



## TERMS OF SERVICE FINIX SUB-MERCHANT AGREEMENT

Last modified: January 24, 2023

These terms of service (the “**General Terms**”), to include all appendices attached hereto, including the Finix Payments, Inc. Application (“**Application**”), Privacy Policy (available at <https://www.finixpayments.com/privacy-policy/>), and Merchant Services Agreement for Sub-Merchants (collectively, the “**Agreement**”) govern the Sub-Merchant’s participation in the Services. The Sub-Merchant agrees to be bound by the terms and conditions of the Agreement, as evidenced either by clicking to submit the Application (for example, by clicking “Submit Application”) or by the transmission of a Transaction receipt or other evidence of a Transaction. Each Party agrees that the electronic signatures and equivalent indications of acceptance by the Parties executing this Agreement are intended to authenticate this Agreement on behalf of each respective signing Party and shall have the same force and effect as manual signatures hereto. The parties to this Agreement shall be the Sub-Merchant as named in the Application that applies to participate in Transactions using Finix’s processing products (“**Sub-Merchant**,” “**Merchant**,” or “**you**”) and Finix Payments, Inc. with its principal place of business at 631 Howard Street, Ste. 100, San Francisco, CA 94105 (“**Finix**,” “**we**,” or “**us**”) each of which may be referred to individually as a “**Party**” or collectively as “**Parties**.” The effective date of this Agreement shall be the date Finix approves Sub-Merchant for participation in the Processing Services (“**Effective Date**”).

**WHEREAS**, Sub-Merchant and Finix are entering into the Agreement to set forth, among other things, terms and conditions under which Finix will provide to Sub-Merchant services that facilitate Sub-Merchant’s acceptance of card payments, e-check, and/or ACH payments for goods and services provided, or charitable donations received, and Finix as an agent for Sub-Merchant, may accept settlement payments from the Acquirer or other third parties on behalf of Sub-Merchant;

**WHEREAS**, Sub-Merchant has entered an agreement with **Vision2** for use and access to **Vision2’s** online software-as-a-service has also contracted with Finix to make Finix’s payment processing services, as described herein, available to Sub-Merchant through Sub-Merchant’s use of **Vision2**;

**WHEREAS**, Finix is party to an agreement with an Acquirer and a Bank under which Acquirer and Bank provide payment processing and Association sponsorship services to Finix on behalf of Sub-Merchant and other sub-merchants of Finix; and

**WHEREAS**, as a condition of providing services to Finix on behalf of Sub-Merchant, Acquirer and Bank require that Finix include certain terms and conditions in the Agreement relating to the payment processing services being provided to Sub-Merchant.

**THEREFORE**, Finix and Sub-Merchant hereby agree to the terms and conditions set forth herein.

On and subject to the terms and conditions hereof, Finix is: (i) acting in the capacity of a “**Payment Service Provider**” (under the Visa Rules) and a “**Payment Facilitator**” (under the MasterCard Rules) and will provide you card processing services as described herein; (ii) entering into this Agreement as an agent of the Acquirer, and (iii) will provide you with additional services as agreed by the Parties. Finix provides processing services with respect to credit card transactions including Visa U.S.A., Inc. (“**Visa**”), MasterCard Worldwide (“**MasterCard**”), DFS Services LLC (“**Discover Network**”), American Express, JCB, Discover, and Diners Club (collectively, the “**Associations**”), as well as e-check, ACH, and any other transactions as decided by Finix. The National Automated Clearing House Association, which governs ACH Transactions, shall be included in the definition of Association. You will honor a card by accepting it for payment. You will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular card type elected by you and approved by us, in favor of any competing card brand also elected and approved. You understand and agree that you are expressly prohibited from presenting sales transactions for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities, and that your ability to impose surcharges for acceptance of payment cards is limited by the Operating Rules and Applicable Laws. For all Cards issued by U.S. Issuers, you will honor all cards within the card types you accept in accordance with this Agreement. For example, if you accept Visa credit cards, you will submit payments from Visa-branded credit card Cardholders without regard to whether the credit card is a Visa-branded rewards credit card or Visa-branded business purpose credit card. You acknowledge that (i) no party will acquire any right, title, or interest in or to the marks of any Associations, (ii) the Associations are the sole and exclusive owners of their marks, (iii) you will not contest the ownership of the Association’s marks, and (iv) that any Association may prohibit you from using their marks (and you will immediately comply with such prohibition). You will not assign to any third party any of the rights to use the marks of any Associations, and the Associations may use information obtained in the Application to monitor you in connection with Card marketing and administrative purposes.

1. **DEFINITIONS.** For the purposes of the General Terms, the definitions contained in Appendix I apply to capitalized words contained within the Agreement unless otherwise specified within the Agreement.
2. **SERVICES AND PRIORITY.** Subject to the terms and conditions of the Agreement, the Parties will provide those Services for which they are respectively responsible as set forth in the Agreement. In the event that terms and conditions described within the appendices differ from those indicated within the General Terms, the terms and conditions contained within the Appendices shall prevail over any conflicting terms and conditions in the General Terms.
3. **SUB-MERCHANT OBLIGATIONS AND REQUIREMENTS.**

- A. Association Operating Rules and Compliance. Sub-Merchant acknowledges that Acquirer and Bank must maintain closer controls over high-volume sub-merchants of Finix and, therefore, Sub-Merchant must immediately notify us if it has, or in Sub-Merchant's reasonable opinion will have greater than \$1,000,000 in annual card sales volume processed hereunder (based upon the date Sub-Merchant's account is approved by Acquirer for any one Association. In the event that more than \$1,000,000 in Visa transactions and/or \$1,000,000 in MasterCard transactions (or such other amount provided by the Operating Regulations) ("**Benchmark Amount**") is processed through and on behalf of Sub-Merchant in any 12-month period, Sub-Merchant will automatically be deemed to have accepted, and will be bound by, the "Merchant Services Agreement for Sub-Merchants" with Acquirer (included below), the terms of which will be independently enforceable by Acquirer.

You shall comply with the Associations' operating rules ("**Operating Rules**"), including the Operating Rules applicable to the Visa PSP and MasterCard Payment Facilitator programs, American Express Merchant Operating Guide, Program Merchant Data Security Requirements, and all applicable local, state, and federal laws, rules, and regulations ("**Applicable Laws**"). The Operating Rules are incorporated by reference herein, shall be deemed to have the same force and effect as if set forth in full herein, and may be available on Association websites, such as <http://www.usa.visa.com/merchants>, <http://www.mastercardmerchant.com>, and [https://icm.aexp-static.com/content/dam/gms/en\\_us/optblue/us-mog.pdf](https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf) as updated from time to time. Without limiting the foregoing, Sub-Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation) and the Associations, including but not limited to Payment Card Industry Data Security Standard ("**PCI**"), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. Should any Operating Rules(s) not be publicly available or otherwise made available to Sub-Merchant, such unavailability shall not alter or limit Sub-Merchant's obligation to comply with the Operating Rules. Notwithstanding Finix's assistance in understanding the Operating Rules, Sub-Merchant expressly acknowledges and agrees that it is assuming the risk of Sub-Merchant's compliance with all provisions of the Operating Rules, regardless of whether Sub-Merchant has possession of those provisions. Any conflict between the terms and conditions set forth in this Agreement and the Operating Rules shall be resolved in favor of the Operating Rules.

- B. Legitimate Business Purpose; Sub-Merchant Business Information. You agree to use the Services for legitimate business purposes only and not for personal, family, or household purposes. On an ongoing basis, you must promptly provide Finix with the current address of each location, all "doing business as" (DBA) names used by you, and a complete description of goods sold and services provided, or charitable donations accepted, by you. You agree to provide Finix with 30 days' prior written notice of your intent to change your business form or entity in any manner (e.g., a change from a limited liability company to a corporation), and/or of your intent to sell all of your stock or assets to another entity. You may not use the Services for any service other than as set forth in this Agreement.
- C. Identify Sub-Merchant. To the extent Sub-Merchant interacts with Cardholder, Sub-Merchant will prominently and unequivocally inform the Cardholder of the identity of the Sub-Merchant at all points of interaction so that the Cardholder readily can distinguish the Sub-Merchant from any other party, such as a supplier of products or services to Sub-Merchant, including Finix. Further, Sub-Merchant must ensure that the Cardholder understands that Sub-Merchant is responsible for the card transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the card transaction, and for customer service and dispute resolution.
- D. Third Parties. Finix and Sub-Merchant may use one or more third party service providers ("**TPSP's**") in connection with the Services and/or the processing of some or all of its Card transactions. In no event shall Sub-Merchant use a TPSP unless such TPSP is compliant with PCI and/or the Payment Application Data Security Standard ("**PA-DSS**"), depending on the type of

TPSP, as required by the Operating Rules. Sub-Merchant acknowledges and agrees that Sub-Merchant shall cause its TPSP to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc). Sub-Merchant shall cause its TPSP to cooperate with Acquirer in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such TPSP. Sub-Merchant shall be solely responsible for any and all applicable fees, costs, expenses, and liabilities associated with such steps, registrations and certifications. Sub-Merchant shall bear all risk and responsibility for conducting Sub-Merchant's own due diligence regarding the fitness of any TPSP(s) for a particular purpose and for determining the extent of such TPSP's compliance with the Operating Rules and applicable law. Sub-Merchant expressly agrees that neither Acquirer, Bank, or Finix shall in any event be liable to Sub-Merchant or any third party for any actions or inactions of any TPSP used by Sub-Merchant, even if Acquirer, Bank or Finix introduced or recommended such TPSP.

