



## Appendix: "VTA"

### Industrial Payment Services Merchant Center Virtual Terminal Agreement

Last Update: February 8, 2019

This Industrial Payment Services Merchant Center and Virtual Terminal agreement ("**Merchant Center/VT Agreement**") is a contract between you (**the "Merchant"**) and Industrial Payment Services, LLC. ("**Industrial Payment Services**", "**we**", "**us**" or "**our**"), and applies to your use of Industrial Payment Services merchant center, or Virtual Terminal (**the "Products"**).

Each of the Products includes the Industrial Payment Services listed in this Merchant Center/VT Agreement and described more fully on our website. You must read, agree with and accept all of the terms and conditions contained in this Merchant Center/VT Agreement. By using any of the Products, you agree to comply with all of the terms and conditions in this Merchant Center/VT Agreement, so please read all of the terms and conditions carefully.

This Merchant Center/VT Agreement applies in addition to the Industrial Payment Services User Agreement and any other agreement to which you have entered into with Industrial Payment Services (collectively "**Industrial Payment Services Agreements**") to your use of the Industrial Payment Services through the Products. If any inconsistency exists between the terms of the Industrial Payment Services User Agreement and this Merchant Center/VT Agreement then the terms of this Merchant Center/VT Agreement shall control in connection with your use of the Industrial Payment Services' through any Product.

We may amend this Merchant Center/VT Agreement at any time by posting a revised version on our website. The revised version will be effective at the time we post it. In addition, if we change the Merchant Center/VT Agreement in a way that reduces your rights or increases your responsibilities, we will provide you with 30 Days' prior notice by posting notice on the "**Policy Updates**" page of our website. If you do not agree with any change, to the Merchant Center/VT Agreement, you may terminate your use of the Industrial Payment Services at any time.

### 1. Credit Report Authorization.

You understand and agree that you are providing Industrial Payment Services with your **"written instructions"** in accordance with the Fair Credit Reporting Act, and you are authorizing Industrial Payment Services to obtain your personal credit report from a credit bureau for the purpose of processing this application for Industrial Payment Services services. You further understand and agree that you are authorizing Industrial Payment Services to obtain your credit report on an ongoing basis for account review purposes.

### 2. Fees.

All fees are in U.S. Dollars unless otherwise stated. The fees associated with any service or transaction submitted by you via any Product are set forth in the Industrial Payment Services User Agreement. Fees are initially calculated from applicant credit, average ticket, risk profile and previous chargeback history. Subsequent changes to fee algorithms and rates can occur at any time.

**a. Risk Factors Fee.** If Industrial Payment Services determines that your Industrial Payment Services account receives, or is likely to receive, a disproportionately high number of customer complaints, reversals, chargebacks, disputes, claims, fees, fines, penalties or other liability (collectively **"Risk Factors"**), you may be subject to up to a 9% fee increase above your then current Transaction Fee rate. This fee may be added to your initial rate when you first sign up for the Industrial Payment Services, or may be added at any time by Industrial Payment Services with 30 days' prior notice of the fee increase. You agree to terminate your use of the Industrial Payment Services Products if you do not agree to this Fee.

### 3. Processing Requirements.

You agree to submit only transactions for processing which represent a bona fide, permissible transaction free of liens, claims, and encumbrances other than ordinary sales taxes; as outlined in this Merchant Center/VT Agreement and in the Card Company Rules, or which accurately describes the product or services being sold or the charitable donations being made. You authorize Industrial Payment Services to submit transactions to and receive settlement and to disclose transaction and merchant information to the appropriate bank or merchant to perform analytics and create reports and for any other lawful business purposes, including commercial marketing communications purposes and important transactional or relationship communications. You also agree to ensure data quality and that any Data is processed promptly, accurately and completely, and complies with the Card Companies' technical specifications. You agree not to process transactions or receive payments on behalf of any other party, or redirect payments to any other party. You agree not to bill or collect from any cardholder for any purchase or payment on the card unless you have the right to do so under the Card Company Rules.

### 4. Data Security.

**a.** You are fully responsible for the security of data on your website or otherwise in your possession or control. You agree to comply with all applicable laws and rules in connection with your collection, security and dissemination of any personal, financial, Card, or transaction information (defined as **"Data"**) on your website. You must report any Data breach or incident to Industrial Payment Services and the Card Companies immediately after discovery of the incident and no later than 24 hours after discovery or confirmation of an incident. Failure to do so may terminate your access to Industrial Payment Services Products.

