comply with all applicable law. Sub-Merchants authorization will remain in full force and effect until Sub-Merchant notifies Payrix that Sub-Merchant revokes such authorization by contacting Payrix through the Account. Sub-Merchant understand that Payrix requires a reasonable time to act on Sub-Merchant revocation.

12. Settlement

Each Account must be linked to at least one verified Sub-Merchant bank account; meaning, the Sub-Merchant bank account(s) must match the Sub-Merchants legal entity name or registered DBA name. The Bank will transfer funds to the Sub-Merchant's bank account(s) according to this Agreement. If Bank cannot transfer the funds to the Sub-Merchant's bank account(s) (due to inaccurate or obsolete bank account information entered by the Sub-Merchant, or for any other reason), Payrix may refund the funds to the Customer or escheat them as provided below. None of Bank, Payrix or the Customer will have any liability to Sub-Merchant for funds so refunded. Settlements to a bank account shall be limited or delayed based on Sub-Merchant perceived risk and history with Payrix as determined by the sole and absolute discretion of Payrix or Bank and Payrix may debit any Sub-Merchant bank account(s) for any reason permitted in this Agreement. Unless otherwise agreed in writing by Payrix, Transaction settlement shall be by ACH to the Sub-Merchants bank account(s).

13. Sub-Merchant Transaction Disclosure and Privacy Policy

Sub-Merchant must not: (i) Require a Customer to complete a postcard or similar device that

includes the Customers account number, card expiration date, signature, or any other card account data in plain view when mailed; (ii) Add any tax to Transactions, unless applicable law expressly requires that Sub-Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the Transaction amount and not collected separately; (iii) Request or use a card account number for any purpose other than as payment for its goods or services; (iv) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Customer to make a cash purchase of goods or services from that Sub-Merchant (being Product); (v) Disburse funds in the form of cash, unless the Sub-Merchant is dispensing funds in the form of travelers cheque, TravelMoney cards, or foreign currency. In this case, the Transaction amount is limited to the value of the travelers cheques, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-Merchant; (vi) Enter into interchange any Transaction for a Transaction that was previously charged back to the Bank and subsequently returned to the Sub-Merchant, irrespective of Customer approval. Sub-Merchant may pursue payment from the Customer outside the Payrix Services; (vii) Accept a Visa Consumer Credit Card or Commercial Visa Product, issued by a U.S. issuer, to collect or refinance an existing debt; (viii) Accept a card to collect or refinance an existing debit that has been deemed uncollectable by the merchant providing the associated goods or services; (ix) Enter into interchange a Transaction that represents collection of a dishonored check; or (x) Change any aspect of what goods or services it sells or how they are sold without prior written consent of Payrix and Bank. Sub-Merchant shall post a privacy policy that complies with the Rules and applicable law to its website and shall honor the terms thereof.

14. Reserves

Where deemed necessary or appropriate by Bank or Payrix, Bank shall create a Reserve in order to protect Bank or Payrix from actual or potential liabilities hereunder. The Reserve will be in an amount determined by Payrix in its sole and absolute discretion to cover anticipated chargebacks, returns, unshipped Product and/or unfulfilled services or credit risk based on Sub-Merchant processing history. The Reserve may be raised, reduced or removed at any time by Bank or Payrix. Where the Reserve is not adequately funded, Sub-Merchant shall pay all amounts requested by Payrix for the Reserve within one (1) business day of a request for such amounts and Bank and Payrix may build the Reserve by off-sets from Transaction settlements or by debiting any bank account of the Sub-Merchant by ACH. Sub-Merchant grants Payrix a security interest in and lien on any and all funds held in any Reserve, and also authorizes Payrix to make any withdrawals or debits from the Reserve, without prior notice to Sub-Merchant, to collect amounts that Sub-Merchant owes Payrix under this Agreement, including without limitation, for any reversals of deposits or transfers. Sub-Merchant will execute any additional documentation required for Payrix to perfect Payrix's security interest in any funds in the Reserve. This security interest survives for as long as Payrix holds funds in Reserve; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. Sub-Merchant irrevocably assigns to Payrix all rights and legal interests to any interest or other earnings that accrue or are attributable to the Reserve.

