



# Terms and Conditions

## Introduction

The EpicPay Terms and Conditions is a legal agreement (this "Agreement") between you ("Sub-Merchant," "user," "you" or "your") and Epic International, Inc. ("EpicPay," "we," "our" or "us") governing your use of an EpicPay Account as defined below and payment processing services ("Services") EpicPay provides. "Service" refers to EpicPay's payment processing services, as well as our website, any software, programs, documentation, tools, hardware, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) thereto provided to you by EpicPay, directly or indirectly.

Sub-Merchant and EpicPay have entered into the Agreement which sets forth, among other things, Terms and Conditions under which EpicPay will provide Sub-Merchant with the services that facilitate Sub-Merchant's acceptance of credit and debit card payments for products and services provided to customers. EpicPay has an agreement with an Acquirer and a Bank who collectively provide payment processing and Card sponsorship to EpicPay on behalf of its Sub-Merchants.

In exchange for EpicPay, (the Guaranteed Party) acceptance of, as applicable, the Agreement, the undersigned unconditionally and irrevocably guarantees the full payment and performance of Sub-Merchant's obligations under the foregoing agreements, as applicable, as they now exist or as modified from time to time, whether before or after termination or expiration of such agreements and whether the undersigned has received notice of any amendment of such agreements. The undersigned waives notice of default by Sub-Merchant and agrees to indemnify the Guaranteed Party for any and all amounts due from Sub-Merchant under the foregoing agreements. The Guaranteed Party shall not be required to first proceed against Sub-Merchant to enforce any remedy before proceeding against the undersigned. This is a continuing personal guaranty and shall not be discharged or affected for any reason. The undersigned understands that this is a Personal Guaranty of payment and not of collection and that the Guaranteed Party are relying upon this Personal Guaranty in entering into the foregoing agreements, as applicable.

**By Clicking "I Agree", you agree to be bound by all Terms and Conditions of this Agreement, including, without limitation, all documents, policies and procedures incorporated herein by reference.**

This Agreement governs your relationship with us and becomes effective when you click "I Agree" ("Effective Date"). To use the Service, you must agree to all the terms of this Agreement. Sub-Merchant may begin to sell its products and services after approval of the account ("Account").

## 1. The Service

EpicPay provides the Service to users ("Sub-Merchant") to facilitate payments to Sub-Merchant by card and bank transfer. These transactions are between Sub-Merchant and their customers. The Services are intended to be used for business purposes and not for personal, family, or household use. The Services allow you to accept valid payments from your customers using credit and debit cards ("Card(s)") issued by members of Visa, MasterCard, Discover, and American Express (collectively "Associations"). For payments by card, EpicPay initiates the payment process by providing information to a processor that sends it to a bank that is a



## Terms and Conditions

member of one of the Associations. The processor and member bank are referred to collectively as the "Bank". The Bank is obligated to pay Sub-Merchant under both (a) the provisions of its agreement with EpicPay, and (b) the by-laws, operating regulations and all other rules, policies and procedures of the Associations as in effect from time to time (the "Operating Regulations"), that make the Bank responsible for settling with you as a Sub-Merchant. For payments by bank transfer, EpicPay initiates the payment process by providing information to the Bank through the National Automated Clearing House ("ACH"). As the provider of the Services, we have certain obligations under the Association regulations.

### **2. EpicPay's Role and Responsibilities**

EpicPay provides data processing services for Sub-Merchants. EpicPay is a Payment Service Provider ("PSP"), not a bank, money transmitter, or Money Services Business ("MSB"), and we do not offer banking or MSB services as defined by the United States Department of Treasury. As a PSP, EpicPay collects, analyzes and relays information generated in connection with payments between Sub-Merchants and its customers. You authorize EpicPay to provide this information to the Bank in order for the Bank to facilitate payments from your customers to you through the Associations, or the ACH, as applicable. As a result, the Bank and not EpicPay actually conducts the settlement of card transactions and ACH transactions to Sub-Merchants. EpicPay does not at any point hold, own or control funds in connection with the Services, nor does EpicPay transmit money or monetary value. In connection with the Services, EpicPay does not actually or constructively receive, take possession of or hold any money or monetary value for transmission, and does not advertise, solicit or hold itself out as receiving money for transmission. The Bank is the party with sole responsibility for conducting the settlement of funds between Sub-Merchants and its customers. In order to act as a PSP, EpicPay must enter into agreements with the Associations, processors and the Bank. You are not a third-party beneficiary of these agreements. Each of the Associations is a third-party beneficiary of this Agreement and has beneficiary rights, but not obligations, and may enforce this Agreement against you.

### **3. Sub-Merchant Account & Verification**

EpicPay allows businesses, and nonprofit organizations to register for EpicPay if they are located in the United States. A Sub-Merchant must be either a United States citizen, a legal permanent resident of the United States, or a United States business or nonprofit organization having a physical presence in the United States and authorized to conduct business by the state in which it operates. A Sub-Merchant who opens an Account must be eighteen (18) years of age or older. You may open an Account for a business or nonprofit organization only if it is legitimate and you have the authority to enter into this Agreement on its behalf. Your acceptance of this Agreement constitutes acceptance by the business or nonprofit organization. Each Account must be linked to a verified U.S. bank account.

A Sub-Merchant must apply with EpicPay. To apply, a Sub-Merchant provides information, including email address and a self-selected password, in order to create an account ("Account") or they complete a hardcopy application. If applying online, you are responsible for maintaining the secrecy and security of your Account access credentials and for any use of or action taken under them. EpicPay asks Sub-Merchant for additional information, such as street address, telephone number, tax identification number (such as Social Security Number), and date of birth to verify your identity. If applicable, you authorize EpicPay to obtain consumer reports and background checks from a credit reporting agency and/or a third-party that conducts identity and background checks, regarding Sub-Merchant and the owners of Sub-Merchant. You agree to provide supplemental documentation upon request (including



## Terms and Conditions

but not limited to: articles of incorporation, passports, driver's license or a business license). You authorize EpicPay, directly or through third parties, to make inquiries or verify that this information is accurate (for example, through social media or third-party databases).

