

# ARRAY MERCHANT PROCESSING TERMS

These Merchant Processing Terms provide additional terms applicable to the use of, and access to, the applicable Merchant Processing Services available within Company's Platform Services subject to the terms of an executed Order, including enablement of the applicable Merchant Processing Services within the Platform by Company and Client. The provision of Merchant Processing Services by Company to Client pursuant to the Merchant Processing Terms set forth below shall be subject to the terms and conditions of the Master Services Agreement between Company and Client that governs the provision of the Platform and Platform Services (the "MSA") and any applicable Order. If these Merchant Processing Terms and the terms of the MSA or Order conflict or are inconsistent, these Merchant Processing Terms shall govern and control strictly as it relates to the provision of the applicable Merchant Processing Services provided by Company.

## 1. GENERAL TERMS; DEFINITIONS

- A. "Account" means an account portal established for Client by Company, and accessed by Client or Company through an application programming interface ("API"), integration, or online portal to utilize the Platform Services.
- B. "Acquiring Bank" means the financial institution supplying Client with the ability to accept credit and debit cards for payments. The financial institution will charge Client fees for providing these services.
- C. "ACH" means Automated Clearing House, which is an electronic network that allows the exchange and settlement of electronic payments between financial institutions.
- D. "Card Association" means any network or association associated with processing Payment Cards of a specific brand, including but not limited to American Express Company, Discover Financial Services, JCB Co., Ltd., Mastercard Incorporated, Visa Inc., or any debit network, and each of their subsidiaries and successors.
- E. "Payment Cards" means Visa, Mastercard, Discover, Amex, and any other Card Association debit or credit card that Client and Company mutually agree to participate in.
- F. "PCI DSS" means Payment Card Industry Data Security Standard.
- G. "Rules" means the rules, requirements, policies, procedures, and standards issued by the Card Associations or other industry bodies such as the PCI Security Standards Council LLC, including without limitation the PCI DSS and the PCI Software Security Framework, or any successor or replacement framework or standard implemented by the PCI Security Standards Council, as each may

be amended from time to time by the Card Associations, National Automated Clearing House Association, or other applicable authorities.

- H. "Third Party Service Provider" shall incorporate the definition as provided in the MSA, but for the purpose of these Merchant Processing Terms, extend to include a third party entity that maintains aspects of the Merchant Processing Services or provides certain bank and/or merchant payment services including but not limited to billing, reporting, customer service, authorization, and settlement services.
- I. "Transaction(s)" means any billable occurrence completed or submitted under Client Account including but not limited to sale, void, refund, credit, offline force, capture, authorization, validate, update or settlement regardless of whether approved or declined.
- J. There may be defined terms used in these Merchant Processing Terms that are defined within the MSA, therefore these Merchant Processing Terms should be read in conjunction with the applicable MSA.

## **2. SERVICES DESCRIPTION.**

- A. Merchant Processing Services. Our Merchant Processing Services include processing of ACH Transactions by Company or its agents that it may designate from time to time, on behalf of Client and / or its Subscribers subject to the terms provided herein.

## **3. LICENSE GRANT.**

- A. Client grants Company a royalty-free, non-exclusive license (with right to sublicense) to use Confidential Information and Personal Information, materials, and other intellectual property as necessary or useful for Company to provide the Merchant Processing Services to Client and to otherwise perform Company's obligations under these Merchant Processing Terms. Company may collect and hold Confidential Information or Personal Information from and about Client and Subscribers for the purpose of providing the Merchant Processing Services. Client understands and agrees that such Confidential Information or Personal Information may be shared with and used by certain third parties (including without limitation Third Party Service Providers, government agencies, or courts). Additionally, Client understands that such Confidential Information or Personal Information may be shared with Company by such certain third parties and Client authorizes Company to receive Client's and Subscriber's Confidential Information or Personal Information from such third parties.