15. Customer Data Security And Compliance

If Sub-Merchant collects, stores, uses or discloses any Customer Data, Sub-Merchant shall comply with PCI DSS and shall certify such compliance when requested by Payrix. Sub-Merchant shall use only PCI DSS compliant Third Party Servicers in connection with the storage, processing, or transmission of Customer Data and shall be exclusively liable for any security breaches of its systems or any other PCI DSS violations. Sub-Merchant has exclusive responsibility for security of Customer Data and other information on Sub-Merchant systems or those under its control. Sub-Merchant is aware of and shall comply with all applicable laws, Rules, and regulations in connection with Sub-Merchant collection, security and dissemination of any personal, financial, or transaction information. Without limitation, Sub-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 Payrix or any third party. Sub-Merchant shall maintain adequate security so as to prevent a breach of Customer or Customer data. In the event of any actual or suspected breach of data in possession or control of Sub-Merchant or one of its Third Party Servicers, Sub-Merchant shall immediately notify Payrix thereof and also comply with all applicable laws and Rules concerning the breach. Sub-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 Sub-Merchant or its agents or Third Party Servicers under Sub-Merchants relationship with its Customer or otherwise. Sub-Merchant shall indemnify and hold Payrix and Bank harmless from and against any liability arising on account of or in relation to the failure by Sub-Merchant to obtain consents from Customers related to their information or cards. Sub-Merchant expressly consents for Payrix, Processor, Bank and all third parties that assist in the delivery of the Payrix Services to collect, use, store and disclose Payrix information, including that provided in the Application, information concerning Customers, Transactions and the business of the Sub-Merchant in order to supply the Payrix Services, generate reports, to reduce fraud, provide customer support, create and share aggregated data concerning the Payrix Services and assessing the risk associated with the Sub-Merchant. Payment Networks shall have the right to use Sub-Merchant name, address, and internet addresses. Payrix reserves the right, at its sole but reasonable discretion, without prior consent of Sub-Merchant, to make reasonable changes to the Payrix Services or implement other risk management controls deemed necessary by Payrix or its suppliers to manage risk. Sub-Merchant shall comply with all such changes.

16. Taxes

Sub-Merchant has the exclusive responsibility to calculate, charge, collect and remit state and other taxes applicable to Product sales. Payrix may have tax reporting responsibilities in connection with the Payrix Services such as an Internal Revenue Service report on Form 1099-K.

17. Refunds And Returns

Sub-Merchant agrees to process returns of, and provide refunds and adjustments for Products in accordance with this Agreement and the Rules. The Rules require that Sub-Merchant will: (i) maintain a fair return, cancellation or adjustment policy; (ii) disclose Sub-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. Sub-Merchants refund policies must be the same for all payment methods, and should specifically include a requirement for prompt payment of refunds in order to limit chargeback risk.

18. Chargeback Liability

The amount of a payment may be charged back to Sub-Merchant for a variety of reasons under the Rules. Sub-Merchant is responsible for all chargebacks, whether or not the chargeback complies with the Rules. Sub-Merchant shall immediately pay Payrix the amount of all chargeback and related Fees, fines, or penalties assessed by the Bank, Processor or the Payment Networks. If Sub-Merchant does not have sufficient funds in its bank account(s), Payrix can offset the amounts thereof from other Transaction amounts owing to Sub-Merchant hereunder, debit the amount by ACH from the Sub-Merchant's bank account(s) or oblige Sub-Merchant to make immediate payment thereof. If Payrix determines that Sub-Merchant is incurring an excessive amount of chargebacks, Payrix or the Bank may establish controls or conditions governing Sub-Merchants Account, including without limitation, by: (i) assessing additional Fees; (ii) creating a Reserve in an amount reasonably determined by Payrix to cover anticipated chargebacks and related fees; (iii) delaying payment; and (iv) terminating or suspending the Payrix Services or closing the Account. Sub-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 Payrix as Payrix may request.

19. Recoupment Of Funds Owing To Payrix

Where amounts are owing from Sub-Merchant to Payrix hereunder, Payrix shall have the right to immediately, without prior consent or notice, offset or debit such amounts from funds: (i) deposited by Sub-Merchant; (ii) due to Sub-Merchant under this Agreement; (iii) held in the Reserve; or (iv) available in Sub-Merchant bank account(s), or other payment instrument registered with the Bank. Sub-Merchants failure to pay in full amounts that Sub-Merchant owes Payrix on demand will be a breach of this Agreement. Sub-Merchant will be liable for Payrix 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, Payrix may make appropriate reports to credit reporting agencies and law enforcement authorities, and cooperate with them in any resulting investigation or prosecution. Sub-Merchant hereby expressly agrees that all communication in relation to delinquent Accounts will be made as permitted under this Agreement. Such communication may be made by Payrix or by anyone on its behalf, including but not limited to a third party collection agent.

20. Escheatment

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

21. Recordkeeping

Sub-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 Sub-Merchants Account. If Sub-Merchant believes that there is an error associated with Sub-Merchants Account, Sub-Merchant must notify Payrix in writing within 60 days after the suspected error occurred. Sub-Merchants failure to notify Payrix within such time period will result in Payrix not being responsible for investigating or effecting any requested adjustments as a result of any error.