### 4. Underwriting

EpicPay will review the information that you submit in connection with your request to sign up for the Services. You must provide accurate and complete information. If we cannot verify that this information is complete and accurate, your identity cannot be validated, or credit worthiness determined unsatisfactory, we may deny your use of our Service, or close your Account, if it was previously approved. These are not all the reasons an account may be declined. Your account could be declined for compliance reasons, as well. EpicPay may close your account at any time, with or without cause.

You agree that EpicPay may periodically obtain additional consumer reports to determine whether you continue to meet the requirements for an EpicPay Account. You agree that EpicPay may share information about you and your EpicPay Account with its processor and/or acquiring bank. After you submit your application, EpicPay or its processor and/or acquiring bank may conclude that you will not be permitted to use the Services.

### 5. Prohibited Activities

By applying as an EpicPay Sub-Merchant, you confirm that you will not accept payments or use the Service in any of the following categories/businesses, or engage in any of the following activities (as may be updated by Bank, Associations, and/or EpicPay in their sole discretion from time to time).

- Any product, service or activity that is deceptive, unfair, predatory or prohibited by one or more Card Brands
- Any Merchant selling goods or services that represent a violation of any law, statute or regulation
- Any Merchant operating outside the United States
- Any Merchant or Sub-Merchant submitting sales for payment that resulted from another commercial entity providing goods or services to the cardholder, including those businesses that may otherwise qualify themselves as a Payment Service Company or Payment Facilitator
- Any Merchant selling products that infringe on the intellectual property rights of others, including counterfeit goods or any product or service that infringes on the copyright, trademark or trade secrets of any third party, such as many Cyberlockers
- Any Merchant accepting a card as payment for a dishonored check or for an item deemed uncollectible by another merchant
- Any Merchant that accepts a card at a scrip-dispensing terminal
- Adult entertainment and/or adult content websites including Electronic Commerce adult content (videotext) merchants that would include MCC's 5967, 7273 and 7841
- Airlines including Charter Airlines
- Bestiality
- Bidding Fee Auctions including Penny Auctions
- Brand or Reputational damaging, potential or otherwise, activities including Child Pornography, Escort Services, Mail Order Brides, Occult
- Collection Agencies
- Commodity Trading or Security Trading



## Terms and Conditions

- Credit Counseling or Credit Repair Services
- Credit Protection or Identity Theft Protection Services
- Cruise Lines
- Currency Exchanges or Dealers
- Debt Elimination, Debt Reduction or Debt Consulting Services
- Digital Wallet or Prepaid Companies
- Direct Marketing: Continuity or Subscription services or merchants including MCC 5968 and 5969
- Direct Marketing-Travel Related Arrangement Services including MCC 5962
- Direct Marketing-Inbound Telemarketing including videotext services and MCC 5967
- Discount Buying Memberships/Clubs
- Discount Medical or Dental plans including Discount Insurance
- Discount Coupon Merchants or Online Sites
- Distressed Property Sales and/or Marketing
- Drug Paraphernalia
- e-Cigarettes
- Firearms and weapons including Ammunition
- Gambling Activities and Establishments including MCC 7995, lotteries, internet gaming, daily fantasy sports, contests, sweepstakes, "special incentives," or offering of prizes as an inducement to purchase goods or services
- High interest rate non-bank consumer lending including, but not limited to, payday lending and title loans
- Infomercial merchants
- Internet/Mail Order Pharmacies
- Investment or "get rich quick" merchants, businesses or programs
- Loan payments conducted on a Visa-branded credit card
- Marijuana dispensaries and related products or services
- Money Transfer, Wire Transfers, Money Orders, Transmitters, and Check Cashing including merchants required to be registered as Money Service Business
- Multi-Level Marketing Businesses
- "Negative option" marketing, renewal, or continuity subscription practices; marketing activities involving low-dollar trails, "pay only for shipping," and/or "free trial" periods after which a credit card is charged periodically and/or a significantly larger amount
- Outbound Telemarketers and Telecom merchants including MCC's 4814, 4816, and 5966
- Pawn Shops
- Payment Facilitators
- Prepaid Phone Cards
- Prepaid Phone Services
- Pseudo Pharmaceuticals
- Psychics and "occult" businesses
- Quasi-Cash or Stored Value
- Real Estate Flipping
- Rebate-Based Businesses
- Sale of Mobile Minutes
- Selling or Sales of Social Media Activity
- Sports Forecasting or Odds Making
- Substances designed to mimic illegal drugs
- Timeshares, including resale's and related marketing



## Terms and Conditions

- Transacting Virtual Currency or credits that can be monetized, re-sold or converted to physical or digital goods or services or otherwise exit the virtual world
- Up-Selling Merchants

If EpicPay determines that you have received funds resulting from fraud or a prohibited activity, those funds may be held, voided, or returned. In addition, if we reasonably suspect that your Account has been used for an unauthorized, illegal, or criminal purpose, you give us express authorization to share information about you, your Account, your access to the EpicPay services, and any of your transactions with law enforcement.

### **6. E-Sign Disclosure and Consent**

#### ***Electronic Delivery***

By accepting this Agreement, you agree and consent to receive electronically all communications, agreements, documents, notices, and disclosures (collectively, "Communications") that we provide in connection with your EpicPay Sub-Merchant Account and your use of the Service by posting it on our website, uploading it to your specific Epic Portal, text messaging or emailing it to the address listed in your Account. You also agree that electronic disclosures and notices have the same meaning and effect as if we had provided you with paper copies, whether or not you choose to view or print or download the disclosure or other notification. Such disclosures and notices are considered received by you within 24 hours of the time posted to our website, or within 24 hours of the time emailed to you unless we receive notice that the email was not delivered. Communications include but not limited to:

1. agreements and policies; such as this Agreement and our Privacy Policy, including updates;
2. annual disclosures;
3. transaction receipts and confirmations;
4. statements and history;
5. federal and state tax statements.

If you want a paper copy, you can print a copy or download the information for your records. You

further agree that your electronic signature has the same effect as your manual, physical signature. Your electronic signature (via "click-through" or other method) has the same effect as if you signed them in ink.