**b. PCI Compliance.** You agree that at all times you shall be compliant with the Payment Card Industry Data Security Standards (**PCI DSS**), the Payment Application Data Security Standards (**PA DSS**), and any Card Company data security requirements, as applicable. You agree to promptly provide us with documentation evidencing your compliance with PCI DSS, PA DSS, or other data security requirements, if requested by us. You also agree that you will use only PCI compliant service providers in connection with the storage, or transmission of Card Data defined as a cardholder's account number, expiration date, and CVV2. You must not store CVV2 data at any time. Industrial Payment Services adheres to PCI DSS. Industrial Payment Services agrees that it shall comply with the applicable PCI DSS requirements, as such may be amended from time to

time, with respect to all cardholder data received by it in connection with this Agreement. Industrial Payment Services acknowledges that it is responsible for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of the Merchant, or to the extent that they could impact the security of the Merchant's cardholder data environment.

**c. Data Usage.** Unless you receive the express consent of your customer, you may not retain, track, monitor, store or otherwise use Data beyond the scope of the specific transaction. Further, unless you get the express written consent of Industrial Payment Services and each Acquiring Bank and/or the Card Companies, as applicable, you agree that you will not use nor disclose the Card Data for any purpose other than to support payment for your goods and services. Card Data must be completely removed from your systems and any other place where you store Card Data, within 24 hours after you receive an authorization decision unless you have received the express consent of your customer to retain the Card Data for the sole purpose of processing recurring payments. To the extent that Card Data resides on your systems and other storage locations, it should do so only for the express purpose of processing your transactions. All Data and other information provided to you by Industrial Payment Services in relationship to the Industrial Payment Services and all Card Data will remain the property of Industrial Payment Services, its Acquiring Bank or the Card Companies, as appropriate.

**d. Password Security.** You agree to restrict use and access to your password and log-on ID to your employees and agents as may be reasonably necessary and will ensure that each such employee or agent complies with the terms of this Merchant Center/VT Agreement. You will not give, transfer, assign, sell, resell or otherwise dispose of the information and materials provided to you to utilize the Industrial Payment Services services. You are solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to you by Industrial Payment Services, each Acquiring Bank or the Card Companies.

**e. Audit.** If Industrial Payment Services believes that a security breach or compromise of Data has occurred, Industrial Payment Services may require you to have a third-party auditor that is approved by Industrial Payment Services conduct a security audit of your systems and facilities and issue a report to be provided to Industrial Payment Services, the Acquiring Banks and the Card Companies. In the event that you fail to initiate an audit within 10 business days of Industrial Payment Services's request, Industrial Payment Services may conduct or obtain such an audit at your expense. In addition, the Card Companies may conduct an audit at any time, for the purpose of determining compliance with the Card Company Rules.

**f. Compliance with Data Protection Schedule.** You agree **(as a "Merchant")** to comply with Schedule 1 below, which forms part of this Agreement. The terms of the Data Protection Schedule prevail over any conflicting terms in this Agreement relating to data protection and privacy.

#### **4. Additional Terms for American Express Card Acceptance.**

**a.** American Express may use the information obtained in your application at the time of setup to screen and/or monitor you in connection with Card marketing and administrative purposes.

**b.** You may be converted from this Merchant Center/VT Agreement to a direct card acceptance agreement with American Express if you reach certain monthly sales volumes. Upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set your pricing and other fees for American Express Card acceptance.

**c.** By accepting these terms, you agree to receive commercial marketing communications from American Express. You may opt out by visiting your account management settings or otherwise contacting Industrial Payment Services.

d. American Express shall be a third-party beneficiary of this Merchant Center/VT Agreement for purposes of American Express Card acceptance. As a third party beneficiary, American Express shall have the right to enforce directly against you the terms of this Merchant Center/VT Agreement as related to American Express Card acceptance. You acknowledge and agree that American Express shall have no responsibility of liability with regard to Industrial Payment Services's obligations to you under this Merchant Center/VT Agreement.

#### 5. Dynamic Currency Conversion.

You may not perform dynamic currency conversion. This means that you may not list an item in one currency and then accept payment in a different currency. If you are accepting payments in more than one currency, you must separately list the price of each product or service in each currency.

#### 6. Brand Parity.

By using the Products, Industrial Payment Services permits you to directly accept Cards. With regard to your Card acceptance, you agree to the following:

a. Where you accept Cards on your website, you will display each Card's logo with equal size and prominence, and you shall not display a preference for, nor discriminate against, one Card over another, including your refund policies for purchases.

b. You agree to comply with the logo usage standards located at: <http://www.IndustrialPaymentServices.com/cgi-bin/webscr?cmd=xpt/general/OnlineLogoCenter-outside>.

c. You authorize Industrial Payment Services to provide information regarding your business and individual Card transactions to third parties for the purpose of facilitating the acceptance and settlement of your Card transactions and in connection with items, including chargebacks, refunds, disputes, adjustments and other inquiries.