22. Term and Termination

The Agreement shall become effective when it is accepted by both parties hereto and shall terminate as set forth herein. Payrix and Bank have the right to terminate this Agreement at any time for any reason or for no reason. On any termination hereof, Sub-Merchant shall immediately cease using the Payrix Services and the Account. Payrix 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. Payrix and Bank shall not have any liability to Sub-Merchant resulting from a termination hereof. This Agreement shall terminate immediately if a Payment Network requires Payrix to terminate this Agreement. Sub-Merchant may terminate this Agreement by closing Sub-Merchant's Account at any time. When Sub-Merchant closes the Account, any pending Transactions will be cancelled. Any funds that the Bank is holding in custody for Sub-Merchant at the time of closure, less any applicable Fees and other liabilities of Sub-Merchant, will be paid out to Sub-Merchant according to Sub-Merchant's payment schedule. Bank may also withhold such funds pending investigation of Sub-Merchant Transactions or potential liabilities hereunder. On any termination hereof, Sub-Merchant shall remain liable hereunder for any and all Fees or costs accrued prior to or following termination and any other amounts owed by Sub-Merchant to Payrix, Bank or a Payment Network.

23. IP

Payrix reserves all rights not expressly granted to Sub-Merchant in this Agreement. Payrix owns the title, copyright and other worldwide intellectual property rights in the Payrix Services and all copies of the Payrix Services. This Agreement does not grant Sub-Merchant any rights to Payrix's

trademarks or service marks, nor may Sub-Merchant remove, obscure, or alter any of Payrix's trademarks or service marks included in the Payrix Services. All comments and suggestions concerning the Payrix Services provided to Payrix shall be the property of Payrix and Sub-Merchant shall not have any rights therein

24. Indemnification

Sub-Merchant shall indemnify, defend and hold Payrix, Bank, Payment Networks and all third parties that assist in providing the Payrix Services, as well as Customers and their respective employees, directors, and 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 Sub-Merchant representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of Payrix policies or the Rules; (ii) Sub-Merchants wrongful or improper use of the Payrix Services; (iii) any Transaction submitted by Sub-Merchant through the Payrix Services (including without limitation the accuracy of any Product information that Sub-Merchant provides or any claim or dispute arising out of Products offered or sold by Sub-Merchant); (iv) Sub-Merchants violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (v) Sub-Merchants violation of any applicable law; or (vi) any other party's access and/or use of the Payrix Services with Sub-Merchants access credentials.

25. Sub-Merchant Representations

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

26. No Warranties

THE PAYRIX SERVICES ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS. USE OF THE PAYRIX

SERVICES IS AT SUB-MERCHANTS OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PAYRIX SERVICES ARE 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.

27. Limitation Of Liability

PAYRIX and Bank 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. PAYRIXS and Banks LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM SHALL NOT EXCEED \$10,000. PAYRIX and Bank SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY: (I) AN ACT OR OMISSION OF SUB-MERCHANT OR ITS AFFILIATES OR ANY CUSTOMER; (II) SUB-MERCHANT USE OF OR SUB-MERCHANT INABILITY TO USE THE PAYRIX SERVICES; (III) DELAYS OR DISRUPTIONS IN THE PAYRIX SERVICES, (IV) VIRUSES OR OTHER MALICIOUS SOFTWARE OBTAINED BY ACCESSING THE PAYRIX SERVICES; (V) BUGS, ERRORS, OR INACCURACIES OF ANY KIND IN THE PAYRIX 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 SUB-MERCHANT ACCOUNTS; (VIII) PAYRIX'S NEED TO MODIFY PRACTICES, CONTENT, OR BEHAVIOR, OR SUB-MERCHANTS DIMINISHED ABILITY TO DO BUSINESS AS A RESULT OF CHANGES TO THIS AGREEMENT OR PAYRIXS POLICIES OR PAYRIX SERVICES MADE IN ACCORDANCE WITH THIS AGREEMENT OR APPLICABLE LAW; (IX) BREACHES BY SUB-MERCHANT OF THIS AGREEMENT; (X) INCORRECT OR INCOMPLETE TRANSACTION INFORMATION; (XI) ACTS OR OMISSIONS OF THIRD PARTY SERVICERS, INCLUDING BUT NOT LIMITED TO THE PLATFORM; OR (XII) Bank, PAYRIX OR ONE OF Payrixs SUPPLIERS ELECTING TO SUSPEND PROVIDING PAYRIX SERVICES IN RESPECT OF SUB-MERCHANT OR A CUSTOMER ON THE BASIS OF ITS LEGAL, COMPLIANCE, OR RISK POLICIES.