- E. Operating Account. Sub-Merchant shall establish an Operating Account at a financial institution of Sub-Merchant's choice prior to processing any payments. The Operating Account shall be utilized for deposits from Payment Card or eCheck Processing Transactions. Sub-Merchant shall advise Finix of the name and address of the financial institution, routing number and account number of the account. Sub-Merchant authorizes Finix to debit fees, charges, and any amounts owed to Finix, including amounts owed due to Disputes and ACH returns, from the Operating Account either daily, monthly or at other times deemed appropriate by Finix through the ACH Network or by a manual debit of the account.
- F. Maintenance of the Operating Account. Sub-Merchant shall maintain the Operating Account throughout the term of this Agreement, to include any extensions or renewals thereof. Sub-Merchant shall, at all times, maintain sufficient funds in the Operating Account to ensure that all credit Entries originated and returns of debit Entries originated, as well as any and all fees, charges, and costs provided for under the Agreement are paid, including any reserve requirements set by Finix in accordance with this Agreement. Sub-Merchant agrees to deposit funds into the Operating Account as required in order to ensure that sufficient funds are maintained in the Operating Account at all times.
- G. Sub-Merchant Authorization and Waiver. Sub-Merchant authorizes Finix, Acquirer, or Member Bank to make deposits to or withdrawals from the Operating Account. Finix will have no signatory or ownership rights in the Operating Account and will have no right to negotiate or assert ownership rights in deposited funds. Sub-Merchant shall be responsible for all Bank charges and Sub-Merchant shall designate representatives authorized to make changes to the Operating Account. If Sub-Merchant requests an Operating Account change, Sub-Merchant must provide Finix at least ten (10) days prior written notice. Sub-Merchant is responsible for providing Finix with accurate contact, payment, and account information for each Account. Finix is not liable for any amounts directed to an account that has been designated as the Operating Account by any purported representative of Sub-Merchant. If required by Finix or any financial institution where the Operating Account is maintained, Sub-Merchant agrees to sign any documents required to authorize the deposits and withdrawals, including without limitation, ACH Transactions.
- H. Retention of Sales Information. Sub-Merchant shall store all sales/service drafts and Transaction records in strict compliance with the Operating Rules, and in a limited access area for at least eighteen months after the date of sales.
- I. Data. Sub-Merchant acknowledges that Finix will receive and handle Data in connection with Finix's performance under this Agreement, whether received directly from Sub-Merchant, **Vision2** or through the POS Equipment. Sub-Merchant further acknowledges, agrees, and consents to Finix's right to receive, access, process, transmit, store, and create derivative works of the Data: (a) as reasonably required for Finix to perform its respective obligations hereunder; (b) to monitor and report fraud or other unlawful or suspicious activities by Cardholders, Payors, or any third party; (c) to develop and improve Finix's products and services; (d) as required to comply with court order, government investigation, industry self-regulatory guidelines, or other legal requirements and operations of applicable law; and (e) in furtherance of its other business operations and commercial purposes. Furthermore, Sub-Merchant permits Finix to share Data with the Associations, Acquirer, and Member Bank, and each of the foregoing may use the same without restriction for analysis, transactions or relationship communication, and any other lawful business purpose. Separate from and in addition to any other representation or warranty herein contained, Sub-Merchant represents and warrants that: (i) it possesses all necessary rights, authorizations, licenses, and consents to provide Data to Finix (and for Finix to subsequently use and access such Data) as set forth herein, including without limitation such authorizations and consents required under applicable laws and regulations governing data privacy, information security, and consumer protection; and (ii) the Data does not infringe, misappropriate, or otherwise violate the personal or proprietary rights of any third party.

- J. Account Updater Services. Finix may provide Sub-Merchant the ability to participate in the Associations' Account Updater Services, through which Finix or its service providers may obtain, on Sub-Merchant's behalf, applicable updated Cardholder data of eligible Cards from participating issuing banks and other third-party sources. Sub-Merchants that use the Account Updater Services may use the updated Cardholder account information to support subscription services, recurring payments, and other account-on-file functions, consistent with Applicable Law, the Operating Rules, and any additional requirements or terms established by Finix. Sub-Merchant shall provide its customers with all disclosures required under Applicable Law to enable Sub-Merchant to use the Account Updater Services to update the customer's Card(s). Sub-Merchant assumes all risk associated with its use of the Account Updater Services, and Finix shall have no liability whatsoever to Sub-Merchant for any liability associated with the Account Updater Services. Finix may cease offering or providing the Account Updater Services at any time.
- K. American Express Marketing Opt-Out. Sub-Merchant may opt out of receiving commercial marketing communications from American Express by notifying Finix in writing of its desire to do so. Sub-Merchant acknowledges that it may continue to receive marketing communications while Finix communicates the opt-out request to American Express and American Express updates its records to reflect such choice. Opting out of commercial marketing communications will not preclude Sub-Merchant from receiving important transactional or relationship messages from American Express.
- L. Same-Day ACH Services. Sub-Merchant may be eligible to receive "Same-Day ACH Services," subject to Finix's approval of Sub-Merchant for receipt of such Same-Day ACH Services. Same-Day ACH Services may be subject to additional Fees as identified to Sub-Merchant by **Vision2**. Finix reserves the right to impose a cap on the daily amount of settlement paid to each Sub-Merchant in its sole discretion. Sub-Merchant agrees that Finix may suspend or terminate the Same-Day ACH Services to Sub-Merchant at any time in its sole discretion, in which case the applicable settlement payouts will thereafter be made pursuant to Finix's standard practices and schedule. Sub-Merchant acknowledges that Same-Day ACH Services may be subject to the policies and procedures of third-party processors and recipient banks with respect to such services. Sub-Merchant further acknowledges and agrees that: (i) Same-Day ACH Services are provided on an "as-is" basis; and (ii) Finix does not guarantee the accelerated settlement of Transactions subject to a request for Same-Day ACH Services. If Sub-Merchant receives Same-Day ACH Services, Sub-Merchant hereby appoints Finix as its limited payment collection agent solely for the purpose of accepting payments from individuals and entities (hereafter "**Payors**") on Sub-Merchant's behalf. Sub-Merchant agrees that a payment made by a Payor to Finix shall be considered the same as a payment made directly to Sub-Merchant. Sub-Merchant understands that Finix's obligation to transmit a payment to Sub-Merchant is subject to and conditional upon successful receipt of the associated payment from a Payor. In accepting appointment as Sub-Merchant's limited payment collection agent, Finix assumes no liability for any of Sub-Merchant's acts or omissions.
- M. Reserved.
- N. POS Equipment. **Vision2** may supply Sub-Merchant with POS Equipment in order to enable Sub-Merchant's acceptance of Card-Present Transactions. Sub-Merchant must, at all times, use POS Equipment in accordance with Operating Rules, Applicable Laws, and this Agreement. Finix shall have no obligation to provide support to Sub-Merchant in connection with the POS Equipment; any support required by Sub-Merchant in connection with the POS Equipment shall be provided by **Vision2**. If Finix suspects or knows that Sub-Merchant is using or has used POS Equipment for unauthorized, fraudulent, or illegal purposes, or in a manner that Finix deems unacceptable, in its sole discretion, Finix may limit or disable the functionality of Sub-Merchant's POS Equipment. Further, with respect to POS Equipment, Sub-Merchant shall:
- i. Ensure that POS Equipment is only used for commercial purposes and within the United States;
  - ii. Ensure that appropriate Association decals and marks are prominently displayed at each location where POS Equipment is used and on other promotional materials as required by the Operating Rules;
  - iii. Ensure that only competent trained employees (or persons under their supervision) are allowed to operate or use POS Equipment and that adequate security measures are put in place to safeguard POS Equipment and data collected by and held on POS Equipment;
  - iv. Not move any POS Equipment to a new location without registering the device to its new location and downloading the local device configuration;
  - v. Not represent, or use any technical measures in an attempt to represent, that the location of POS Equipment is a location

different from its actual physical location;

- vi. Not use POS Equipment to enable any party to benefit from any activities that have not been previously approved by Finix in writing;
- vii. Not copy, reproduce, republish, upload, post, transmit, resell, or distribute in any way, any data, content, or any part of the POS Equipment;
- viii. Not transfer any rights granted to Sub-Merchant under this Agreement unless otherwise agreed between Sub-Merchant and Finix in writing;
- ix. Not work around any of the technical limitations implemented in the POS Equipment or enable functionality that is disabled or prohibited, including replacing any software provided by Finix with third-party software;
- x. Not reverse engineer or attempt to reverse engineer POS Equipment except as expressly permitted by Applicable Laws; and
- xi. Not perform or attempt to perform any actions that would interfere with the normal operation of POS Equipment or impact the use of the POS Equipment by other users.