#### 7. Card Not Present.

You acknowledge that Industrial Payment Services processes transactions through the Products as remote **(card not present)** payments. If you accept a Card that is not physically presented to you at the point of sale you acknowledge that the scope of your protection from Chargebacks will be limited to the protection that is available for remote payments.

#### 8. Risk Controls.

If you use the Products, you may be able to elect to use our Risk Controls which provide you the option of changing certain controls to accept transactions with a higher likelihood of risk. Eligibility for Risk Controls is determined in Industrial Payment Services's sole discretion. The following terms apply to your use of the Risk Controls:

a. Liability. If you adjust your Risk Controls, in addition to your existing liability for fraudulent transactions, you are liable for all additional risk. It is your responsibility to adjust the Risk Controls to determine whether you want to accept or decline such transactions. You may adjust the Risk Controls on the Risk Controls Overview Page on the Industrial Payment Services merchant center. If you would like to remove your ability to access Risk Controls, please contact your account manager.

b. Expanding Acceptance. You may adjust your Risk Controls to accept certain payments, including:

1. Direct Payments or Virtual Terminal Payments that are unable to verify the cardholder's address through the Address Verification Services. This is also referred to as **"AVS No Match."**

2. Direct Payments or Virtual Terminal Payments that do not include a card security code. This is also referred to as **"Card Security Code Not Submitted"**.

3. All payment types that failed Industrial Payment Services's proprietary risk models.

- c. Expanding Declines. You may adjust your Risk Controls to decline payments, including:
1. Direct Payments or Virtual Terminal Payments where the address entered by the cardholder only partially matches the information stored by the issuing bank.
  2. Direct Payments or Virtual Terminal Payments where the Address Verification Service is unsupported or unavailable at the time the payment is processed.

d. Transaction Reviews. You may adjust your Risk Controls to review and manually accept payments. Reviewing a payment prevents the funds from being transferred to your Account until you review the payment. If you do not accept a payment within 30 days, it will be reversed. Note that not all payment types can be reviewed.

e. Rejecting Transactions. You may not reject a transaction unless, based on various combinations of authentication information, you reasonably determine that the individual requesting the transaction is misrepresenting his or her identity.

## 9. Fraud Management Filters.

Fraud management filters allow you to accept or reject transactions with a higher likelihood of risk. If you would like to restrict the ability to access fraud management filters, please contact your account manager. Note, not all transactions will be reviewed and there is no guarantee that fraud management filters will prevent losses.

a. Liability. If you adjust your fraud management filters, in addition to your existing liability for fraudulent transactions, you are liable for all additional risk. It is your responsibility to adjust the fraud management filters to determine whether you want to accept or decline such transactions.

b. Adjustments. You may adjust your fraud management filters to accept, flag, review or deny certain payments, including:

1. Direct Payments or Virtual Terminal Payments that are unable to verify the cardholder's address through the Address Verification Services. This is also referred to as **"AVS No Match"**.
2. Direct Payments or Virtual Terminal Payments that do not include a card security code. This is also referred to as **"Card Security Code Not Submitted"**.
3. Direct Payments and Virtual Terminal Payments that failed Industrial Payment Services's proprietary risk models.
4. Direct Payments and Virtual Terminal Payments where the address entered by the cardholder only partially matches the information stored by the issuing bank.
5. Direct Payments and Virtual Terminal Payments where the Address Verification Service is unsupported or unavailable at the time the payment is processed.

c. Transaction Reviews. Reviewing a payment prevents the funds from being transferred to your Account until you decide to accept that payment. If you do not accept a payment within 30 days, it will be reversed.

d. Rejecting Transactions. You may not reject a transaction unless, based on various combinations of authentication information, you reasonably determine that the individual requesting the transaction is likely not the consumer they are representing themselves to be.

## 10. Fraud Protection Services.

If you use Payments Advanced or Payments Pro Payflow, you may use our Fraud Protection Services. If you use our Fraud Protection Services, you are responsible for setting preferences for the Industrial Payment Services Fraud Protection Services. It is your responsibility to determine which transactions the Fraud Protection Services will accept or reject based on the authentication information provided by Industrial Payment Services.