## **4. CLIENT REPRESENTATIONS AND WARRANTIES.**

- A. In addition to Client's compliance with these Merchant Processing Terms, Client will comply, at its own expense, with all Rules, Applicable Laws, regulations, rules, ordinances, orders of governmental authorities, and then-current legal obligations and security measures including without limitation those issued by the United States government, federal, state and municipal laws and ordinances, Card Association, the Federal Trade Commission, Consumer Financial Protection Bureau, PCI DSS and any other governing body. You will comply with all Company security protocols, notices and safeguards in effect during the term of these Merchant Processing Terms.
- B. Client shall not request, introduce, or process Transactions using the Merchant Processing Services on behalf of any other person or entity, and shall not use the Merchant Processing Services in any other prohibited manner, including those set forth in Appendix A and set forth in the Rules or in furtherance of any activity that may cause Company to be subject to investigation, prosecution, or legal action.
- C. Client expressly acknowledges and agrees that Client is assuming the risk of compliance with all provisions of the Rules, regardless of whether Client has possession of such Rules. Client warrants that it has taken such precautions as are necessary to ensure that Client Confidential Information and Subscriber Personal Information is protected and that Client's electronic systems are secure from breach, intrusion or compromise by any unauthorized third parties. In the event that Client's system is breached and an unauthorized third party has access to or has accessed Subscriber Personal Information, Client shall notify the designated parties as required under any applicable laws or industry guidelines and shall immediately notify Company of such breach and take such prompt action and precautions as necessary to prevent any continuous or additional breach.
- D. Client is solely responsible for the security of Confidential Information and Personal Information residing on servers owned or operated by Client, or any third party designated by Client (e.g., a web hosting company, processor, or other service provider), including Payment Card numbers and any other Personal Information. Client shall comply with all Card Association rules, applicable laws and regulations governing the collection, retention and use by Client of Payment Card and other financial information, and Client agrees to provide notice to Subscribers on Client's web site that discloses how and why personal and financial information is collected and used, including uses governed by these Merchant Processing Terms.
- E. Client is solely responsible for verifying the accuracy and completeness of all Subscriber Personal Information submitted to Company associated with processing a Transaction on Client's behalf. Client is liable for any Transactions that are unauthorized, improperly processed or approved, wrongfully

declined, or otherwise due to providing inaccurate or incomplete Subscriber Personal Information to Company, or for any unauthorized, illegal, or fraudulent access to any Transaction or Account data or Subscriber's Personal Information.

- F. Client is solely responsible for the security of its credentials associated with the API, and the security of information and data submitted through the API.
- G. Client will not use, disclose, sell or disseminate any card, cardholder, bank account, or ACH information obtained in connection with a Transaction except for purposes of completing or settlement of a Transaction or resolving chargebacks, retrievals or similar issues involving a Transaction unless required to do so by court order or governmental agency request, subpoena or order.
- H. Client is solely responsible for compiling and retaining permanent records of all Subscriber Personal Information desired by Client for its reference. Client shall use proper controls for and limit access to all Subscriber Personal Information. Prior to discard Client shall render all Subscriber Personal Information unreadable and abide by any laws or regulations imposed on Client for destruction and/or disposal of applicable Subscriber Personal Information.
- I. Client represents and warrants that it has provided notice to, and obtained consent from, Subscribers whose Personal Information is provided to Company with regard to: (i) the purposes for which Subscriber's Personal Information has been collected; (ii) the sharing and use of Subscriber's Personal Information with Company and its Third Party Service Providers and its and their agents, suppliers, and contractors; (iii) which parts of Subscriber's Personal Information are obligatory and which parts, if any, are voluntary; and (iv) how Subscribers can access and, if necessary, rectify the Personal Information Client holds about them. Neither Company nor its Third Party Service Providers are responsible for any consequences resulting from Client's failure to provide notice or obtain consent from Subscribers nor for Client providing outdated, incomplete or inaccurate information.
- J. Client represents and warrants that all Transactions submitted in connection with the Merchant Processing Services are for bona fide business operations compliant with applicable Rules, laws, and regulations and that Client is not engaged in any illegal or fraudulent business operation or any business operation prohibited by any applicable law, regulation, or Rule, or in any business identified on a prohibited activities list promulgated by any Third Party Service Provider or the Card Associations.

## **5. TERMINATION BY THIRD PARTY.**

A. In the event Company is notified by a Third Party Service Provider, court of competent jurisdiction, governmental body or authority, Acquiring Bank or the Card Association that Client is no longer entitled to receive the Merchant Processing Services for any reason whatsoever, Company may suspend and/or terminate the Merchant Processing Services and/or the MSA without notice and without liability.

## **6. LIMITATION OF LIABILITY.**

COMPANY AND ITS THIRD PARTY SERVICE PROVIDERS EXPRESSLY DISCLAIM ANY LIABILITY OR LOSS, HOWEVER OCCURRING INCLUDING NEGLIGENCE, ARISING FROM OR RELATED TO: (i) CLIENT FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE ITS ACCOUNT(S); (ii) DISRUPTION OF COMPANY SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (iii) ACTIONS OR INACTIONS BY ANY ACQUIRING BANK; OR (iv) CLIENT'S SALE OF PRODUCTS OR SERVICES (INCLUDING WITHOUT LIMITATION ANY RISK ASSOCIATED WITH PAYMENT CARD FRAUD, ACH FRAUD, CHECK FRAUD, CHARGEBACKS, TRANSACTION RATING, IMPROPERLY AUTHORIZED TRANSACTIONS, LEGITIMATE BUT UNAUTHORIZED TRANSACTIONS, DATA TRANSMISSION ERRORS, OR ANY ACTION OR OMISSION BY A THIRD PARTY).