#### 4. SECURITY INTEREST; RESERVE; SETOFF RIGHTS.

- A. Security Interest and Lien. Sub-Merchant hereby grants a security interest and lien upon funds payable to or in the Operating Account or any substitute account now and in the future and all proceeds thereof to Finix to secure all fees, costs, and charges due in accordance with this Agreement (the “**Amounts Due**”). In the exercise of its rights with regard to the security interest and lien, Finix may only debit the Operating Account to the extent of the then existing amounts due and shall only do so if Finix becomes reasonably concerned about whether the Sub-Merchant will otherwise fulfill its financial obligations. The security interest and lien granted herein shall survive the termination of this Agreement until all amounts due are determined and paid in full. Sub-Merchant hereby authorizes Finix to prepare all documents or to take other actions reasonably necessary to perfect its security interest or lien in the Operating Account or any substitute account therefor.
- B. Establishment of Reserve Account. We may withhold funds by temporarily suspending or delaying payouts of Transaction proceeds to you and/or designating payouts of Transaction proceeds in a separate reserve account (“**Reserve**”) to secure the performance of your obligations under any agreement between you and Finix. We may require a Reserve for any reason related to your use of the Services. The Reserve will be in an amount as reasonably determined by us to cover potential losses to Finix. If you do not have sufficient funds in your Reserve, we may fund the Reserve from any funding source associated with the Services, including any funds (a) deposited by you, (B) due to you, or (c) available in your Operating Account, or other payment instruction registered with us.
- C. Set-Off Rights. To the extent permitted by law, we may set off any amounts owed by you, including without limitation in connection with Disputes or refunds, against (i) any amounts which Finix would otherwise deposit to the Operating Account; (ii) the Operating Account and Reserve; (iii) any other amounts Sub-Merchant may owe Finix; or (iv) against any property of Sub-Merchant in the possession or control of Finix. For the avoidance of doubt, if you owe us an amount that exceeds your cumulative incoming proceeds, we may debit the Operating Account. Your failure to fully pay amounts that you owe us on demand will be a breach of this Agreement. You are liable for any of our costs associated with collection in addition to any amounts owed, including attorneys’ fees and expenses, collection agency fees, and any applicable interest.
- D. Auditing and Credit Investigation. Sub-Merchant authorizes Finix or its respective agents (including without limitation **Vision2**) to engage in any investigation of Sub-Merchant’s finances, activities, and operations that Finix reasonably determines necessary to underwrite Sub-Merchant and confirm Sub-Merchant’s eligibility for and use of the Services. Sub-Merchant agrees to cooperate in any such investigation and to provide Finix or its respective agents (including **Vision2**) with any information required to complete such an investigation. Sub-Merchant authorizes Finix or its respective agents (including without limitation **Vision2**) to make any background, identity verification, or credit inquiry that Finix deems necessary and authorizes any consumer reporting agency to compile information to answer such inquiries and furnish that information to Finix or its respective agents (including without limitation **Vision2**). If applicable, Sub-Merchant agrees to work with Finix

or its respective agents (including without limitation **Vision2**) to obtain any necessary authorizations for any background, credit, or other check or report on Sub-Merchant's owners, officers, guarantors, directors, or other principals. Finix may terminate this Agreement or suspend or delay the provision of Services if the information received in any investigation is unsatisfactory in Finix's sole discretion. Finix may also audit from time-to-time Sub-Merchant's compliance with the terms of this Agreement. Sub-Merchant shall provide all information requested by Finix necessary to complete the audit. Upon Finix's request, Sub-Merchant shall provide all of its books and records, including financial statements for Sub-Merchant and personal financial statements for all guarantors. Sub-Merchant authorizes Finix to make on-site visits to any and all of the Sub-Merchant's locations with regard to all information necessary or pertinent to the Services. Sub-Merchant authorizes Finix to share any information it collects or receives from or about Sub-Merchant with the Acquirer and Member Bank.

## 5. SUB-MERCHANT REPRESENTATIONS AND WARRANTIES.

- A. Without limiting any other warranties hereunder, you represent, warrant and covenant with us and with the submission of each card transaction that:
- i. Each transaction is genuine and arises from a bona fide transaction, permissible under the Operating Rules and Applicable Law, by the Cardholder directly with you;
  - ii. Each transaction represents a valid obligation for the amount shown on the sales draft and does not involve the use of a card for any other purpose (including but not limited to illegal or prohibited activity such as money-laundering or financing of terrorist activities);
  - iii. Each transaction represents an obligation of the related Cardholder for the amount of the transaction;
  - iv. The amount charged for each Card Transaction is not subject to any dispute, set off or counterclaim;
  - v. Each transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased, or rented to a Cardholder by you, or for respective charitable donations received by you from a Cardholder or bank account owner, and, except for any delayed delivery or advance deposit transactions disclosed on the Application and authorized by this Agreement, that merchandise, service or charitable donation was actually delivered to the Cardholder entering into that transaction, performed for the Cardholder entering into that transaction, or received by you simultaneously upon your accepting and submitting that transaction for processing;
  - vi. With respect to each transaction, you have no knowledge or notice of any fact, circumstance, or defense which would indicate that such transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that transaction or relieve that Cardholder from liability with respect thereto;
  - vii. Each transaction is made in compliance with this Agreement and Applicable Law;
  - viii. Each sales draft is free of any alteration not authorized by the related Cardholder; and
  - ix. You have not opened multiple processing accounts without having provided information sufficient to demonstrate that such additional processing accounts are necessary for legitimate business.
- B. Further, Sub-Merchant represents and warrants (i) you are authorized to carry on your own business as it is conducted and to enter into this Agreement; (ii) no other authorizations, consents, or approvals are required in connection with the validity and enforceability of this Agreement or your execution, delivery, and performance of this Agreement; (iii) you have not changed the nature of your business, card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different merchant category code under Operating Rules, in a way not previously disclosed to us; (iv) you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any person; (v) you, or your third-party service providers, have not filed, or intend to file, a bankruptcy petition not previously disclosed to us; (vi) all information and Data you provide to us, or for which you engage a third party to provide to us, is complete, truthful, accurate, valid, and your lawful property, and you have the right to communicate such information; (vii) you own or otherwise have the full right and authority to use and disseminate all information, Data, graphics, text, video,

music, or other intellectual property which forms a part of your website, or which you use in your advertising; (ix) you and your third-party service providers are legally authorized to sell any product or services, or accept charitable donations, offered and have obtained all necessary regulatory approvals and certificates (“**Certificates**”), and you have the proper facilities, equipment, inventory, agreements, and personnel required to conduct business. You will provide us any copies of Certificates immediately upon receipt of our request.

## 6. TERM AND TERMINATION.

- A. Term. This Agreement shall become effective on the Effective Date and, unless sooner terminated in accordance with this Agreement, continue on a month-to-month basis until terminated by either Party upon notice to the other Party. Finix and/or the Associations may terminate your use of the Services and/or this Agreement at any time for any reason. Any termination of this Agreement does not relieve you of obligations to pay fees or costs accrued prior to termination, Disputes, and any other amounts owed to us as provided in this Agreement. Any funds that we are holding in custody for you at the time of termination, less any applicable fees, will be paid out according to your payout schedule, subject to the conditions in this Agreement. If an investigation is pending at the time this Agreement is terminated, we may hold your funds as described herein. If you are later determined to be entitled to some of the funds, we will release those holds for you. Further, Finix will immediately terminate this Agreement if any Association de-registers Finix. If the Acquirer ceases to be a member of any of the Associations for any reason, or if the Acquirer no longer has a license to use an Association’s marks, then the Acquirer will cease processing with respect to that Association’s transactions and Finix may engage another processor.
- B. Suspension of Services. Finix may, in its sole discretion, suspend the Services at any time with or without notice to you. Finix may selectively terminate one or more of Sub-Merchant's approved locations or certain Services without terminating this Agreement.

## 7. FEES.

- A. General. **Vision2** is responsible for setting the fees related to Sub-Merchant’s use of the Services and disclosing such fees to Sub-Merchant. **Vision2** may also charge **Vision2** Fees to Sub-Merchant. Finix does not control and is not responsible for any of the **Vision2** Fees charged to Sub-Merchant by **Vision2**. Any disputes regarding any **Vision2** Fee shall be exclusively resolved between you and **Vision2**. Sub-Merchant agrees to pay all fees set by **Vision2**. All fees imposed upon Sub-Merchant are netted against other funds due to Sub-Merchant or debited from Sub-Merchant’s bank account or other payment instrument associated with Sub-Merchant’s Account. Sub-Merchant agrees to pay the fees for the Service that are posted from time to time by **Vision2**. Card-Not-Present Transaction and Card-Present Transaction payment processing fees shall not exceed 5% of the total Transaction amount plus \$0.50 per Transaction.
- B. Fee Changes. Subject to the terms of this Agreement, **Vision2** reserves the right to change its fees. **Vision2** will try, but is not required, to give Sub-Merchant thirty (30) days’ notice before the effective date of any change in a fee.
- C. Third Party Penalties. Notwithstanding any other provision of this Agreement, Sub-Merchant shall be responsible for all amounts imposed or assessed to Sub-Merchant, Finix Acquirer, or Bank in connection with this Agreement by third parties such as, but not limited to, Associations and governmental authorities to the extent that such amounts are not the direct result of the gross negligence or willful misconduct of Acquirer, Bank or Finix as applicable. Such amounts include, but are not limited to, fines, penalties, and loss allocations.
- D. Refunds. Fees charged for executing the original Transaction will not be refunded in part or in whole to the Sub-Merchant if such Transaction is refunded or made subject to a Dispute. **Vision2** is solely responsible for determining whether or not **Vision2** Fees are refundable. If Sub-Merchant receives a refund of **Vision2** Fees, Sub-Merchant hereby appoints Finix as its limited payment collection agent solely for the purpose of accepting payments from Payors on Sub-Merchant’s behalf. Sub-Merchant agrees that a payment made by a Payor to Finix shall be considered the same as a payment made directly to Sub-Merchant. Sub-Merchant understands that Finix’s obligation to transmit a payment to Sub-Merchant is subject to and conditional upon successful receipt of the associated payment from a Payor. In accepting appointment as Sub-Merchant's limited payment collection agent, Finix assumes no liability for any of Sub-Merchant’s acts or omissions.
- E. Taxes, Information Filings and Backup Withholding. Sub-Merchant agrees to pay all federal, state, and local sales, use, income, property, and excise taxes, which may be assessed in connection with the Services provided under this Agreement.

Sub-Merchant agrees and understands that Finix, Finix's designee, or Acquirer will provide information reporting to the Internal Revenue Services and applicable state treasurers for all reportable payment transactions of Sub-Merchant as defined in IRC § 6050W. If necessary, Finix or its designee will conduct backup withholding on the revenue generated by the reportable payment transactions of the Sub-Merchant.