### **11. Recurring Billing/Recurring Payments Consent.**

If you are using the Recurring Billing or Recurring Payments feature you agree that it is your responsibility to comply with Card Company Rules, applicable law, including the Electronic Funds Transfer Act (Reg E), including by capturing your customers' agreement to be billed on a recurring basis.

### **12. No Warranty.**

THE PRODUCTS AND THE INDUSTRIAL PAYMENT SERVICES AND ALL ACCOMPANYING DOCUMENTATION ARE PROVIDED TO YOU ON AN "AS IS" BASIS WITHOUT AN WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. INDUSTRIAL PAYMENT SERVICES MAKES NO WARRANTY THAT THE INDUSTRIAL PAYMENT SERVICES WILL BE CONTINUOUS OR ERROR-FREE. Industrial Payment Services does not guarantee, represent or warrant that the Industrial Payment Services and related features that enable you to detect or minimize fraudulent transactions will discover or prevent all non-valid or fraudulent transactions. Industrial Payment Services is not responsible for any non-valid or fraudulent transactions that are processed.

### **13. Reserves and other Protective Actions.**

If, in our sole discretion, we believe there may be a high level of risk associated with you, your Industrial Payment Services account, your business model, or your transactions we may take certain actions in connection with your Account and/or your use of the Industrial Payment Services.

**a. Reserves.** Industrial Payment Services, in its sole discretion, may place a Reserve on funds held in your Industrial Payment Services account when Industrial Payment Services believes there may be a high level of risk associated with your Account. If Industrial Payment Services places a Reserve on funds in your Industrial Payment Services account, they will be shown as **"pending"** in your Industrial Payment Services Balance. If your Industrial Payment Services account is subject to a Reserve, Industrial Payment Services will provide you with notice specifying the terms of the reserve. The terms may require that a certain percentage of the amounts received into your Industrial Payment Services account are held for a certain period of time, or that a certain amount of money is held in reserve. Industrial Payment Services may change the terms of the Reserve at any time by providing you with notice of the new terms.

**b. Additional Actions.** We may take other actions we determine are necessary to protect against the risk associated with your Industrial Payment Services account including requesting additional collateral from you such as a letter of credit or a personal guarantee. Industrial Payment Services may contact your customers, on your behalf, in the event that Industrial Payment Services is investigating potential fraud.

**c. Information.** In order to determine the risk associated with your Industrial Payment Services account, Industrial Payment Services may request at any time, and you agree to provide, any information about your business, operations or financial condition. We reserve the right to reassess your eligibility for any Product if your business is materially different from the information you provided in your application.

### **14. Termination.**

**a. By Merchant.** You may terminate your use of the Industrial Payment Services at any time. Merchant may terminate its acceptance of American Express at any time upon notice.

**b. By Industrial Payment Services.** Industrial Payment Services may terminate your use of the Industrial Payment Services Products if:

**1.** You fail to comply with the terms of, or are unable to pay or perform your obligations under, this Merchant Center/VT Agreement or any of the Industrial Payment Services Agreements that apply to the Industrial Payment Services Products;



2. We decide, in our discretion, that you become ineligible for the Industrial Payment Services Products because there is a high level of risk associated with your Industrial Payment Services account or for any other reason, or upon request by any Acquiring Bank or any of the Card Companies.

3. You violate any Card Company Rule as they may be amended by the Card Companies from time to time.

c. Effect of Termination. If your use of any Product is terminated, your use of the Industrial Payment Services associated with that Product will immediately end. You agree to complete all pending Card transactions, immediately remove all logos for Cards, and stop accepting new transactions through the Product. If your use of any Product is terminated, you will not be refunded the remainder of the Monthly Fees that you have paid for such Product.

#### **15. Industrial Payment Services is Your Agent for Receiving Payment.**

You represent and warrant to Industrial Payment Services that each transaction that you process through the Industrial Payment Services Payments Pro or Virtual Terminal services is solely in payment for your provision of bona fide goods and/or services to your customers (each, a **"Payor"**). You hereby designate Industrial Payment Services, and Industrial Payment Services hereby agrees to serve, as your limited agent for the sole purpose of receiving such payments on your behalf from your Payors. You agree that upon Industrial Payment Services receiving payment from a Payor:

- a. You shall be deemed to have received payment from such Payor
- b. Such Payor's obligation to you in connection with such payment shall be satisfied in full.
- c. Any claim you have for such payment against such Payor shall be extinguished.
- d. You are obligated to deliver the applicable goods and/or services to the Payor, in each case regardless of whether or when Industrial Payment Services remits such payment to you.