#### ***Hardware and Software Requirements***

In order to access and retain electronic Communications, you will need the following computer hardware and software:

1. a computer with an Internet connection;
2. a modern web browser that includes 128-bit encryption, such as the current version of Chrome ([www.google.com/chrome](http://www.google.com/chrome)), Internet Explorer ([www.microsoft.com/ie](http://www.microsoft.com/ie)), Mozilla Firefox ([www.mozilla.com](http://www.mozilla.com)), or Apple Safari ([www.apple.com/safari](http://www.apple.com/safari));
3. Adobe Acrobat Reader version 8.0 and above to open documents in PDF format;
4. a valid email address (your primary email address registered with EpicPay); and
5. sufficient storage space to save past Communications or an installed printer to print them.



## Terms and Conditions

### **Updating Your Contact Information**

It is your responsibility to keep your primary email address up to date. You understand and agree that if EpicPay sends you an electronic Communication but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic Communications, EpicPay will be deemed to have provided the Communication to you. Please note that if you use a spam filter that blocks or re-routes emails from senders not listed in your email address book, you must add EpicPay to your email address book so that you will be able to receive the Communications we send to you. You can update your primary email address or street address at any time by calling EpicPay Customer Service at 866-377-3287.

### **7. Authorization**

You authorize the Bank to hold, receive, disburse and settle funds on your behalf. Your authorization permits the Bank to generate a paper draft or electronic funds transfer to process each payment transaction that you authorize. Subject to this Agreement, you also authorize the Bank to debit or credit any payment card or other payment method we accept.

You authorize the Bank to initiate electronic ACH entries to each bank account that you set up and to initiate adjustments for any transactions credited or debited in error. You agree to be bound by the ACH Rules, and you agree that all ACH transactions that you initiate will comply with all applicable laws. Your authorization will remain in full force and effect until you notify us that you revoke it by contacting EpicPay at 1-866-377-3287 or by closing your Account. You understand that EpicPay requires a reasonable time to act on your revocation.

### **8. Funds Management**

The Bank will hold any funds associated with your Account in an account separate from any account used for EpicPay's corporate funds. EpicPay will not and cannot use your funds for our corporate purposes (including the granting of any security or similar interest), will not voluntarily make funds available to our creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit our creditors to attach the funds. You will not receive interest or any other earnings on any funds that the Bank holds for you. As consideration for using the Service, you irrevocably assign to us or the Bank all rights and legal interests to any interest and/or other earnings or benefits that may accrue or are attributable to the Bank holding your funds in a pooled account. If your Account is negative for an extended period of time (as defined by EpicPay in its sole discretion), the Bank may close your Account and we may pursue legal action or other collection efforts.

### **9. Card Acceptance**

EpicPay supports most domestic credit, debit, prepaid or gift cards with a Visa, MasterCard, American Express or Discover logo. In addition, EpicPay supports most international cards with these logos. We may add or remove support for certain payment cards at any time without prior notice. We may elect only to process cards that receive an authorization from the applicable issuer. You understand that there may be times when the customer may not be the authorized user of the Card or that such customer may otherwise contest the transaction through the Chargeback process. You agree to comply with the Chargeback process and to liability associated with such Chargebacks. You agree to accept all of the cards issued by Associations that EpicPay supports in accordance with the terms of this Agreement. EpicPay also supports payments via ACH with a U.S. bank account. We may conduct verification checks on



## Terms and Conditions

customers to ensure account ownership and sufficient balance, and we may refuse to process payments from customers at our discretion.

### **10. Compliance with Rules and Laws**

You must comply with all rules and operating regulations issued from time to time by the Bank (as EpicPay makes them available from time to time) and Associations; any policies, procedures, and instructions provided by us; and the Payment Card Industry Data Security Standards ("PCI DSS") and the Payment Application Data Security Standard ("PA-DSS") (collectively, "Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. The Rules may be viewed at <http://www.epicpay.com/?q=legal>. You shall comply with all applicable national, federal, state, and local laws, rules, regulations, requirements or other standards established by any governmental authority having jurisdiction to control such activities ("Applicable Law"), including, without limitation, those relating to anti-money laundering compliance, Office of Foreign Asset Control compliance, the Federal Trade Commission, bank regulatory authorities, and state and local consumer protection agencies. You will assist us in complying in a complete and timely manner with all Laws and Rules, now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to us any information we may reasonably deem necessary. If any terms of this Agreement conflict with the Association Rules, the Rules will govern.

### **11. Payment Card Industry Data Security Standard (PCI-DSS)**

"Cardholder Data" is information associated with a payment card, such as account number, expiration date, and CVV2. EpicPay will maintain all applicable PCI DSS requirements to the extent EpicPay possesses or otherwise stores, processes, or transmits cardholder data on your behalf, or to the extent EpicPay could impact the security of your cardholder data environment.

If you handle, transmit, or store any Cardholder Data in connection with your use of the EpicPay Service or the EpicPay API, you agree to comply at all times with the Payment Card Industry Data Security Standards ("PCI DSS"). Further, you agree to certify such compliance and provide documentation in accordance with Operating Regulations, or when asked by EpicPay to do so. You also agree that you will use only PCI compliant service providers in connection with the storage, processing, or transmission of Cardholder Data.

You are fully responsible for the security of data (including but not limited to Cardholder Data) on your website or otherwise in your possession or control. You agree to comply with all applicable laws, Operating Regulations, and rules in connection with your collection, security and dissemination of any personal, financial, or transaction information.

Unless you receive the express consent of your customer, you may not retain, track, monitor, store, disclose or otherwise use data (e.g. to send any marketing or promotional materials to Customer) except for the transaction for which it was given and any post transaction activities in connection with such immediate transaction (e.g. chargeback).

PCI compliance and/or non-compliance fees may be assessed to the sub-merchant.

### **12. Information Sharing**

You agree that EpicPay is permitted to share information about you and your application

## Terms and Conditions

(including whether you are approved or declined), and your EpicPay Account with your bank or other financial institution. This includes sharing information (a) about your transactions for regulatory or compliance purposes, (b) for use in connection with the management and maintenance of the Service, (c) to create and update their customer records about you and to assist them in better serving you, and (d) to conduct EpicPay's risk management process.