## 8. INDEMNIFICATION AND LIMITATIONS OF LIABILITY.

- A. Indemnification. Sub-Merchant shall indemnify, defend, and hold harmless Finix and its directors, officers, employees, affiliates, agents, principals, successors, and assigns (collectively, "**Indemnitees**") from and against any and all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred in connection with any third-party claim, suit, or other proceeding made or brought against any of the Indemnitees resulting from or arising out of: (i) the Services in this Agreement; (ii) Sub-Merchant's payment activities; (iii) the business of Sub-Merchant or its customers; (iv) any sales transaction acquired by Acquirer or Member Bank; (v) any information provided by Sub-Merchant on which Finix relied in determining to grant, extend or continue Services that was inaccurate, misrepresented or fraudulent; (vi) use or alleged misuse of the ACH system and/or fines assessed against Finix, Bank, or any Financial Institution in connection therewith; (vii) any noncompliance with the Operating Rules (or any rules or regulations promulgated by or in conjunction with the Associations) by Sub-merchant or its agents (including any TPSP); (viii) any issue, problems, or disputes between Acquirer and Sub-Merchant, or Bank and Sub-Merchant; (ix) any Data Incident, any infiltration, hack, breach, or violation of the processing system of Sub-Merchant, TPSP, or any other third party processor or system; (x) any breach or nonperformance of any provision of this Agreement on the part of Sub-Merchant, or its employees, agents, TPSPs, or customers; or (xi) any failure by Sub-Merchant to properly describe or deliver goods or services, or comply with its legal or contractual obligations to its customers. The indemnification obligations hereunder shall survive the termination of the Agreement.
- B. Limitation of Liability. Neither Party shall be liable for lost profits, lost business, or any incidental, special, consequential or punitive damages (whether arising out of circumstances known or foreseeable by the other Party) suffered by such Party, their customers or any third party in connection with the Services. However, nothing in the foregoing sentence is in any way intended, and shall not be construed, to limit (i) Sub-Merchant's obligation to pay any fees, assessments or penalties due under this Agreement, including but not limited to those imposed by telecommunications services providers, VISA, MasterCard and/or other Association(s); (ii) Sub-Merchant's liability for breach of its confidentiality obligations hereunder, or (iii) Sub-Merchant's obligation to indemnify Finix pursuant to this Agreement. In no event will Finix be liable for any damages or losses that are wholly or partially caused by Sub-Merchant, or its employees, agents, or TPSPs. Sub-Merchant is solely responsible for, and Finix expressly disclaims all liability for, Sub-Merchant's compliance with Applicable Laws and obligations related to its provision of the goods or services to Sub-Merchant's customers, or receipt of charitable donations. This may include providing customer service, notification and handling of refunds or consumer complaints, provision of receipts, or other actions not related to the services provided by Finix hereunder. Further, neither Finix nor Bank shall be liable to Sub-Merchant or Sub-Merchant's customers or any other person for any of the following: (i) any loss caused by a Transaction downgrade resulting from defective or faulty software or equipment; (ii) any loss or liability resulting from the product or service of a third party; (iii) denial of credit to any person or Merchant's retention of any Card or any attempt to do so; or (iv) any delay by an ACH Operator or Receiving Depository Bank in processing any credit or debit Entry, nor for the failure of a third party to process, credit, or debit any such Entry or for other acts of omission.
- C. Limitation of Damages. FINIX SHALL NOT BE LIABLE FOR ANY DAMAGES OR LIABILITIES IN ANY CLAIM ARISING BETWEEN THE PARTIES IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT THAT EXCEED IN THE AGGREGATE THE TOTAL AMOUNT OF FEES RECEIVED BY FINIX UNDER THIS AGREEMENT DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE APPLICABLE CLAIM FIRST ACCRUED, REGARDLESS OF THE LEGAL THEORY OR CAUSE OF ACTION.
- D. Warranty Disclaimer. SUB-MERCHANT ACKNOWLEDGES THAT FINIX HAS NOT PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS, OR DELAYS RESULTING FROM FINIX'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, FINIX'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE. SUB-MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND SUB-

MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.

9. **NOTICE.** All notices, requests, demands or other instruments, which may be or are required to be given by any Party herein, shall be in writing and each shall be deemed to have been properly given (i) three Business Days after being sent by certified mail, return receipt requested; (ii) upon delivery by a nationally recognized overnight delivery service to the addresses listed herein for the respective Parties; or (iii) solely in the case of notices from Finix to Sub-Merchant, (A) on the Sub-Merchant Statement, (B) through electronic communications on the **Vision2** or the **Vision2's** website, and/or (C) to the email address provided by Sub-Merchant in the Application as noted below, it being understood in each case that Sub-Merchant by this Agreement has expressly consented to receive effective legal notice by such means. Notices shall be addressed as follows:

If to Finix:  
Finix Payments, Inc.

631 Howard Street, Ste. 100  
San Francisco, CA 94105  
Attn: Legal Department

If to Sub-Merchant:  
The physical or email address provided in the Application  
Any Party may change the address to which subsequent notices are to be sent by written notice to the other Party.

10. **AMENDMENTS.** Finix may amend or modify this Agreement and any such amendment or modification will be effective and binding on Sub-Merchant upon notice. Sub-Merchant's continued use of Services after the effective date of any such amendment or modification shall signify Sub-Merchant's acceptance of, and agreement to, abide by the terms and conditions contained in any such amendment or modification. To withdraw Sub-Merchant's consent, Sub-Merchant must close its Account. Sub-Merchant can access a copy of the current terms of this Agreement at <https://finix-hosted-content.s3.amazonaws.com/flex/v2/finix-terms-of-service.html> or, in some cases, through the **Vision2's** terms of service. For the avoidance of doubt, notice may be given as specified in Section 9 (NOTICE) of these General Terms.

#### 11. MISCELLANEOUS.

- A. **Rights to Dispute Charges; Reports; Invoices.** You expressly agree that your failure to notify us or **Vision2** that you have not received any settlement funds within three (3) business days from the date that settlement was due to occur, or fail to reject any report, notice, or invoice within thirty (30) business days from the date the report or invoice is made available to you, shall constitute your acceptance of the same.
- B. **Investigations.** Sub-Merchant shall assist Finix in any and all investigations of Transactions in a timely manner and will provide written reports of investigated transactions to Finix upon Finix's request.
- C. **Confidentiality.** Neither Party shall disclose to any third party the Confidential Information disclosed by the other Party and shall not use any such Confidential Information for any purpose other than the purpose for which it was originally disclosed to the receiving Party. Each Party agrees to treat Confidential Information with the same degree of care and security as it treats its most confidential information, but in no circumstance less than a reasonable degree of care. Each Party may disclose such Confidential Information to employees and agents who require such knowledge to perform services under this Agreement, provided that such employees and agents are subject to obligations of confidentiality in regard to the protection of the Confidential Information no less binding than those set forth herein. Confidential Information shall not include information that (i) is known to the receiving Party at the time it receives Confidential Information; (ii) has become publicly known through no wrongful act of the receiving Party; (iii) has been rightfully received by the receiving Party from a third Party authorized to make such communication without restriction; (iv) has been approved for release by written authorization of the disclosing Party; or (v) is required by law to be disclosed. In the event either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information, the recipient shall promptly notify each other Party of such receipt and may, thereafter, comply with such subpoena or process to the extent permitted by law. The terms and conditions and commissions associated with this Agreement are specifically included in the definition of Confidential Information. The obligations of the Parties under this Section will survive termination of this Agreement for whatever reason, and will bind the Parties, their successors and assigns. Notwithstanding the foregoing, the Parties acknowledge and agree that

Data is not Confidential Information, and shall be subject to the terms, restrictions, and other provisions herein governing the Parties' use and access to Data in lieu of this paragraph.

- D. Independent Contractor; Third Party Beneficiary. In the performance of its duties herein, each Party shall be an independent contractor, not an employee or agent of the other Party. You are not a third-party beneficiary to any agreement between Finix and the Bank, and you may not bring any claims related thereto against the Bank. The Associations, Acquirer, or Member Bank may enforce the terms of this Agreement against Sub-Merchant.
- E. Cooperation. In their dealings with one another, each Party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the matters contemplated by this Agreement.
- F. Entire Agreement. This Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into between the Parties relating to the subject matter covered herein and constitutes the entire agreement of the Parties hereto. In the event that there is a conflicting term between the Application and the General Terms, the General Terms supersede the Application.
- G. Assignment. Neither this Agreement nor any of Sub-Merchant's rights or obligations may be assigned by Sub-Merchant without the prior written consent of Finix. A change in control of Sub-Merchant as a result of a sale, reorganization, merger or otherwise, shall be deemed an assignment and shall require the written consent of Finix.
- H. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
- I. Governing Law, Arbitration. This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to its principles of conflict of laws. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The number of arbitrators shall be one. The place of arbitration shall be in California. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- J. Attorneys' Fees. If Finix takes legal action against Sub-Merchant for any amounts due to Finix or if Sub-Merchant is required to indemnify Finix pursuant to this Agreement, Sub-Merchant shall pay reasonable costs and attorneys' fees incurred by Finix whether suit is commenced or not. Attorneys' fees are due whether or not an attorney is an employee of Finix or its affiliates.
- K. No Waiver. Any delay, waiver, or omission by a Party to exercise any right or power arising from any breach or default of the other Party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the Party. Any waiver shall not be deemed to modify any of the terms of the Agreement. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
- L. Bankruptcy. Sub-Merchant shall notify Finix within five days upon filing of voluntary or involuntary bankruptcy proceedings by or against Sub-Merchant. The Parties acknowledge that this Agreement constitutes an extension of financial accommodations by Finix to Sub-Merchant within the meaning of Section 365 of the Bankruptcy Code. The right of Sub-Merchant to receive any amounts due from Finix hereunder is expressly subject and subordinate to Disputes, Return Entries, recoupment, lien, set-off and security interest rights of Finix regardless of whether such Disputes, Return Entries, recoupment, lien, set-off and security interest rights are claims that are liquidated, unliquidated, fixed, contingent, matured, or un-matured.
- M. Compliance with Laws. Sub-Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations of the United States pertaining to Transactions.
- N. Force Majeure. Finix shall be excused from performing any of its obligations under this Agreement that are prevented or delayed by any occurrence not within Finix's control including, but not limited to, strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, war, riots, emergency conditions, interruption of transmission or

communications facilities, equipment failure, or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

- O. Survival; Severability. In the event of termination, all obligations of Sub-Merchant incurred or existing under this Agreement prior to termination shall survive the termination. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof. It is the Parties' desire that if any provision of this Agreement is determined to be ambiguous, then the rule of construction that such provision is to be construed against its drafter shall not apply to the interpretation of the provision.