Industrial Payment Services will remit to you in accordance with this Agreement or apply as an offset to any obligation you may have to Industrial Payment Services, any such payments it receives on your behalf. Any receipt provided to the Payor shall be binding on you and shall satisfy all applicable regulatory requirements. This paragraph states the entirety of Industrial Payment Services's duties as your agent for receipt of payment, and no other duties shall be implied by Industrial Payment Services's undertaking to act in that capacity.

#### **16. General.**

a. Law and Forum for Disputes. Except as otherwise agreed by the parties or as described in section 14.1 or 14.2 of the Industrial Payment Services User Agreement, you agree that any claim or dispute you may have against Industrial Payment Services must be resolved by a court located in Los Angeles County, California. You agree to submit to the personal jurisdiction of the courts located within Los Angeles County, California for the purpose of litigating all such claims or disputes. This Merchant Center/VT Agreement shall be governed in all respects by the laws of the State of California, without regard to conflict of law provisions.

b. Indemnification. You agree to defend, indemnify and hold Industrial Payment Services, its parent, officers, directors and employees harmless from any claim or demand (including attorneys' fees) made or incurred by any third party due to or arising (i) out of your breach of this Merchant Center/VT Agreement; (ii) your use of the Products or the Industrial Payment Services accessed through the Products; (iii) your fraudulent transaction or data incidents.

c. No Waiver. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

**d. Compliance with Laws.** You agree to comply with all applicable laws, rules, or regulations, including the Card Company Rules.

**e. Data Use.** Industrial Payment Services shall have the right (i) to use the Data it receives from you as necessary to perform the Industrial Payment Services services; (ii) to collect and process the Data subject to applicable law to use internally for record keeping, internal reporting, analytics, fraud detection and support purposes; (iii) to compile and disclose Data in the aggregate where your individual or user Data is not identifiable, including calculating Merchant averages by region or industry; and (iv) to provide the Data as required by the Card Companies, the Acquiring Banks, law or court order, or to defend Industrial Payment Services's rights in a legal dispute.

**f. Complete Agreement.** This Merchant Center/VT Agreement, along with the Industrial Payment Services User Agreement and any applicable policies and agreements on the [Legal Agreements](#) page on the Industrial Payment Services website, sets forth the entire understanding between you and Industrial Payment Services with respect to your use of the Products and the Industrial Payment Services accessed through the Products. If any provision of this Merchant Center/VT Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. In addition, your acceptance of Card transactions via a Product is also subject to a Commercial Entity Agreement you have with each of the Acquiring Banks.

## **17. Definitions.**

**"Acquiring Bank"** means each of the financial institutions Industrial Payment Services partners with to process your Card payments, including your hardware, and Virtual Terminal Payments, and with whom you entered into a Commercial Entity Agreement.

**"Advanced Fraud Management Filters"** means the optional feature associated with Virtual Terminal that allows you to use additional filters and toggles to help protect you from fraud and chargebacks, as described in more detail on the Industrial Payment Services website.

**"American Express"** means American Express Travel Related Services Company, Inc. and its affiliates.

**"API"** means Industrial Payment Services's proprietary application programming interfaces used to interface with the Industrial Payment Services systems in order to use certain Industrial Payment Services services.

**"Buyer Authentication Service"** means the optional service associated that enables you to integrate Visa's Verified by Visa and MasterCard's SecureCode into the Products, as described in more detail on the Industrial Payment Services website.

**"Card Companies"** means a company or group of financial institutions that promulgate rules to govern Card Transactions via bankcard and payment networks including MasterCard, Visa, Discover, American Express, and the debit networks.

**"Card Company Rules"** means the rules and regulations governing acceptance of Cards. Rules are available [Visa](#), [MasterCard](#), [American Express](#), and [Discover](#).

**"Cards"** means Visa, MasterCard, American Express, Discover, and debit network branded payment cards.

**"CVV2 Data"** means the three- or four-digit number printed to the right of the Card number in the signature panel on the back of the Card. On American Express Cards, it is printed on the front of the Card above the Card number.

**"Data"** has the meaning provided in Section 3(a).



**"Fixed Fee"** means the portion of the Transaction Fees that is a fixed monetary amount and not a percentage of the payment amount.

**"Fraud Protection Services"** means the optional services that allows you to access additional risk management features to help protect you from fraud and chargebacks, as described in more detail on the Industrial Payment Services website.