In addition, we may share some or all of the information about you and your transactions with our processor, the Networks, and our other partners (and their respective affiliates, agents, subcontractors, and employees), who may use this information to perform their obligations under their agreements with EpicPay, to operate and promote their respective Associations, to perform analytics and create reports, to prevent fraud, and for any other lawful purpose.

### **13. Transactions and Limits**

Transactions may have various states such as Pending, Received, Approved, Declined, or Error.

If a transaction is "Pending", it is waiting for a response from the processor.

"Received" indicates that a transaction has been received but does not have a definitive status. The transaction may be in review. The transaction could later be "voided", which indicates the transaction was stopped or reversed. This could be due to inaccurate or incomplete information about your Account, our inability to validate the legitimacy of a payment, customer, or Sub-Merchant, or another proprietary reason. You should check the Declined report to obtain the status of these transactions. You also may contact EpicPay for more information. Although payments are voided, the removal of an authorization on a customer credit card or a return of funds to a customer bank account may not be immediate, and EpicPay cannot guarantee availability within a specific timeframe.

"Approved" indicates that a transaction has cleared and the funds will be made available in the Sub-Merchant's Account. If EpicPay determines that the transaction is related to a restricted or prohibited business or activity or that the transaction is the result of fraudulent activity, EpicPay may reverse or refund the transaction at any time.

"Declined" indicates that a transaction could not be processed due to inaccurate Account information, insufficient funds, or another transaction-related reason.

An "Error" response indicates an error with the submission of the transaction. You must fix the error prior to resubmitting the transaction.

Upon the release of transaction information by EpicPay, a Customer will be debited or charged by the Bank. The Sub-Merchant agrees that the Customer's obligation to the Sub-Merchant is treated as paid at the time of (1) the release of this transaction information when a transaction enters the "Approved" state; and (2) the related initiation of processing by the Bank. After the initiation of processing by the Bank, Sub-Merchant agrees not to attempt to collect or otherwise seek payment from the Customer, because Sub-Merchant agrees Customer's obligation to the Sub-Merchant has been conclusively discharged. Sub-Merchant agrees that the Customer is a third-party beneficiary of the preceding two sentences. Transactions may stay in a "Received"





## Terms and Conditions

state before "Approved" if EpicPay is reviewing a transaction for risk purposes. Transactions in this state should not be treated as paid until they are "Approved".

Transactions may be disputed, regardless of state, by the Customer. Disputes resolved in favor of the Customer may result in reversal of the disputed transaction, regardless of state.

EpicPay reserves the right to limit or restrict transaction size or volume at any time. If you would like to increase your limits, please contact EpicPay at 1-866-377-3287. Upon receiving this request, EpicPay will conduct a review of your Account, and decide whether to lift or remove these limits. EpicPay will consider a variety of factors in making this decision and will make this determination at its sole discretion.

### **14. Deposit of Funds**

The Bank will transfer funds to the Sub-Merchant's bank account as instructed by EpicPay. The Bank will transfer funds no more than thirty (30) days after funds settle to the Bank, subject to any "Reserve" imposed under Section 14 below. If the Bank cannot transfer the funds to the Sub-Merchant's bank account (due to inaccurate or obsolete bank account information entered by the Sub-Merchant, or for any other reason), EpicPay may return the funds to the Customer or escheat them pursuant to Section 20 below. Neither the Bank, EpicPay, nor the Customer will have any liability to Sub-Merchant for funds returned in this manner.

Settlements to a bank account may be limited or delayed based on your perceived risk and history with EpicPay. If you would like to request a change in regard to your settlement time, please contact EpicPay at 1-866-377-3287. Upon receiving this request, EpicPay will conduct a review of your account. EpicPay will consider a variety of factors in making this decision and will make this determination at its sole discretion.

Should EpicPay need to conduct an investigation or resolve any pending dispute related to your Account, the Bank may defer payout or restrict access to your funds for the entire time it takes us to do so. The Bank may also defer payout or restrict access to your funds as required by law or court order, or if otherwise requested by law enforcement or governmental entity.

Furthermore, if EpicPay or the Bank suspects future chargebacks or disputes as a result of transactions to your Account, the Bank may defer payout and/or restrict access to your funds until EpicPay or the Bank reasonably believes, in their sole discretion, that the risk of receiving a chargeback or dispute has passed.

All settlements to Sub-Merchants are subject to review for risk and compliance purposes and can be delayed or postponed at EpicPay's sole discretion.

### **15. Reserve**

The Bank, at any time, may temporarily suspend or delay payments to you and/or designate an amount of funds that the Bank must maintain in your Account ("Reserve") to secure the performance of your payment obligations under this Agreement. We may require a Reserve for any reason, including high number and/or amount of chargebacks or indications of performance problems related to your use of the Service.



## Terms and Conditions

The Reserve will be in an amount as reasonably determined by us to cover anticipated chargebacks, returns, unshipped merchandise and/or unfulfilled services or credit risk based on your processing history or such amount designated by our processor. The Reserve may be raised, reduced or removed at any time by EpicPay, in its sole discretion, based on your payment history, a credit review, the amount of any arbitration award or court judgment against you in EpicPay's favor, or otherwise as EpicPay or its processor or the Bank may determine or require. If you do not have sufficient funds in your Reserve, the Bank may fund the Reserve from any funding source associated with your Account, or from any other Account under your control or any funding source associated with such other Account, including but not limited to any funds (a) credited to your Account, (b) due to you under this Agreement, or (c) available in your bank account, or other payment instrument registered with us.

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

### **16. Fees**

EpicPay charges fees to you for using the Service. The Bank withholds these fees from payments received by you. We also charge you fees for processing exceptions, such as when a Sub-Merchant receives a chargeback. These fees are netted by the Bank against other funds due to you or debited by the Bank from your bank account. You agree to pay EpicPay the fees that are posted from time to time by us (the "fees").