**AGREED AND ACCEPTED**

## APPENDIX I TO TERMS OF SERVICE DEFINITIONS

“**ACH**” means the Automated Clearing House.

“**ACH Network**” means the funds transfer system (network) governed by the Operating Rules providing for the inter-financial institution clearing of electronic entries for participating financial institutions.

“**ACH Transaction**” means the acceptance of a check, whether in electronic or paper form, or routing and account information associated with Payor’s bank account for payment for goods sold and/or leased or services provided to Payor by Merchant and receipt of payment by Merchant via the ACH Network.

“**Account**” means a demand deposit account or other deposit account Finix or Sub-Merchant has with a financial institution that is permitted to be linked to a Service.

“**Acquirer**” shall mean Worldpay, LLC, located at 8500 Governors Hill Drive, Symmes Township, Ohio 45242, which is the entity contracted by Finix to submit sales drafts and transaction information to the Associations on behalf of Finix and to receive and pay to Finix settlement funding for such sales transactions.

“**Address Verification**” means a service that allows Sub-Merchant to verify Cardholder’s billing address with Issuer.

“**Agreement**” consists of the Finix Application, General Terms, and/or Transaction Services Agreement including all appendices, schedules, exhibits and attachments.

“**Application**” means the document or API by which Sub-Merchant applies to participate in Transactions using our products and services

“**Authorization**” means an affirmative response by or on behalf of an Issuer, to Sub-Merchant’s request to affect a Payment Card Processing Transaction, that a Payment Card Processing Transaction is within the Cardholder’s available credit limit and that the Cardholder has not reported the Card lost or stolen. All Payment Card Processing Transactions require Authorization.

“**Bank**” shall collectively refer to Acquirer and Member Bank.

“**Business Day**” means any day other than: Saturday or Sunday; or a day on which banking institutions are authorized by law or executive order to be closed; or a day on which the Federal Reserve Bank is closed.

“**Card(s)**” means a Visa, MasterCard, American Express or Discover Network credit card or debit card.

“**Card-Not-Present Transaction**” means mail order, telephone order, e-commerce (Internet) order, or other transactions that are not Card-Present Transactions.

“**Card-Present Transaction**” means a Payment Card Processing Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the magnetic strip or Chip.

“**Cardholder**” means a person authorized to use a Card.

“**Confidential Information**” means any information of a Party (including, without limitation, information received from third parties) disclosed to another Party, which is identified as, or should be reasonably understood to be, confidential to the disclosing Party or a third party, including, but not limited to non-public financial information that is personally identifiable to a customer, know-how, trade secrets, technical processes and formulas, software, merchant lists, unpublished financial information, business plans, projections, marketing data and the terms and conditions of this Agreement.

“**CVV/CID**” means a service that allows Sub-Merchant to verify Cardholder’s possession of Card through the identification of unique digits on Card.

“**Data**” shall mean the data and information provided to Finix hereunder (including without limitation Transaction information initially submitted by Cardholders or Payors), whether directly from Sub-Merchant or through the **Vision2** and its features, which Finix uses in connection with its performance of its respective obligations hereunder.

“**Data Incident**” means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of a Card or Cardholder Data in Sub-Merchant’s possession or control (or in the possession or control of Sub-Merchant’s employees, agents, or third-party contractors), regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

“**Dispute**” means a Payment Card Processing Transaction that the Cardholder contests with their bank.

“**eCheck Processing**” means the acceptance of an ACH or EFT transaction for payment of goods sold or services provided to bank account holders by Sub-Merchant and receipt of payment by Sub-Merchant via the ACH Network, whether the transaction is approved, declined, or processed as a NOC or other exception.

“**Effective Entry Date**” means the date placed on an ACH Transaction by the Originator of the transaction or the ODFI. The Effective Entry Date is normally the date the transfer is intended to take place. The Effective Entry Date may be, but is not necessarily always, the same date as the settlement of funds.

“**Electronic Funds Transfer Act**” means the law passed by the US congress in 1978, which set out the rights and obligations of consumers and their financial institutions regarding the use of electronic systems to transfer funds. This act is implemented in the Federal Reserve Bank’s Regulation E.

“**Entries**” means credit Entries, debit Entries, on-us Entries consistent with the NACHA Operating Rules, and any data for entries or any pre-notification entries.

“**Entry Settlement Limit**” means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Sub-Merchant by Finix in writing from time to time.

“**File**” means a group of ACH entries stored for delivery to an ACH receiving point.

“**Forced Sale**” means a Payment Card Processing Transaction processed without an approved electronic authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.

“**In-Process Entries**” means the aggregate dollar amount of all credit or debit Entries initiated by Finix and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.

“**Issuer**” means an Association member that issued a Card to a Cardholder.

“**IVR**” means interactive voice response unit used for an Authorization.

“**Member Bank**” shall mean Fifth Third Bank, N.A., located at 38 Fountain Square Plaza, Cincinnati, Ohio 45202, which is the financial institution contracted by the Acquirer that is a member of the Associations and provides Association sponsorship for card transactions submitted by Finix for processing.

“**NACHA**” means the National Automated Clearing House Association, which governs ACH Transactions.

“**ODFI or Originating Depository Bank**” means financial institutions that originate ACH Transactions on behalf of its customers. ODFIs must abide by NACHA Rules.

“**Operating Account**” means a demand deposit account at a financial institution through which fees, charges and credits due in accordance with this Agreement may be processed. Operating Account shall be used to describe all accounts established by the Sub-Merchant for the purposes described herein.

“**Originator**” means a company or entity that initiates entries into

the ACH Network.

“**Overlimit Entry**” means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit.

“**Password**” means confidential, unique personal numbers, codes, marks, signs, public keys, or other information composed of a string of characters used as a means of authenticating and accessing a Service.

“**Payment Card Processing**” means the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Sub-Merchant and receipt of payment from Finix whether the transaction is approved, declined, or processed as a Forced Sale.

“**Payor**” means a person authorized to use a Card or pay with a check.

“**Vision2 Fee**” means any fee imposed upon Sub-Merchant by Vision2 for value-added services, excluding the transaction processing services provided by Finix.

“**POS Equipment**” means point of sale equipment and/or software, including electronic terminals, other processing equipment, devices, accessories, components, or spare parts, and any related software or firmware.

“**Pre-Authorized Recurring Order Transactions**” means Transactions which have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Sub-Merchant without having to obtain approval from the Cardholder each time.

“**Pre-notification Entry**” means a non-dollar Entry entered prior to a dollar Entry to verify the accuracy of the routing and account numbers.

“**Processing Services**” means the Services.

“**RDFI**” or “**Receiving Depository Bank**” means a financial institution qualified by NACHA to receive ACH Transactions.

“**Regulation E**” means the regulation published by the “Federal Reserve.”

“**Return Entry**” or “**Return Entries**” means any item, which cannot be processed and is being returned by the RDFI to the ODFI for correction or re-initiation.

“**Rules**” means the by-laws, operating regulations and/or all other rules, guidelines, policies and procedures of VISA, MasterCard, Discover, American Express and/or other networks, and all other applicable rules, regulations and requirements of Member Bank, Finix providers, banks, institutions, organizations, associations, or

networks which govern or affect any services provided under this Agreement, and all state and federal laws, rules and regulations which govern or otherwise affect the activities of Sub-Merchant, including, but not limited to, those of the National Automated Clearing House Association (“NACHA”) and the Federal Trade Commission (“FTC”), as any or all of the foregoing may be amended and in effect from time to time, and the regulations and requirements of Member Bank or Finix.

“**SEC Codes**” or “**Standard Entry Class Codes**” means the three-character code within an ACH company/batch header, which identifies the type of transactions.

“**Security Procedures**” means, unless Finix and Sub-Merchant agree otherwise, the security requirements and procedure necessary to verify the authenticity of Entries.

“**Services**” means the Transaction processing services provided by Finix under this Agreement and features of those services that Finix may provide from time to time. Transaction processing services shall include Payment Card Processing Services, eCheck Processing Services, or both, depending upon whether Sub-Merchant applies for the Services set forth in Appendix II or Appendix III, or both.

“**Settlement Date**” means the date, on which settlement occurs, i.e., funds actually change hands as a result of an ACH entry.

“**Sub-Merchant Statement**” means an accounting or statement of all charges and credits to the Operating Account.

“**Transaction**” means an eCheck Processing Transaction or a Payment Card Processing Transaction, as applicable. “Transaction” also includes credits and voids.