28. Direct Merchant Status

If Sub-Merchant has \$1,000,000 or greater in charge volume in a rolling twelve month period, Sub-Merchant shall be converted to a direct card acceptance relationship with American Express and, upon conversion, Sub-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 Sub-Merchant for American Express Card acceptance. Sub-Merchant shall be bound by the Direct Merchant Agreement in addition to the terms and conditions of this Agreement if Sub-Merchant receives more than \$1,000,000 in payments from Visa or Mastercard in a twelve-month period. By agreeing to this Agreement, Sub-Merchant also agrees to the terms and conditions of the Direct Merchant Agreement, which constitutes a legal binding contract between Sub-Merchant, on the one hand, and Payrix and Bank on the other hand. Sub-Merchant shall comply with the Rules, including those posted at the following sites and are incorporated herein by reference: usa.visa.com, www.mastercard.com, www.americanexpress.com and www.discover.com. Sub-Merchant agrees to comply with the specific requirements set forth in the American Express Card Acceptance and Brand Requirements, regardless of the amount of American Express charge volume.

29. Confidentiality

Unless otherwise required by law, Sub-Merchant shall, and shall cause its Affiliates to, hold in strict confidence at all times following the date hereof all Payrix, Bank and Processor Confidential Information, and neither Sub-Merchant nor any of its Affiliates shall use such Confidential Information for any purpose other than for the performance of Sub-Merchants duties and obligations hereunder. If Sub-Merchant breaches, or threatens to breach, any of the provisions of this section, in addition to any other rights Payrix may have, including a claim for damages, Payrix shall have the right to have the provisions of this section specifically enforced, and Sub-Merchants breach or threatened breach enjoined, by any court of competent jurisdiction, without presentment of a bond (such requirement being expressly waived by Sub-Merchant), it being agreed that any breach or threatened breach of this section would cause irreparable harm to Payrix in that money damages would not provide an adequate remedy.

30. Arbitration

Payrix and Sub-Merchant shall settle all disputes relating in any way to this Agreement or arising from or in respect of this Agreement exclusively by binding arbitration with a single arbitrator administered by the American Arbitration Association (www.adr.org) 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 in Dallas County, Texas before a single arbitrator who is a lawyer practicing commercial law. ANY ARBITRATION UNDER THIS AGREEMENT WILL BE ONLY BE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND SUB-MERCHANT IS HEREBY WAIVING SUB-MERCHANTS RIGHTS TO HAVE ANY CLAIMS ARISING HEREUNDER DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST PAYRIX. In the event that Sub-Merchant or Payrix are not able to resolve a Dispute with American Express, or a claim against Payrix or any other entity that American Express has a right to join, American Express Card Acceptance and Brand Requirements will apply.

31. Governing Law

The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of Texas applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof. The Federal and state courts located in Dallas County, Texas shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

32. Limitation On Time To Initiate A Dispute

Unless otherwise required by law, an action or proceeding by Sub-Merchant relating to any dispute or claim by Sub-Merchant hereunder must commence within one year after the cause of action

accrues failing which Sub-Merchant foregoes any rights in respect thereof.

33. Amendment Of Agreement

Payrix reserves the right to modify the Payrix Services or change or add to the terms of this Agreement or any exhibit, attachment or document linked hereto 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 Payrix deems reasonable. Such changes may be to any of the terms hereof, including but not limited to Fees. If Sub-Merchant does not terminate this Agreement following any such change, then Sub-Merchant shall be deemed to have accepted the change. This Agreement may also be amended by written agreement between the parties hereto.

34. 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.

35. Guarantee

If an individual executes this Agreement on behalf of Sub-Merchant as a guarantor following a request by Payrix, then such individual personally guarantees performance by the Sub-Merchant hereunder, shall be deemed to be a Guarantor for all purposes, and shall be joint and severally liable with Sub-Merchant for all liabilities of the Sub-Merchant hereunder.

36. Assignment

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

37. Electronic Signatures, Notices and Electronic Communication

When provided to Sub-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. By pressing Submit, Accept or I Agree, Sub-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 Sub-Merchant has the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize Payrix

to conduct an investigation of Sub-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 as described in Sections 5 and 9 of this Agreement. Sub-Merchant agrees to receive all communication under this Agreement by electronic means (which may also be by phone, and may be made by Payrix or by anyone on its behalf), including but not limited to communications regarding agreements and policies, such as this Agreement and Payrix's privacy policy. Sub-Merchant shall make sure that its primary email address is up to date in the Account and it shall check that email periodically and not less than once per week. In the event that any email from Payrix or other communication is blocked by a spam filter or other issue outside of the control of Payrix, Sub-Merchant shall be deemed to have received the communication all the same. 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 Payrix, support@payrix.com, and if to Sub-Merchant, to the e-mail address indicated on the Account. 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 Payrix sent to Payrix shall also be sent by courier to the address of Payrix appearing on the Site with proof of delivery.

38. Whole Agreement; No Waiver; Severability

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. 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.

39. 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.