Fees that you pay to process a card transaction, commonly called merchant discount, is a combination of base costs and markups. Base fees consist of interchange and assessments. They are the same for all processors. Interchange is the largest part of the fees that you will pay. This fee goes to the card-issuing banks. None of this fee is realized as revenue to the processor or the card brands. The card brands charge assessments on every transaction. Assessments are the same for all processors and no processor can give you a lower rate. This is how the card brands yield a profit. The types of fees are expansive and the cost may change once or twice a year. The processing fees include the following; however, may not be all inclusive: Visa Fixed Acquirer Network Fee (FANF), Visa ACQ Processing Fee, Visa Misuse of Auth Fee, Visa Zero Floor Limit Fee, Visa International Acquirer Fee, Visa Kilobyte Fee, Visa ADF Partial Auth Non Participation Fee, FANF, Visa ACQ ISA Fee, Visa Trans Integrity Fee, Visa Proc Fee, Visa BIN Fee, MasterCard Kilobyte Fee, MasterCard Proc Fee, MasterCard AVS Fee, MasterCard CVC2 Fee, MasterCard Acquirer Support Fee, MasterCard Cross Border Fee, MasterCard National Acquirer Brand Usage Fee (NABU), MasterCard Processing Integrity Fee, MC ICA AVS Fee, MC Digital Fee, MC License Fee, MC Location Fee, Mastercard Business to Business US Fee, Discover Network Authorization Fee, Discover International Processing Fee, Discover International Service Fee, Discover Data Usage, American Express Network Fee, American Express System Processing Fee, Jeanie/Pulse/NYCE/Accel, Debit Networks Annual Fee, and Star Debit Network Annual Fee. Card Fees apply to Visa, MasterCard, Discover and American Express. These fees are identified separately on your statement based on the type of pricing you chose. If your pricing structure is interchange plus;



## Terms and Conditions

sometimes referred to as cost plus, the assessments are passed directly to you and you will see the fees displayed on your statement. If your price structure is a bundled rate; sometimes called a one rate or two rate price plan, these fees are included in the rate and will not be displayed independently.

Subject to the terms of this Agreement, we reserve the right to change our Fees at any time. By continuing to use the Service, you consent to the change in fees. To withdraw your consent, you must close your Account.

### **17. Taxes**

EpicPay or the Bank may have tax reporting responsibilities in connection with the Service. For example, EpicPay or the Bank will report to the Internal Revenue Service ("IRS") on Form 1099-K as required by law, your name, address, Tax Identification Number (Employee Identification Number or Social Security Number), the total dollar amount of the payments you receive in a calendar year, and the total dollar amount of the payments you receive for each month in a calendar year.

However, you are responsible for determining any and all taxes assessed, incurred, or required to be collected, paid, or withheld, in connection with your use of the Service. You are solely responsible for collecting, withholding, reporting and correctly remitting any taxes to the appropriate tax authority. EpicPay is not obligated to, and will not, determine whether taxes apply, or calculate, collect, report or remit any taxes to any tax authority arising from your use of the Service.

### **18. Sub-Merchant Obligations**

#### ***Representations and Warranties***

You represent and warrant to us that: (a) you are eligible to register and use the Service and have the right, power, and ability to enter into and perform under this Agreement; (b) the name identified by you when you registered is your business name under which you sell goods and services; (c) any sales transaction submitted by you will represent a bona fide sale by you; (d) any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a Customer; (e) you will fulfill all of your obligations to each Customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with the Customer; (f) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to your business, including any applicable tax laws and regulations; (g) except in the ordinary course of business, no transaction submitted by you through the Service will represent a sale to any principal, partner, proprietor, or owner of your entity; (h) you will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; (i) your use of the Service will be in compliance with this Agreement.

#### ***Customer Service***

You are solely responsible for all customer service issues relating to your goods or services, including pricing, order fulfillment, order cancellation by you or the Customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from EpicPay. You will cooperate with EpicPay to ensure that Customers have access to clear customer service information,



## Terms and Conditions

including an active customer service email address and telephone number.

### **Refunds and Returns**

You agree to process returns of, and provide refunds and adjustments for goods or services through your EpicPay Account in accordance with this Agreement and the Operating Regulations and ACH Rules, if applicable. The Operating Regulations require that you will (a) maintain a fair return, cancellation or adjustment policy; (b) disclose your return or cancellation policy to Customers at the time of purchase, (c) not give cash refunds to a Customer in connection with a payment card sale, unless required by law, and (d) not accept cash or any other item of value for preparing a payment card sale refund. Your refund policies must be the same for all payment methods. If your Customer is dissatisfied with your refund policy, the Customer may dispute the payment.

### **Retrieval & Chargeback Handling**

A retrieval request occurs when the card issuer asks for a copy of the actual sales receipt or invoice of a transaction. This is the first step the issuer may take prior to the transaction being disputed and becoming a chargeback. A fee may be assessed for each retrieval request.

The amount of a payment may be charged back to you if (a) it is disputed by a Customer, (b) it is reversed for any reason, (c) it was not authorized or we have any reason to believe that the transaction was not authorized, or (d) it is unlawful, suspicious, or in violation of the terms of this Agreement. You are responsible for all chargebacks, whether or not the chargeback complies with the Operating Regulations. If a chargeback occurs, you owe us and will immediately pay us the amount of any chargeback and any associated fees, fines, or penalties assessed by us, the Bank, our processor or the Associations. If you do not have sufficient funds in your Account, we will have the remedies set forth in the "Collection Rights" section below. If you have pending chargebacks, the Bank may delay payouts to you.

Further, if we reasonably believe that a chargeback is likely with respect to any transaction, the Bank may withhold the amount of the potential chargeback from payments otherwise due to you under this Agreement until such time that: (a) a chargeback is assessed due to a Customer's complaint, in which case the Bank will retain and refund the funds; (b) the period of time under applicable law or regulation by which the Customer may dispute that the transaction has expired; or (c) we determine that a chargeback on the transaction will not occur.