**"Monthly Sales Volume"** means the total payment volume processed by you through any Product using any payment method.

**"Payments Advanced"** means optional additional services include Fraud Protection Services and Recurring Billing, which are all more fully described on our website

**"Recurring Billing/Payments"** means the optional feature that, with the consent of your customer, enables you to set up payments that recur at specified intervals and frequencies as described in more detail on the Industrial Payment Services website.

**"Risk Controls"** means the optional features that provide a merchant with the option of changing certain controls to accept or decline transactions with a higher likelihood of risk.

**"Transaction Fees"** means the fees provided in Appendix "Fee Schedule" of the User Agreement. If you use certain optional Industrial Payment Services, certain additional fees may apply to your transactions on a per transaction basis, as outlined in Appendix "Fee Schedule"; however, these are not included in this definition.

**"Virtual Terminal"** means the Industrial Payment Services service that enables you to receive a Card payment by manually entering Card Data given to you by a customer.

**"Virtual Terminal Payment"** means a payment processed by Industrial Payment Services through the Virtual Terminal flows that is funded directly by a Card and not through an Industrial Payment Services account.

## **SCHEDULE 1 DATA PROTECTION SCHEDULE**

This Data Protection Schedule applies only to the extent that Industrial Payment Services acts as a processor or Sub-processor to Merchant.

Capitalized terms used but not defined in this Schedule shall have the meaning set out in the Agreement.

### **1. DEFINITIONS AND INTERPRETATION**

**1.1** The following terms have the following meanings when used in this Schedule:

**"Card Information"** is defined in Section 2.15 of this Schedule.

**"Customer"** means a European Union customer of Merchant who uses the Industrial Payment Services and for the purposes of this Schedule, is a data subject.

**"Customer Data"** means the personal data that the Customer provides to Merchant and Merchant passes on to Industrial Payment Services through the use by the Merchant of the Industrial Payment Services.

**"Data controller"** (or simply **"controller"**) and **"data processor"** (or simply **"processor"**) and **"data subject"** have the meanings given to those terms under the Data Protection Laws.

**"Data Protection Laws"** means General Data Protection Regulation (EU) 2016/679 (GDPR) and any associated regulations or instruments and any other data protection laws, regulations, regulatory requirements and codes of conduct of EU Member States applicable to Industrial Payment Services's provision of the Industrial Payment Services.

**"Data Recipient"** is defined in Section 2.15 of this Schedule.

**"Industrial Payment Services Group"** means Industrial Payment Services and all companies in which Industrial Payment Services or its successor directly or indirectly from time to time owns or controls.

**"Personal data"** has the meaning given to it in the Data Protection Laws.

**"Processing"** has the meaning given to it in the Data Protection Laws and **"process"**, **"processes"** and **"processed"** will be interpreted accordingly.

**"Sub-processor"** means any processor engaged by Industrial Payment Services and/or its affiliates in the processing of personal data.

### **2. PROCESSING OF PERSONAL DATA IN CONNECTION WITH THE SERVICES**

**2.1** Merchant data controller. With regard to any Customer Data to be processed by Industrial Payment Services in connection with this Agreement, Merchant will be a controller and Industrial Payment Services will be a processor in respect of such processing. Merchant will be solely responsible for determining the purposes for which and the manner in which Customer Data are, or are to be, processed.

**2.2** Merchant written instructions. Industrial Payment Services shall only process Customer Data on behalf of and in accordance with Merchant's written instructions. The Parties agree that this Schedule is Merchant's complete and final written instruction to Industrial Payment Services in relation to Customer Data. Additional instructions outside the scope of this Schedule (if any) require prior written agreement between Industrial Payment Services and Merchant, including agreement of any additional fees payable by Merchant to Industrial Payment Services for carrying out such additional instructions. Merchant shall ensure that its instructions comply with all applicable laws, including Data Protection Laws, and that the processing of Customer Data in accordance with Merchant's instructions will not cause Industrial Payment Services to be in

breach of Data Protection Laws. The provisions of this Section are subject to the provisions of Section 2.14 on Security. Merchant hereby instructs Industrial Payment Services to process Customer Data for the following purposes:

**2.2.1** as reasonably necessary to provide the Industrial Payment Services to Merchant and its Customer;

**2.2.2** after anonymizing the Customer Data, to use that anonymized Customer Data, directly or indirectly, which is no longer identifiable personal data, for any purpose whatsoever.

**2.3** Industrial Payment Services cooperation. In relation to Customer Data processed by Industrial Payment Services under this Agreement, Industrial Payment Services shall co-operate with Merchant to the extent reasonably necessary to enable Merchant to adequately discharge its responsibility as a controller under Data Protection Laws, including without limitation as Merchant requires in relation to:

**2.3.1.** assisting Merchant in the preparation of data protection impact assessments to the extent required of Merchant under Data Protection Laws; and

**2.3.2** responding to binding requests from data protection authorities for the disclosure of Customer Data as required by applicable laws.