CLIENT WILL REMAIN LIABLE FOR ANY LIABILITIES AND LOSSES AND OTHER AMOUNTS INCURRED BY COMPANY ARISING UNDER THIS AGREEMENT THAT ARE ATTRIBUTABLE IN WHOLE OR IN PART TO: (I) INTENTIONAL MISREPRESENTATION, FRAUD, WILLFUL OR INTENTIONAL ACTS OR OMISSIONS OR NEGLIGENCE BY CLIENT, INCLUDING ITS EMPLOYEES OR AGENTS, OR THE FAILURE OF ANY OF SUCH PERSONS TO COMPLY WITH THESE MERCHANT PROCESSING TERMS, RULES, APPLICABLE LAWS, RULES OR REGULATIONS, (II) CLIENT'S BREACH OF ANY PROVISION OF THESE MERCHANT PROCESSING TERMS OR OTHER APPLICABLE AGREEMENT ASSOCIATED WITH THE COMPANY SERVICES; (III) ANY PERSONAL INFORMATION, DATA, OR TRANSACTION THAT YOU KNOW OR SHOULD HAVE KNOWN CONTAINS INACCURACIES OR OMISSIONS; (IV) ANY SECURITY BREACH OR UNAUTHORIZED ACCESS TO PERSONAL INFORMATION, DATA OR CONFIDENTIAL INFORMATION CAUSED BY THE ACTIONS OF CLIENT OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES; OR (V) ANY ASSESSMENTS, FINES, PENALTIES OR OTHER AMOUNTS (HOWEVER LABELED) IMPOSED BY THE CARD ASSOCIATIONS OR ANY GOVERNMENTAL OR REGULATORY BODY OR OTHER THIRD PARTY AS A RESULT OF ANY ACTION OR INACTION BY CLIENT OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. ALL SUCH OBLIGATIONS AND AMOUNTS IMPOSED BY THIRD PARTIES WILL BE DEEMED DIRECT, NOT INDIRECT OR CONSEQUENTIAL, DAMAGES, AND WILL BE COLLECTIBLE NOTWITHSTANDING ANY PROVISION IN THESE MERCHANT PROCESSING TERMS OR THE MSA TO THE CONTRARY.

### **Appendix A – Prohibited Activities**

You agree that You will not at any time conduct Your business in any manner that directly or indirectly offers, sells, leases, licenses or displays, delivers, advertises, recommends, or promotes any product(s), service(s), data, information, image(s), text and/or any content which:

1. Is unlawful or violates any applicable local, state, federal, national or international law, statute, ordinance, or regulation including, without limitation, Card Association rules, consumer protection laws, unfair competition, antidiscrimination or false advertising;
2. Is associated with any illegal form of adult, sexually oriented, or obscene materials or services, including without limitation, any material clearly designed to sexually arouse the viewer/reader with images of children less than 18 years old and/or escort services;
3. Infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party, including, but not limited to, the unauthorized copying and posting of trademarks, pictures, logos, software, articles, musical works and videos;
4. Is threatening, abusive, harassing, defamatory, obscene, libelous, slanderous, deceptive, fraudulent, invasive of another's privacy, tortious, or otherwise violate Array's rules or policies;
5. Victimized harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
6. Impersonates any person or entity;
7. Contains harmful content, including, without limitation, software viruses, Trojan horses, worms, time bombs, cancel bots, spy-ware, or any other files, software programs, or technology that is designed or intended to disrupt, damage, surreptitiously intercept or expropriate the Array Services or any system, program, data or personal information or limit the functioning of any software, hardware, or equipment or to damage or obtain unauthorized access to any data or other information of any third party;
8. Violates any U.S. export or import laws, including, without limitation, the Export Administration Act and the Export Administration Regulations maintained by the Department of Commerce;
9. Offers or disseminates fraudulent goods, services, schemes, or promotions (i.e., make money fast schemes, chain letters, pyramid schemes) or engage in any unfair deceptive act or practice;
10. Is associated with any form of illegal gambling or illegal lottery type services;
11. Is associated with illegal telecommunications or illegal cable television equipment or illegal satellite equipment;
12. Is associated with unlicensed money transmission services, or any similar unlicensed payment type; or
13. Is associated with the sale of (a) any controlled drug that requires a prescription from a licensed practitioner unless You are authorized by the National Association of Boards of Pharmacy to offer such products as a Verified Internet Pharmacy Practice Site and only if such a prescription has been issued by the practitioner after a bona fide examination of the patient; or (b) any over-the-counter drug, unless the sale of such product, without a prescription, has been approved by the Food & Drug Administration; or (c) nonprescription drugs that make false or misleading treatment claims or treatment claims that require FDA approval; or (d) any drug or controlled substance that Array believes to be or may become harmful, unlawful, or prohibited. Array requires sellers of prescription drugs to abide by all laws applicable to both the buyer and seller and may require You to provide evidence of compliance with these requirements. In addition, due to the complexities of current laws regulating the importation of

controlled drugs into the United States, You may not use the Array Services to sell prescription drugs that are imported into the United States from an international location. The foregoing list is a non-exhaustive list of prohibited goods and services.