If we determine that you are incurring an excessive number of chargebacks, EpicPay or the Bank may establish controls or conditions governing your Account, including without limitation, of (a) assessing additional fees, (b) creating a Reserve in an amount reasonably determined by us to cover anticipated chargebacks and related fees, (c) delaying payouts, and/or (d) terminating or suspending the Service or closing your Account.

You agree to assist us when requested, at your expense, to investigate any of your transactions processed through the Service. To that end, you permit us to share information about a chargeback with the Customer, the Customer's financial institution, and your financial institution in order to investigate and/or mediate a chargeback. We will request necessary information from you to contest the chargeback. If the chargeback is contested successfully, we will deposit the funds to your bank account or release the reserved funds to you. If a chargeback dispute is not resolved in your favor by the Associations or issuing bank or you choose not to



## Terms and Conditions

contest the chargeback, we may recover the chargeback amount and any associated fees as described in this Agreement. You acknowledge that your failure to assist us in a timely manner when investigating a transaction, including providing necessary documentation within seven (7) days of our request, may result in an irreversible chargeback. We reserve the right, upon notice to you, to charge a fee for mediating and/or investigating chargeback disputes.

After the chargeback process has been completed, a dispute may be escalated to an arbitration case. In arbitration, the Card Brand makes the final decision of who will be awarded the funds. The arbitration process involves the following fees: Filing fee: \$150.00, Administrative fee: \$250.00, and a Withdrawal fee: \$150.00.

### **Collection Rights**

If you owe EpicPay money, the Bank may deduct that money from your incoming payments or debit your bank account, to the extent permitted by law. The Bank may set off any obligation you owe us under this Agreement (including chargebacks) against any credit in your Account or against any amounts due to you. All Fees are deducted first from the transferred or collected funds and thereafter from your Account. If you do not have sufficient funds, the Bank may collect from any funding source associated with your Account, or from any other Account under your control, or from any funding source associated with such other Account, including but not limited to any funds (a) deposited by you, (b) due to you under this Agreement, or (c) available in your bank account, or other payment instrument registered with the Bank. Your failure to pay in full amounts that you owe us on demand will be a breach of this Agreement. You will be liable for our 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 (1½%) per month or the highest rate permitted by law. In its discretion, EpicPay may make appropriate reports to credit reporting agencies and law enforcement authorities, and cooperate with them in any resulting investigation or prosecution. You hereby expressly agree that all communication in relation to delinquent accounts will be made by electronic mail, by phone, or any other means as provided by you to EpicPay. Such communication may be made by EpicPay or by anyone on its behalf, including but not limited to a third-party collection agent.

### **Direct Relationship with Bank**

You, as the Sub-Merchant understand that the Bank and/or Associations may require a direct agreement with you. You acknowledge that, if you have (1) greater than \$1,000,000 in American Express charge volume annually, you will be converted to a direct card acceptance relationship with American Express and, upon conversion, you will be bound by the current American Express Card acceptance agreement and American Express will set the discount and other fees payable by you for American Express Card acceptance. You also acknowledge that, if you have (2) \$1,000,000 or greater in Visa charge volume annually or (3) \$1,000,000 or greater in MasterCard charge volume annually, you agree to be bound by the Sub-Merchant Services Agreement set forth in Exhibit A to this Agreement, if it applies to you. By agreeing to this Agreement (by "click through" or otherwise), you also agree to the terms and conditions of the Sub-Merchant Services Agreement, which constitutes a legal binding contract between you and VANTIV, LLC and its designated Member Bank. Furthermore, you must abide by the applicable Operating Regulations and ACH Rules, if applicable. For example, where you accept payment cards on your website, you will display each card's logo with equal size and prominence, and you shall not display a preference for, or discriminate against, one card brand over another. If you are required to enter into such an



## Terms and Conditions

agreement and decline to do so, we may suspend or terminate your Account. Notwithstanding EpicPay's assistance in understanding the Operating Regulations, and ACH Rules, you expressly acknowledge and agree that you are assuming the risk of compliance with all provisions of the Operating Regulations, and ACH Rules, regardless of whether you have possession of those provisions. The Associations make excerpts of their respective Operating Regulations available on their websites (including [usa.visa.com](http://usa.visa.com), [www.mastercard.com](http://www.mastercard.com), [www.americanexpress.com](http://www.americanexpress.com) and [www.discover.com](http://www.discover.com)).

### **Third Party Partnerships**

You may be offered services, products and promotions provided by third parties. If you decide to use these third-party services, you will be responsible for reviewing and understanding the terms and conditions associated with them. You agree that EpicPay is not responsible for the performance of these services. The Website may contain links to third party websites. The inclusion of any website link does not imply an approval, endorsement, or recommendation by EpicPay. You agree that you access any such website at your own risk, and that the site is not governed by the terms and conditions contained in this Agreement. EpicPay expressly disclaims any liability for these websites. When you use a link to go from our Website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including those that have a link on our Website, is subject to that website's own rules and policies.

### **19. Term & Termination**

You may terminate the Agreement by closing your EpicPay Account at any time. When you close your EpicPay Account, any pending transactions will be cancelled. Any funds that the Bank is holding in custody for you at the time of closure, less any applicable Fees, will be paid out to you. An early termination fee may be assessed. If an investigation is pending at the time you close your EpicPay Account, the Bank may hold your funds as described herein. If you are later determined to be entitled to some or all of the funds in dispute, the Bank will release those funds to you.

We may terminate this Agreement and close your EpicPay Account for any reason or no reason at any time upon notice to you. We may also suspend the Service and instruct the Bank to suspend access to your EpicPay Account (including the funds in your EpicPay Account) if you (a) have violated the terms of the EpicPay's policies or this Agreement, (b) pose an unacceptable credit or fraud risk to us, or (c) provide any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct.

If your EpicPay Account is terminated for any reason or no reason, you agree: (a) to continue to be bound by this Agreement, (b) to immediately stop using the Service and to remove all card logos from your website and wherever else they are displayed, (c) that the terms of this Agreement shall end, (d) that we reserve the right (but have no obligation) to delete all of your information and Account data stored on our servers, and (e) that EpicPay shall not be liable to you or any third party for termination of access to the Service, deletion of your information or Account data, or export of your information or Account data.