**2.4** Scope and Details of Customer Data processed by Industrial Payment Services. The objective of processing Customer Data by Industrial Payment Services is the performance of the Industrial Payment Services pursuant to the Agreement. Industrial Payment Services shall process the Customer Data in accordance with the specified duration, purpose, type and categories of data subjects as set out in Attachment 2 (Data Processing of Customer Data).

**2.5** Compliance with Laws. The Parties will at all times comply with Data Protection Laws.

**2.6** Correction, Blocking and Deletion. To the extent Merchant, in its use of the Industrial Payment Services, does not have the ability to correct, amend, block or delete Customer Data, as required by Data Protection Laws, Industrial Payment Services shall comply with any commercially reasonable request by Merchant to facilitate such actions to the extent Industrial Payment Services is legally permitted to do so. To the extent legally permitted, Merchant shall be responsible for any costs arising from Industrial Payment Services's provision of such assistance.

**2.7** Data Subject Requests. Industrial Payment Services shall, to the extent legally permitted, promptly notify Merchant if it receives a request from a Customer for access to, correction, amendment or deletion of that Customer's personal data. Merchant shall be responsible for responding to all such requests. If legally permitted, Industrial Payment Services shall provide Merchant with commercially reasonable cooperation and assistance regarding such Customer's request and Merchant shall be responsible for any costs arising from Industrial Payment Services's assistance.

**2.8** Training. Industrial Payment Services undertakes to provide training as necessary from time to time to the Industrial Payment Services personnel with respect to Industrial Payment Services's obligations in this Schedule to ensure that the Industrial Payment Services personnel are aware of and comply with such obligations.

**2.9** Limitation of Access. Industrial Payment Services shall ensure that access by Industrial Payment Services's personnel to Customer Data is limited to those personnel performing Industrial Payment Services in accordance with the Agreement.

**2.10** Sub-processors. Merchant specifically authorizes the engagement of members of the Industrial Payment Services Group as Sub-processors in connection with the provision of the Industrial Payment Services services. In addition, Merchant generally authorizes the engagement of any other third parties as Sub-processors in connection with the provision of the Industrial Payment Services services. When engaging any

Sub-processor, Industrial Payment Services will execute a written contract with the Sub-processor, which contains terms for the protection of Customer Data which are no less protective than the terms set out in this Schedule. Industrial Payment Services shall make available to Merchant a current list of Sub-processors for the respective Industrial Payment Services services with the identities of those Sub-processors.

**2.11 Audits and Certifications.** Where requested by Merchant, subject to the confidentiality obligations set forth in the Agreement, Industrial Payment Services shall make available to Merchant (or Merchant's independent, third-party auditor that is not a competitor of Industrial Payment Services or any members of Industrial Payment Services or the Industrial Payment Services Group) information regarding Industrial Payment Services's compliance with the obligations set forth in this Schedule in the form of the third-party certifications and audits (if any) set forth in the Privacy Policy set out on our website. Merchant may contact Industrial Payment Services in accordance with the Agreement to request an on-site audit of the procedures relevant to the protection of personal data. Merchant shall reimburse Industrial Payment Services for any time expended for any such on-site audit at Industrial Payment Services's then-current professional Industrial Payment Services services rates, which shall be made available to Merchant upon request. Before the commencement of any such on-site audit, Merchant and Industrial Payment Services shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Merchant shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Industrial Payment Services. Merchant shall promptly notify Industrial Payment Services with information regarding any non-compliance discovered during the course of an audit.

**2.12 Security.** Industrial Payment Services shall, as a minimum, implement and maintain appropriate technical and organizational measures as described to keep Customer Data secure and protect it against unauthorized or unlawful processing and accidental loss, destruction or damage in relation to the provision of the Industrial Payment Services. Since Industrial Payment Services provides the Industrial Payment Services Products to all Merchants uniformly via a hosted, web-based application, all appropriate and then-current technical and organizational measures apply to Industrial Payment Services's entire customer base hosted out of the same data center and subscribed to the same service. Merchant understands and agrees that the technical and organizational measures are subject to technical progress and development. In that regard, Industrial Payment Services is expressly permitted to implement adequate alternative measures as long as the security level of the measures is maintained in relation to the provision of the Industrial Payment Services.