## APPENDIX II TO TERMS OF SERVICE PAYMENT CARD PROCESSING

Finix shall provide, and Sub-Merchant shall receive, the services described below (the “**Payment Card Processing Services**”). Sub-Merchant agrees that pursuant to any such Payment Card Processing Services it will be receiving under the terms of the Agreement it will also be bound by the terms and conditions of this Appendix II. Sub-Merchant acknowledges that no other agreements or understandings pursuant to such Payment Card Processing Services, unless otherwise stated by Finix shall be applicable to the Payment Card Processing Services. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the main body of the Agreement.

1. **PAYMENT CARD PROCESSING.** Sub-Merchant is in the business of selling and/or leasing goods or providing services to its customers as described in the Finix Application. Sub-Merchant has requested and Finix has agreed to permit Sub-Merchant’s participation in the Processing Services. Without the prior written consent of Finix, Sub-Merchant is not authorized to process Payment Card Processing Transactions for payment for any other type of goods or services other than as set forth in the Finix Application. Finix reserves the right to establish certain limits on volume of daily, weekly, and monthly transactions and dollar limits per Payment Card Processing Transaction that Sub-Merchant may process.

2. **FINIX OBLIGATIONS AND REQUIREMENTS.**

A. Finix will provide Payment Card Processing Services to Sub-Merchant. Finix agrees to sponsor Sub-Merchant’s acceptance of cards for Payment Card Processing Transactions. Finix agrees to provide Sub-Merchant with the Payment Card Processing Services indicated on the Finix Application, as amended from time to time by Finix during the term of the Agreement, subject to the terms and conditions of the Agreement.

B. Electronically Transmitted Transactions. Finix shall deliver payment to Sub-Merchant by a credit to the Operating Account equal to the reconciled summary of Sub-Merchant’s total summary Payment Card Processing Transactions since the previous credit. This credit will be net of following charges:

- i. The sum of all Cardholder charges denied, refused or charged back;
- ii. All refunds processed on account of Cardholders during said time period;
- iii. All taxes, penalties, charges and other items incurred by Finix that are reimbursable pursuant to this Agreement; and
- iv. Fees, including but not limited to an amount equal to a specified percentage of the total cash price of each draft (“**Merchant Discount Rate**”), a specified

amount per Payment Card Processing Transaction (“**Transaction Fee**”), and additional fees such as a monthly terminal fee, monthly statement fee, installation fees and any other fees agreed to by the Parties.

Any credits to the Operating Account are provisional only and subject to revocation by Finix until such time that the Payment Card Processing Transaction is final and no longer subject to dispute by the Issuer, Cardholder, or Associations.

C. Disputes. Sub-Merchant understands and agrees that Finix is not in any way financially responsible for Disputes. Finix shall be authorized to dispute to Sub-Merchant any Payment Card Processing Transactions as specified throughout this Agreement and for reasons including, but not limited to, the following:

- i. No specific prior authorization for the Payment Card Processing Transaction was obtained;
- ii. The Payment Card Processing Transaction was made at or by a Merchant or Sub-Merchant other than the Sub-Merchant named in the Application associated with this Agreement;
- iii. The Payment Card Processing Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
- iv. Any representation or warranty made by Sub-Merchant in connection with the Payment Card Processing Transaction is false or inaccurate in any respect;
- v. The Payment Card Processing Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been cancelled;
- vi. The Card giving rise to the Payment Card Processing Transaction was cancelled prior to, or at the time of, the Payment Card Processing Transaction;

- vii. The Card expired prior to the date of the Payment Card Processing Transaction or the date of Payment Card Processing Transaction was prior to the validation date, if any, indicated on the Card;
- viii. All required information was not submitted to Finix;
- ix. Finix or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Sub-Merchant and Cardholder;
- x. The Cardholder makes a written complaint to Finix or Issuer that the Cardholder did not make or authorize the Payment Card Processing Transaction;
- xi. A setoff or counterclaim of any kind exists in favor of any Cardholder against Sub-Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Payment Card Processing Transaction; or
- xii. A Payment Card Processing Transaction is charged back by an Issuer.

In any case, including those defined above, Finix shall not be obligated to accept a Payment Card Processing Transaction for credit to the Operating Account. If Finix has credited the Operating Account or Reserve Account for such Payment Card Processing Transaction, Finix may return the Payment Card Processing Transaction to the Sub-Merchant, and Finix shall recover the amount of the Transaction from the aforementioned account. Sub-Merchant agrees that Finix without prior notice to Sub-Merchant, may:

- i. Charge the amount of the Payment Card Processing Transaction to the Operating Account or Reserve Account;
- ii. Recoup the amount of the Payment Card Processing Transaction by adjustment of the credits due to Sub-Merchant; or
- iii. Set off the amount of the Payment Card Processing Transaction against any account or property Finix holds for or on behalf of Sub-Merchant.

### 3. SUB-MERCHANT OBLIGATIONS AND REQUIREMENTS.

A. Adjustments and Returns. Sub-Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold or leased to its customers whenever appropriate. In the event that goods are returned, or any services are discounted, written off,

or cancelled, or any price is adjusted on a Payment Card Processing Transaction, Sub-Merchant will prepare and transmit a credit or return Payment Card Processing Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of sales drafts transmitted that day. In the event the amount of credit or return transactions exceeded the amount of sales draft transactions, Finix shall charge the Operating Account for the excess. Sub-Merchant shall make no cash refunds on Payment Card Processing Transactions and shall handle all credit adjustments as provided in this Section. Sales drafts for any Payment Card Processing Transaction for which no refund or return will be given must be conspicuously marked as a “final sale” and “no returns” on the customer’s copy of the sales draft at the time of the Payment Card Processing Transaction. All Sub-Merchants must follow Visa, MasterCard, American Express, and Discover Network reservation/no-show policy. All Sub-Merchants must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified of the exact number of days required for reservation deposit refunds. A Sub-Merchant not following Visa, MasterCard, and Discover Network reservation/no-show policy may receive a Dispute to the Operating Account for lodging regulation violations.

B. Customer Complaints. Sub-Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. Finix reserves the right to charge Sub-Merchant reasonable fees and reimbursement, in addition to any applicable Association fees or charges, on account of excessive Cardholder inquiries, refunds, or Disputes. Sub-Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Sub-Merchant has received notice:

- i. The Cardholder's name;
- ii. A unique confirmation number, transaction sequence number, or other identifier that the Sub-Merchant can use to reference the transaction in subsequent communications with Finix;
- iii. The date and time the Cardholder asserted the claim or defense;
- iv. The nature of the claim or defense; and
- v. The action that Sub-Merchant took in an attempt to resolve the dispute.

Upon request, Sub-Merchant shall furnish Finix with this information in writing within ten (10) days.

- C. Sub-Merchant shall not (i) disclose any Cardholder Data to any entity except for necessary disclosures to affected cardholders, and through Acquirer to the Associations, (ii) transfer, or attempt to transfer, financial liability by asking or requiring cardholders to waive their dispute rights, or (iii) submit transactions on behalf of another entity that the Associations would consider a sub-ISO, payment service provider, payment facilitator, or other third-party payment provider.

#### 4. COMPLIANCE.

- A. Use of Marks. Merchant will display prominently at its place of business, where payments are accepted for card present transactions, Card emblems and other promotional material and literature provided by Finix. Subject to the prior written consent of Finix and upon such conditions as authorized by Finix, Sub-Merchant may use Card service marks or design marks in its own advertisement and promotional materials.

- B. You will immediately notify us of any suspected, alleged, or confirmed compromised data (“**Compromised Data Event**”), regardless of the source, including from any of your third-party service providers. We or our service providers may engage a forensic vendor approved by an Association. You must cooperate with the forensic vendor so that it may immediately conduct an examination of your equipment, systems, and your third-party service providers’ procedures and records and issue a written report of its findings. You agree that upon your suspected or actual discovery of a Compromised Data Event, you will not alter or destroy any related records. You agree to maintain complete and accurate documentation regarding any modifications made to the records. You will share with us and our servicers information related to your or any Associations’ investigation related to any actual or suspected Compromised Data Event (including, but not limited to, forensic reports and systems audits), and we and our service providers may share that information with Associations. Upon notice to you, we or our servicers, or the respective representatives of each may conduct remote electronic scans of your systems to confirm compliance with the requirements of the Associations and Applicable Laws. You must promptly cooperate with any such parties to facilitate the scans.

- C. Sub-Merchant is responsible for the security of Cardholder Data.

- D. Website Requirements for E-Commerce Sub-Merchants. A website operated by the Sub-Merchant that accepts Card Transactions must contain all of the following information:

- i. Complete description of the services offered;
- ii. Return merchandise and refund policy, which includes the communication of the return policy during the order process and the requirement that the cardholder must be allowed to select a “click to accept” option or other affirmative button to acknowledge the policy;
- iii. Terms and conditions must be displayed on the same screen view as the Finix screen used to present the total purchase amount or within the sequence of web pages the cardholder accesses during the Finix process;
- iv. Customer service contact including e-mail address or telephone number;
- v. Transaction currency;
- vi. Export or legal restrictions;
- vii. Delivery policy;
- viii. Consumer data privacy policy;
- ix. The security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
- x. Address of the Sub-Merchant outlet’s permanent establishment, including the Sub-Merchant outlet country.

The above information must be provided either (i) on the same screen view as the Finix screen used to present the total purchase amount or (ii) within the sequence of web pages the Cardholder accesses during the Finix process.

5. **TERMINATION**. In order to protect Finix and the Associations, Finix may, in addition to the rights granted in the General Terms, terminate this Agreement, or any or all of the Services provided hereunder, immediately in any of the following circumstances:

- A. Disputes in excess of Association monitoring guidelines;
- B. Sub-Merchant’s percentage of error Payment Card Processing Transactions or retrieval requests is excessive in the opinion of Finix; or
- C. Sub-Merchant appears on the Association Terminated Merchant File.