We will not be liable to you for compensation, reimbursement, or damages in connection with any termination or suspension of the Service. Any termination of this Agreement does not relieve you of any obligations to pay any fees or costs accrued prior to the termination and any other amounts owed by you to us as provided in this Agreement.

## **20. Dormancy**

If there is no activity in your Account (including access or payment transactions) for the period of time set forth in the applicable unclaimed property laws, and you have a credit, we may notify you by sending an email to your registered email address. We may also notify you by U.S. mail. Once you respond back to the notification, we will send the funds to your bank account via ACH. If you do not respond to our notice within the time period specified in the notice, we may close your Account and the Bank will escheat your funds in accordance with applicable law.

## **21. Transfers**

EpicPay may transfer or assign the Agreement at any time; however, you may not transfer or assign the Agreement.

## **22. Intellectual Property Rights**

All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layout, processing techniques, procedures, algorithms, and methods), owned, developed, or licensed by us prior to, during the term of, or after the Agreement shall be and remain our exclusive property. EpicPay owns the title, copyright and other worldwide intellectual property rights in the Service and all copies of the Service. This Agreement does not grant you any rights to EpicPay's trademarks or service marks, nor may you remove, obscure, or alter any of EpicPay's trademarks or service marks included in the Service.

You may choose to, or we may invite you to, submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("Feedback"). By submitting Feedback, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place EpicPay under any fiduciary or other obligation, and that we are free to use the Feedback without any additional compensation to you, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, EpicPay does not waive any rights to use similar or related ideas previously known to EpicPay, or developed by its employees, or obtained from sources other than you.

## **23. Security & Privacy**

We have implemented technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

If you discover a security-related issue, you agree to inform us of the issue immediately by contacting EpicPay. You also agree not to disclose the issue until EpicPay has addressed it.

Your privacy is very important to us. By accepting this Agreement, you confirm that you have read, understood and accepted our Privacy Policy found at [www.epicpay.com](http://www.epicpay.com).

**24. Indemnification**

You will indemnify, defend and hold us and our processors and partners harmless (and our and their respective employees, directors, agents, affiliates and representatives) 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: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of our policies or the Operating Regulations; (b) your wrongful or improper use of the Service; (c) any transaction submitted by you through the Service (including without limitation the accuracy of any product information that you provide or any claim or dispute arising out of products or services offered or sold by you); (d) your violation of any third party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (e) your violation of any law, rule or regulation of the United States or any other country; and/or (f) any other party's access and/or use of the Service with your unique username, password or other appropriate security code.

**25. Warranty Disclaimer**

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EPICPAY OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, EPICPAY, ITS PROCESSORS, ITS PROVIDERS, ITS LICENSORS AND THE BANK (AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EPICPAY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND EPICPAY WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

ALL THIRD PARTY HARDWARE AND OTHER PRODUCTS INCLUDED OR SOLD WITH THE SERVICE ARE PROVIDED SOLELY ACCORDING TO THE WARRANTY AND OTHER TERMS SPECIFIED BY THE MANUFACTURER, WHO IS SOLELY RESPONSIBLE FOR SERVICE AND SUPPORT FOR ITS PRODUCT. FOR SERVICE, SUPPORT, OR WARRANTY ASSISTANCE, YOU SHOULD CONTACT THE MANUFACTURER OR DISTRIBUTOR DIRECTLY. EPICPAY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

**26. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EPICPAY, ITS PROCESSORS, SUPPLIERS, LICENSORS, ASSOCIATIONS, OR THE BANK (OR THEIR RESPECTIVE





## Terms and Conditions

AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE. UNDER NO CIRCUMSTANCES WILL EPICPAY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR EPICPAY ACCOUNT OR THE INFORMATION CONTAINED THEREIN. IN NO EVENT WILL EPICPAY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR COVER DAMAGES ARISING OUT OF YOUR USE OF OR INABILITY TO USE THIRD PARTY PRODUCTS OR ANY AMOUNT IN EXCESS OF THE AMOUNT PAID BY YOU FOR THE PRODUCT THAT GIVES RISE TO ANY CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EPICPAY, ITS PROCESSORS, THE ASSOCIATIONS, AND THE BANK (AND THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF THE SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, OR ANY DELAY IN PERFORMING OUR OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF WHETHER THE FAILURE OR DELAY IS CAUSED BY AN EVENT OR CONDITION BEYOND OUR CONTROL; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL EPICPAY, ITS PROCESSORS, AGENTS, SUPPLIERS, LICENSORS, ASSOCIATIONS, OR THE BANK (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES EARNED BY US IN CONNECTION WITH YOUR USE OF THE SERVICE DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF EPICPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

THE SERVICE IS CONTROLLED AND OPERATED FROM FACILITIES IN THE UNITED STATES. EPICPAY MAKES NO REPRESENTATIONS THAT THE SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN OTHER LOCATIONS. THOSE WHO ACCESS OR USE THE SERVICE FROM OTHER JURISDICTIONS DO SO AT THEIR OWN VOLITION AND ARE ENTIRELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE UNITED STATES AND LOCAL LAWS AND REGULATIONS, INCLUDING BUT NOT LIMITED TO EXPORT AND IMPORT REGULATIONS. YOU MAY NOT USE THE SERVICE IF YOU ARE A RESIDENT OF A COUNTRY EMBARGOED BY THE UNITED STATES, OR ARE A FOREIGN PERSON OR ENTITY BLOCKED OR DENIED BY THE UNITED STATES GOVERNMENT. UNLESS OTHERWISE EXPLICITLY STATED, ALL MATERIALS FOUND ON THE SERVICE ARE SOLELY DIRECTED TO INDIVIDUALS, COMPANIES, OR OTHER ENTITIES LOCATED IN THE UNITED STATES.



## Terms and Conditions

### **27. Dispute Resolution**

#### ***Disputes***

If a dispute of any kind arises, we want to understand and address your concerns quickly and to your satisfaction. Please contact EpicPay with any dispute. If we cannot resolve your concerns, we agree to an informal and inexpensive dispute resolution process requiring individual arbitration.