**2.13 Security Incident Notification.** If Industrial Payment Services becomes aware of a Security Incident in connection with the processing of Customer Data, Industrial Payment Services will, in accordance with Data Protection Laws: (a) notify Merchant of the Security Incident promptly and without undue delay; (b) promptly take reasonable steps to minimize harm and secure Customer Data; (c) describe, to the extent possible, reasonable details of the Security Incident, including steps taken to mitigate the potential risks; and (d) deliver its notification to Merchant's administrators by any means Industrial Payment Services selects, including via email. Merchant is solely responsible for maintaining accurate contact information and ensuring that any contact information is current and valid.

**2.14 Deletion.** Upon termination or expiry of the Agreement, Industrial Payment Services will delete or return to Merchant all Customer Data processed on behalf of the Merchant, and Industrial Payment Services shall delete existing copies of such Customer Data except where necessary to retain such Customer Data strictly for the purposes of compliance with applicable law.

**2.15 Data Portability.** Upon any termination or expiry of this Agreement, Industrial Payment Services agrees, upon written request from Merchant, to provide Merchant's new acquiring bank or payment service provider ("**Data Recipient**") with any available credit card information including personal data relating to

Merchant's Customers ("**Card Information**"). In order to do so, Merchant must provide Industrial Payment Services with all requested information including proof that the Data Recipient is in compliance with the Association PCI-DSS Requirements and is level 1 PCI compliant. Industrial Payment Services agrees to transfer the Card Information to the Data Recipient so long as the following applies:

- a.** Merchant provides Industrial Payment Services with proof that the Data Recipient is in compliance with the Association PCI-DSS Requirements (Level 1 PCI compliant) by providing Industrial Payment Services a certificate or report on compliance with the Association PCI-DSS Requirements from a qualified provider and any other information reasonably requested by Industrial Payment Services;
- b.** the transfer of such Card Information is compliant with the latest version of the Association PCI-DSS Requirements; and
- c.** the transfer of such Card Information is allowed under the applicable Association Rules, and any applicable laws, rules or regulations (including Data Protection Laws).

## **ATTACHMENT: Technical and Organizational Measures**

The following technical and organizational measures will be implemented:

1. Measures taken to prevent any unauthorized person from accessing the facilities used for data processing;
2. Measures taken to prevent data media from being read, copied, amended or moved by any unauthorized persons;
3. Measures taken to prevent the unauthorized introduction of any data into the information system, as well as any unauthorized knowledge, amendment or deletion of the recorded data;
4. Measures taken to prevent data processing systems from being used by unauthorized person using data transmission facilities;
5. Measures taken to guarantee that authorized persons when using an automated data processing system may access only data that are within their competence;
6. Measures taken to guarantee the checking and recording of the identity of third parties to whom the data can be transmitted by transmission facilities;
7. Measures taken to guarantee that the identity of the persons having had access to the information system and the data introduced into the system can be checked and recorded ex post facto at any time and by any authorized person;
8. Measures taken to prevent data from being read, copied, amended or deleted in an unauthorized manner when data are disclosed and data media transported;
9. Measures taken to safeguard data by creating backup copies.



## **ATTACHMENT: Data Processing of Customer Data**

Categories of data subjects:

**Customer Data** – The personal data that the Customer provides to Merchant and Merchant passes on to Industrial Payment Services through the use by the Customer of the Industrial Payment Services.

**Subject matter of processing the payment** - Processing services offered by Industrial Payment Services which provides Merchant with the ability to accept credit cards, debit cards, and other payment methods on a website or mobile application from Customers.

**Nature and purpose of the processing** - Industrial Payment Services processes Customer Data that is sent by the Merchant to Industrial Payment Services for purposes of obtaining verification or authorization of the Customer's payment method as payment to the Merchant for the sale goods or services.

Type of personal data:

**Customer Data** – Merchant shall inform Industrial Payment Services of the type of Customer Data Industrial Payment Services is required to process under this Agreement. Should there be any changes to the type of Customer Data Industrial Payment Services is required to process then Merchant shall notify Industrial Payment Services immediately.

Industrial Payment Services processes the following Customer Data, as may be provided by the Merchant to Industrial Payment Services from time to time:

**Full name**

**Shipping address**

**Billing address**

**Email address**

**Telephone number**

**Fax number**

**Government ID number**

**Bank account number and bank routing number**

**Card or payment instrument type (optional)**

**Card Primary Account Number (PAN)**

**Card Verification Value (CVV)**

**Card expiration date**

**Business tax ID**

**IP address**

**Special categories of data (if relevant)**