6. **AUDITS**. At any reasonable time (during normal business hours) upon reasonable notice to you, you shall allow

auditors, including the auditors of any Association or any third party designated by Finix, Member Bank, or the applicable Association, to review the files held and the procedures followed by you at any or all of your offices or places of business. You agree that the cost of such audit shall be borne by you. You shall assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is required by an Association, Member Bank, or regulatory agency, and/or required by the Operating Rules or applicable law, Finix may, at its option, and at Sub-Merchant's sole expense, either retain a third party to perform the audit, or require that Sub-Merchant directly retain a specific third-party auditor. If Finix requires that Sub-Merchant directly retain the auditor, Sub-Merchant shall promptly arrange for such audit to be performed, and will provide Finix Member Bank, and the Associations with a copy of any final audit report.

## 7. COLLECTION AND USE OF PAYMENT CARD PROCESSING TRANSACTION INFORMATION.

### A. Documenting Payment Card Processing Transactions.

Merchant shall submit the following information to Finix in connection with Transaction processing:

- i. The DBA name of Merchant, name of Merchant and Merchant's physical and email address;
- ii. Merchant customer service telephone number;
- iii. Merchant Internet address;
- iv. Merchant Number assigned by Member Bank;
- v. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card;
- vi. Name, address, and telephone number of Cardholder (when required by the Associations); and
- vii. Such additional information as may be required by Finix or Member Bank and/or the Associations, from time to time.

Merchant shall not submit a Payment Card Processing Transaction (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Payment Card Processing Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant must not transmit a Payment Card Processing Transaction that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions.

Merchant may transmit a Payment Card Processing Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Payment Card Processing Transaction and within time limits established by the Associations.

### B. Authorization for Payment Card Processing Transactions. Merchant shall obtain Authorization for Payment Card Processing Transactions as follows:

i. Electronically Transmitted Transaction. Sub-Merchant shall submit each Payment Card Processing Transaction for Authorization to Finix's designated authorization center. Finix's designated authorization center shall respond with the Issuer's authorization or rejection to a Payment Card Processing Transaction transmitted for Authorization and shall capture and process for Sub-Merchant the information relating to the Payment Card Processing Transaction.

ii. Card-Present Transactions. The following additional requirement applies to Card-Present Transactions (if applicable):

a. If a terminal or software application is inoperable at the time of an Authorization request, the Payment Card Processing Transaction may be manually authorized. In that case, the Payment Card Processing Transaction shall be entered as a Forced Sale, provided the approval number is also entered, and Sub-Merchant shall be subject to an additional IVR authorization fee as outlined in the Application.

b. Sub-Merchant shall ensure that the following actions are performed at the point of sale: (1) verify that the Card is legitimate and valid and not visibly altered or mutilated; (2) capture Card data using only the POS Equipment by inserting the Card (chip card), swiping the Card (magnetic stripe), or tapping/waving the Card (contactless); (3) ensure that the Cardholder (e.g., a person authorized to use a card) enters their PIN using the keypad if prompted or provides their signature unless Company is participating in a "no signature required" or PINless program; (4) verify the Card's "valid from date" and the expiration date; (5) verify that the Card number and expiration date on the Card are the same as on the transaction receipt and the number displayed on the POS Equipment; (6) verify that the name on the

Card-Present Transaction receipt is the same as the name on the front of the Card (if applicable); and (7) ensure that the Cardholder appears to be the person shown in the photograph (for Cards with a photograph of the Cardholder).

- c. Sub-Merchant shall not: (1) require a Cardholder to complete a postcard or similar device that includes the Cardholder account number, Card expiration date, signature or any other Card account data in plain view when mailed; (2) require a Cardholder to provide fingerprints or other personal information, such as address, license, telephone number or social security number as a condition for honoring a Card, unless required to do so by the Payment Network Rules; or (3) make a photocopy of a Card or require the Cardholder to provide a photocopy or facsimile of a Card unless the photocopy or facsimile is required by a Payment Network or Sponsor Bank.

iii. Card-Not-Present Transactions. The following additional requirements apply to Card-Not-Present Transactions:

- a. All Card-Not-Present Transactions are at Sub-Merchant's risk. As to each Card-Not-Present Transaction, Sub-Merchant warrants to Finix that the person whose name is submitted as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Finix may dispute the Payment Card Processing Transaction to Sub-Merchant. If Finix charges back the Payment Card Processing Transaction to Sub-Merchant, Sub-Merchant shall pay Finix the amount of the Payment Card Processing Transaction, a Dispute fee, plus any Association fine or assessment. Finix may charge the Payment Card Processing Transaction to the Operating Account or Reserve Account without prior notice to Merchant;
- b. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required for Documenting Payment Card Processing Transactions, also shall indicate an authorization code, if required; customer address and address verification; CVV (card verification value), CID (card identification data);
- c. If Sub-Merchant accepts a Recurring Order Transaction, the Cardholder shall execute and

deliver to Sub-Merchant a written request for this pre-authorization. This written request shall be maintained by Sub-Merchant and made available upon request to Finix. All annual billings must be reaffirmed at least once a year. Sub-Merchant shall not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled or from Finix that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored; and

- d. For Card-Not-Present Transactions Sub-Merchant shall verify Cardholder's address through the Association network. For telephone or mail order sales, Sub-Merchant shall transmit a ticket/invoice number and shall perform Address Verification Service (AVS), CVV2, and CID and only accept as approved those Payment Card Processing Transactions receiving at least a partial match or system unavailable response.

- C. Prohibited Payment Card Processing Transactions. You must not (i) submit a transaction for payment that is illegal, fraudulent, damaging to the reputation or brand of any card network, or not authorized by the cardholder; (ii) add any tax to transactions, unless applicable law expressly requires that you impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (iii) 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; or (iv) accept a card to collect or refinance an existing debt that has been deemed uncollectable. Transactions submitted must result from bona fide activity between you and a cardholder. Transactions must not involve any coercion, intimidation, or unfair act upon the cardholder. The Associations' Operating Rules (links provided on page 1 of this Agreement) provide guidance as to certain transactions that may be prohibited, restricted or otherwise limited. You are responsible for completing transactions that comply with the same. The following are several examples of transactions, transaction limits or transaction characteristics for which you should determine if your intended actions are permitted and/or limited in any manner:
  - i. The establishment of minimum or maximum transaction amounts;
  - ii. Transactions with charges related to the payment transaction itself, above and beyond the goods or services sold;

- iii. Any determination as to whether certain cards may or may not be accepted including whether cash payment discounts would be offered to a consumer;
- iv. Acceptance of cards for other than the sale of goods or services such as transactions involving debt repayment;
- v. Submission of a transaction for payment from card belonging to you;
- vi. Transactions involving the disbursement of cash; or
- vii. Refunding a prior payment transaction to other than the original charged card.

D. Disclosure and Storage of Payment Card Processing Transaction Information.

- i. A Merchant must not disclose a Card account number, personal information, or other Payment Card Processing Transaction information to third Parties other than to Finix or Merchant Servicers or Member Bank for the sole purpose of:
  - a. Assisting the Merchant in completing the transaction; or
  - b. As specifically required by law.
- ii. Merchant may only disclose Payment Card Processing Transaction information to approved third parties for the sole purpose of:
  - a. Supporting a loyalty program; or
  - b. Providing fraud control services.
- iii. A Merchant must store all material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and render all

such Data unreadable prior to discarding. A Merchant must not do any of the following:

- a. Retain or store full contents of any track on the magnetic stripe subsequent to a Payment Card Processing Transaction;
- b. Retain or store CVV/CID Data subsequent to Authorization of a Payment Card Processing Transaction;
- c. Request the CVV/CID Data on any paper form; and
- d. Sell or disclose databases containing Cardholder account numbers, personal information, or other Card Transaction Data to third Parties.

E. Use and Disclosure of BIN Information. A Merchant that receives BIN information from Bank must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

8. **AMENDMENTS TO CARDS AND/OR PAYMENT CARD PROCESSING SERVICES.** Finix or Member Bank may amend or delete Cards or Payment Card Processing Services listed in the Application by notifying Merchant in writing. All provisions of this Agreement shall apply to Cards or Payment Card Processing Services added to this Agreement. Finix shall notify Merchant of the fees to be charged for processing the additional Cards and Payment Card Processing Services. Acceptance by Merchant of a new approved Card as payment for a Payment Card Processing Transaction or continued use of Payment Card Processing Service after Finix or Member Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions. For the avoidance of doubt, notice by Finix shall be made in accordance with Section 9 (NOTICE) of the General Terms of this Agreement.

### APPENDIX III TO TERMS OF SERVICE eCHECK/ACH PROCESSING

Finix shall provide, and Sub-Merchant shall receive (if indicated in the Application), eCheck Processing Services. The eCheck Processing Services shall include Entries to Accounts maintained by Finix or at a financial institution (“**Financial Institution**”) initiated by Finix on behalf of Sub-Merchant by means of the ACH Network where standards, rules, and procedures are established by NACHA. Sub-Merchant agrees that pursuant to any such eCheck Processing Services it will be receiving under the terms of the Agreement, it will also be bound by the terms and conditions of this Appendix III. Sub-Merchant acknowledges that no other agreements or understandings pursuant to such eCheck Processing Services, unless otherwise stated by Finix shall be applicable to the eCheck Processing Services. Finix shall, where necessary to provide an eCheck Processing Service, utilize the services of its chosen Financial Institution. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the main body of the Agreement.

1. **TYPES OF ENTRIES.** Financial Institution will transmit debit and/or credit Entries initiated by Finix on behalf of Sub-Merchants to the ACH Network as provided in the Rules and this Agreement. As used in this Agreement, “**Internet-Initiated Entry**” (aka “**WEB**”) shall mean a debit Entry or enrollment in recurring debit to a consumer account initiated by an Originator pursuant to an authorization that is obtained from the receiver via the Internet.
2. **TERMINATION.** Finix may, in addition to the termination rights granted in the General Terms, terminate this Agreement immediately in the following circumstances:
  - A. Sub-Merchant’s total of unauthorized returns, summary of losses suffered or incurred by Merchant in connection with failed or reversed transactions are excessive in the opinion of Finix;
  - B. Sub-Merchant is in violation of the Rules or applicable laws, provided that such violation presents a reputational, financial, or regulatory risk in the reasonable judgment of Finix; or
  - C. Sub-Merchant completed transactions in violation of the laws and regulations of the United States;
3. **WARRANTIES.** Sub-Merchant certifies to Finix that it is in compliance with all warranties a Party is deemed by the Rules to make with respect to Entries originated by Sub-Merchant. These warranties include, but are not limited to, the following:
  - A. Each Entry is accurate, is timely, has been authorized by the Party whose account will be credited or debited, and otherwise complies with the Rules;
  - B. Each debit Entry is for the sum which, on the settlement date with respect to it will be owing to Sub-Merchant from the Payor, whose account will be debited, is for a sum specified by such Party to be paid to Sub-Merchant, or is a correction of a previously transmitted erroneous credit Entry;
  - C. Sub-Merchant will comply with the terms of the Electronic Funds Transfer Act of Regulation E, if applicable, or UCC4A, if applicable and Merchant shall otherwise perform its obligations under this Agreement in accordance with all applicable laws and regulations; and
  - D. Merchant certifies its compliance with all warranties made by a Party pertaining to such Entries exchanged through the ACH Network.
5. **AUTHORIZATIONS.**
  - A. Authorization Agreement. All debits to Payor accounts must be authorized by the Payor in writing and must be signed or similarly authenticated in a manner that is compliant with the Rules. Sub-Merchant agrees that it will obtain proper authorization in accordance with the Rules and U.S. laws for each initiation debit or credit Entry to a Payor’s account. An authorization agreement must be readily identifiable as either an ACH credit or ACH debit authorization and must clearly and conspicuously state the terms of the authorization in order that the Parties to the ACH Transaction understand the authorization.
  - B. Retention of Authorizations. Sub-Merchant must retain the signed or authenticated authorization for a period of two (2) calendar years following the termination or revocation of the authorization. Sub-Merchant must promptly present a copy of the Payor’s authorization to Finix upon Finix’s request.
  - C. Termination of Authorization. Sub-Merchant agrees that it will not initiate an Entry after the termination or revocation of a consumer’s authorization.
6. **NAME AND ACCOUNT NUMBER INCONSISTENCY.** Sub-Merchant acknowledges that if an Entry describes the receiver inconsistently by name and account number, payment of the Entry may be made as provided in the Rules on the basis of the account number even if it identifies a Party different from the named receiver.

7. **PROVISIONAL CREDIT.** Sub-Merchant acknowledges that the Rules make provisional any credit given for an Entry until Finix crediting the account specified in the Entry receives final settlement. If Finix does not receive final settlement, it is entitled to a refund from the credited Party and the originator of the Entry shall not be deemed to have paid the Party.
8. **TRANSMISSION OF ENTRIES.**
- A. **Transmission of Entries.** Sub-Merchant shall comply with any and all of Finix's procedures for conforming all Entries to the format, content, data encryption, and other specifications contained in the Rules. Sub-Merchant authorizes Finix and Financial Institution to transmit all Entries received in accordance with the terms of this Agreement and to credit or debit such Entries to the specified accounts.
- B. **Security of Transmission.** Finix is responsible for establishing and maintaining the procedures to safeguard against unauthorized transmissions. Sub-Merchant agrees to comply with any procedures or safeguards required by Finix in carrying out its security obligations.
9. **EXPOSURE LIMITS.** Sub-Merchant shall comply with the transaction limits established by Finix based on regulatory file limit guidelines as notified by Finix. Sub-Merchant agrees that Finix will not process an Overlimit Entry. Finix will suspend any Overlimit Entry submitted by Sub-Merchant and may, following its receipt of an Overlimit Entry, suspend all In-Process Entries. Sub-Merchant acknowledges that any Overlimit Entry or other In-Process Entries suspended by Finix will not settle on their scheduled Settlement Date. If Sub-Merchant wishes to initiate an Entry through Finix that would cause the amount of In-Process Entries to exceed the Entry Settlement Limit, Sub-Merchant may submit to Finix its request to initiate an Entry that otherwise would be an Overlimit Entry. Sub-Merchant must submit its request at least two (2) banking days prior to the date on which Sub-Merchant wishes to initiate the Entry that otherwise would be an Overlimit Entry. Finix may require from Sub-Merchant financial or other information in connection with Finix's consideration of the request. Finix may grant or deny the request at its sole discretion. In addition to the foregoing, Finix generally reserves the right to limit the nature and amount of the preauthorized debit/credit Entries processed under this Agreement or to refuse to process any debit/credit Entries under this Agreement if, in Finix's sole judgment (i) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (ii) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (iii) a preauthorized credit Entry or the return of a preauthorized debit Entry would create an overdraft of the Operating Account. If any of the foregoing actions are taken by Finix with respect to a particular preauthorized debit/credit Entry, Finix will notify Sub-Merchant as promptly as practicable, but in no event later than two (2) banking days after the decision.
10. **CANCELLATION, REJECTION, RETURN OR CHANGE OF ENTRIES.**
- A. **Cancellation or Amendment of Entries.** Sub-Merchant shall have no right to cancel or amend any Entry/File after receipt of Entry/File by Finix.
- B. **Return Entries.** To the extent Finix has allowed Sub-Merchant to withdraw funds related to a Return Entry and sufficient funds are not available in the Operating Account to reimburse Finix Sub-Merchant shall provide the immediately available funds to Finix in the amount necessary to reimburse Finix or Finix shall be authorized to take the outstanding funds from the Reserve Account if one has been established.
- C. **Notification of Change.** Finix will notify Sub-Merchant of Correction Entries ("COR"), which are commonly referred to as Notification of Change ("NOC") Entries, received no later than two (2) banking days after the settlement date of the NOC. Sub-Merchant shall make the submitted changes within six (6) days of receipt of the NOC information or before the next "live" Entry, whichever is later. If the NOC is incorrect, Sub-Merchant shall notify Finix who shall direct Financial Institution to generate a Refused NOC and deliver it to Sub-Merchant within fifteen (15) calendar days.
11. **REVERSALS.** Sub-Merchant may initiate a reversing Entry or File of Entries for erroneous or duplicate transactions. In doing so, Sub-Merchant warrants that it has initiated the Entries or Files within five (5) banking days of the original Entry or Entries and within 24 hours of discovery of the error. Sub-Merchant also warrants that the account holder of a reversing Entry will be notified of the reversal, and the reason for the reversal, no later than the settlement day of the reversal. Notwithstanding the foregoing, reversals, whether for Entry or File of Entries for erroneous or duplicate transactions or otherwise, are not available and may not be initiated in connection with payments received through the Finix Bank Bill Payments solution.
12. **COMPLIANCE.** Sub-Merchant agrees to comply with and be bound by the current Rules in existence as they may be amended from time to time. The duties of Merchant set forth in this Appendix in no way limits the requirements of complying with the Rules. Any fines or liabilities imposed against Finix or Financial Institution for a violation of the Rules caused by an action and/or inaction of Merchant shall

be assessed against Merchant. Costs associated with Rules publications and/or association membership will be the responsibility of Merchant.



## MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS (“**Sub-Merchant Agreement**”) is made among Worldpay, LLC and its designated Member Bank (collectively “**Acquirer**”) and the sub-merchant named in the Application that applies to participate in Transactions using Finix’s processing products (“**Sub-merchant**”) in connection with the Agreement between Sub-merchant and Finix Payments, Inc. (“**Provider**”). Acquirer will provide Sub-merchant with certain payment processing services (“**Services**”) in accordance with the terms of this Sub-Merchant 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 Sub-Merchant 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:

1. **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 review the VISA, MasterCard, and Discover websites for a copy of the Visa, MasterCard and Discover regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. 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.

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.

2. **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 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 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.

3. **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.
4. **Term and Termination.** This Sub-Merchant Agreement shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Sub-Merchant Agreement shall begin, and the terms of the Sub-Merchant Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Sub-Merchant 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 Sub-Merchant 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) Acquirer 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.
5. **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 Sub-Merchant Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS SUB-MERCHANT 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 Sub-Merchant Agreement. In the event that Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Sub-Merchant 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 Sub-Merchant Agreement or the Services. Sub-merchant acknowledges Acquirer is only providing this Sub-Merchant 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 Sub-Merchant Agreement and Acquirer elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Sub-Merchant 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 Sub-Merchant Agreement, Acquirer will cease to provide such services after receipt of notice from Provider and this Sub-Merchant Agreement will govern Acquirer's relationship with Sub-merchant.

6. **Miscellaneous.** This Sub-Merchant 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 Sub-Merchant Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Sub-Merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees, and assignees. This Sub-Merchant 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 Sub-Merchant Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Sub-Merchant 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 Sub-Merchant Agreement will be construed as if such provision is not contained in the Agreement. "**Member Bank**" as used in this Sub-Merchant Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Sub-Merchant Agreement. As of the commencement of this Sub-Merchant Agreement, Member Bank shall be Fifth Third Bank, N.A. The Member Bank is a party to this Sub-Merchant 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.

IN WITNESS WHEREOF, this Sub-Merchant Agreement has been accepted and executed by Sub-merchant's authorized officer as of the Effective Date.