Unless otherwise required by law, an action or proceeding by you relating to any dispute must commence within one year after the cause of action accrues.

#### ***Arbitration***

You and EpicPay agree to arbitrate all "Disputes," defined as any claim, controversy or dispute (whether involving contract, tort, equitable, statutory or any other legal theory) between you and EpicPay, including but not limited to any claims relating in any way to this Agreement (including its breach, termination and interpretation), any other aspect of our relationship, EpicPay advertising, and any use of EpicPay software or services. "Disputes" also include any claims that arose before this Agreement and that may arise after termination of this Agreement. Notwithstanding the foregoing, you or EpicPay may choose to pursue a claim in court and not by arbitration if you fail to timely pay amounts due. EpicPay may assign your account for collection, and the collection agency may pursue in any court of competent jurisdiction any claim that is strictly limited to the collection of past due amounts and any interest or cost of collection permitted by law or this Agreement.

If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case, shall there be a class arbitration). All disputes shall be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association ([www.adr.org](http://www.adr.org)) ("AAA") according to this provision and the applicable arbitration rules. A form for initiating arbitration proceedings is available on the AAA's website at [www.adr.org](http://www.adr.org).

### **28. Governance**

This Agreement and any dispute will be governed by Texas law and/or applicable federal law (including the Federal Arbitration Act) as applied to agreements entered into and to be performed entirely within Texas, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction.

### **29. Amendments & Other Provisions**

We have the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the software or Service with notice that we in our sole discretion deem to be reasonable in the circumstances, including notice on our Website or any other website maintained or owned by us and identified to you. Any use of our software or Service after our publication of any such changes shall constitute your acceptance of this Agreement as modified. No modification or amendment to this Agreement shall be binding upon EpicPay unless in a written instrument signed by a duly authorized representative of EpicPay.

Except as expressly provided in this Agreement, these terms are a complete statement of the



## Terms and Conditions

agreement between you and EpicPay, and they describe the entire liability of EpicPay and its vendors and suppliers (including processors) and your exclusive remedy with respect to your access and use of the Service. In the event of a conflict between this Agreement and any other EpicPay agreement or policy, this Agreement shall prevail on the subject matter of this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. Headings and summaries are included for convenience only, and shall not be considered in interpreting this Agreement. The Agreement does not limit any rights that EpicPay may have under trade secret, copyright, patent or other laws. EpicPay's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

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.



## Terms and Conditions

### Exhibit A

#### **MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS**

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS ("Agreement") is made among VANTIV, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank (collectively "Acquirer") and ("Sub-Merchant") in connection with the agreement between Sub-Merchant and ("Provider"). Acquirer will provide Sub-Merchant with certain payment processing services ("Services") in accordance with the terms of this Agreement. In consideration of Sub-Merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Associations"), Sub-Merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-Merchant meets certain requirements under the Operating Regulations or an Association or the Operating Regulations otherwise require, Sub-Merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Agreement, Sub-Merchant has fulfilled such requirement. However, Acquirer understands that Sub-Merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sub-Merchant for all or part of Sub-Merchant's obligations contained herein.

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

Certain Sub-Merchant Responsibilities. Sub-Merchant agrees to comply, and to cause third parties acting as Sub-Merchant's agent ("Agents") to comply, with the Association's and other payment network's by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations"). Sub-Merchant may access the VISA, MasterCard, and Discover websites for the Visa, MasterCard, and Discover regulations at:

<http://usa.visa.com/merchants/>

<http://www.mastercard.com/us/merchant/>

<http://www.discovernetwork.com/merchants/>

Sub-Merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Without limiting the foregoing, Sub-Merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sub-Merchant's software providers and/or equipment providers.

## Terms and Conditions

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

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

Sub-Merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-Merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-Merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Sub-Merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

Sub-Merchant Prohibitions. Sub-Merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Sub-Merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-Merchant, v) disburse funds in the form of cash unless Sub-Merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-Merchant), or Sub-Merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-Merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance

## Terms and Conditions

an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check. Sub-Merchant further agrees that, under no circumstance, will Sub-Merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

Settlement. Upon receipt of Sub-Merchant's sales data for card transactions, Acquirer will process Sub-Merchant's sales data to facilitate the funds transfer between the various Associations and Sub-Merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-Merchant, either directly to the Sub-Merchant-Owned Designated Account or through Provider to an account designated by Provider ("Provider Designated Account"), at Acquirer's discretion, for such card transactions. Sub-Merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-Merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-Merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-Merchant's designated demand deposit account ("Sub-Merchant-Owned Designated Account") upon receipt of such account information from Sub-Merchant or Provider, or if Acquirer deposits settlement funds into the Sub-Merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-Merchant or Provider.

Term and Termination. This Agreement shall be binding upon Sub-Merchant upon Sub-Merchant's execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Agreement by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sub-Merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) Sub-Merchant or Provider fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sub-Merchant or Provider may be a violation of the Operating Regulations or any Laws, (iii) Acquirer believes that Sub-Merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquire determines Sub-Merchant poses a financial or regulatory risk to Acquirer or an Association, (v) Acquirer's agreement with Provider terminates, (vi) any Association deregisters Provider, (vii) Acquirer ceases to be a member of the Associations or fails to have the required licenses, or (viii) Acquirer is required to do so by any of the Associations.

Limits of Liability. Sub-Merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Agreement, which notice will



## Terms and Conditions

specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-Merchant and a waiver of any and all rights to dispute such breach.

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

Miscellaneous. This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Agreement may not be assigned by Sub-Merchant without the prior written consent of Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, Acquirer and Sub-Merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Agreement upon notice to Sub-Merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement "Member Bank" as used in this Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank shall be Fifth Third Bank, an Ohio Banking Corporation, located in Cincinnati, OH 45263. The Member Bank is a party to this Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sub-Merchant.



## Terms and Conditions

IN WITNESS WHEREOF, this Agreement has been executed by Sub-Merchant's authorized officer as of the date set forth below.

SUB-MERCHANT:

By:

Name:

Title:

Date:

Address: