

## **RELAY PAYMENTS TERMS AND CONDITIONS**

These Terms and Conditions constitute the terms and conditions that apply to Member's use of Relay's proprietary software platform (the "Relay System"). These terms and conditions, as subsequently amended or modified, are incorporated into and are a part of the Relay Payments Member Services Agreement and Order Form entered into and agreed to by and between Relay and the Member. These Terms and Conditions, together with the Relay Payments Member Services Agreement and Order Form and any and all other addenda, exhibits, attachments, and future amendments thereto (collectively, the "Agreement"), constitute a valid and binding contract between Member and Relay, and by registering for or being authorized to use the Relay System, Member agrees to be bound by these Terms and Conditions of the Agreement, including all agreements and policies referenced herein or otherwise applicable to use of specific features of the Relay System which are required to be agreed to and accepted before use of such specific features. If Member does not agree to the terms and conditions of this Agreement, including all referenced and applicable policies, Member may not use or access the Relay System.

Please read these Terms and Conditions, the Agreement, the Relay Payments Member Services Agreement and Order Form, and any and all addenda, exhibits, attachments, and future amendments thereto, carefully and print and retain a copy for your records.

### **1. USE OF RELAY**

Relay and its affiliates provide transaction processing services to companies and individuals in the logistics industry. (collectively defined as "**Members**", individually defined as "**Member**") utilizing the Relay System pursuant to the Agreement. Under the terms of the Agreement, Member will be furnished with the products and services described herein that are selected by Member in an order form, including, without limitation, the use of the Relay System to conduct the Transactions (as hereinafter defined). Collectively, the products and services selected by Member and provided to Member by Relay, and the use of the Relay System shall be referred to herein as the "**Services**". Member will pay Relay for such Services in accordance with this Agreement. The Parties acknowledge and agree that Relay may enter into a separate agreement with the vendors and suppliers of Member to facilitate the transfer of funds from Member to such vendors or suppliers.

### **2. GRANT OF LIMITED USE LICENSE**

2.1. **License Grant to Member.** Relay hereby grants to Member a limited nonexclusive and non-transferable license to access and use the Relay System to access the Services during the term of this Agreement, and Member hereby accepts such license and agrees to utilize and access the selected Services in accordance with the Agreement.

2.2. Member may use the Relay System (a) for its own internal business purposes and operations, and/or (b) as a service provided to its customers, unless otherwise agreed in writing by Relay.

2.3. **Reservation of Rights.** No license or right to reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of Relay's Proprietary Information (including the Relay System), as defined in Section 3 below, in whole or in part, is granted herein except as expressly provided by these Terms and Conditions. Neither Member nor any of its affiliates shall reverse engineer, decompile or disassemble the Relay System or any Proprietary Information.

2.4. Nothing in the Agreement shall be construed to provide Member with a license of any third-party proprietary information or property outside of the Relay System.

### **3. OWNERSHIP**

3.1. **Proprietary Information.** All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to Relay's products and the Services, including the Relay System (collectively, the "**Proprietary Information**"), are and will remain the sole and exclusive property of Relay, subject to the license grant provided for in Section 1.

3.2. Relay shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing Relay System, Relay products or Services and/or any new programs,

upgrades, modifications or enhancements developed by Relay in connection with rendering any Services to Member (or any of its affiliates), even when refinements and improvements result from Member's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in Relay by virtue of Member's agreement to these Terms and Conditions, Member hereby transfers and assigns (and, if applicable, shall cause its affiliates to transfer and assign) to Relay all rights, title, and interest which Member or any of its affiliates may have in and to such refinements and improvements.

3.3. Relay hereby grants to Member a limited, nonexclusive, non-transferable, revocable, worldwide, royalty-free right during the term of this Agreement to use Relay's name and trademark to identify Relay as the provider of transaction processing services to Member. All goodwill generated from the use of Relay's name and trademark will inure to the benefit of Relay.

#### 4. TRANSACTION PROCESSING SERVICES

4.1. **Accepting Transactions.** The term "Transaction" shall mean a request for a transfer of funds from the Relay Account (as described in Section 4.5 below) submitted by the Member in the proper format, pre-approved by Relay. Relay shall accept Transactions on a 24-hour basis, with a cut-off time of midnight each day. Transactions received after the designated cut-off time will be included in the next day's processing. Relay is responsible only for processing Transactions that are received by Relay in the proper format, pre-approved by Relay and that are made on a timely basis.

4.2. **Processing Limits.** The Parties will mutually agree on a reasonable cap for the number or dollar amount of Transactions that Relay will process for Member. The expectation is that this cap will increase as the Parties increase their familiarity with the Relay System. If Member exceeds the established limits, Relay will notify Member and the Parties will discuss increasing the cap. If the Parties are unable to agree upon an increased cap within 30 days after Relay notifies Member that the cap has been exceeded, Relay may temporarily suspend Transaction processing for any Transactions that are above the agreed upon reasonable cap.

#### 4.3. **Modifying Transactions.**

4.3.1. At Member's written request, Relay will make reasonable efforts to reverse, modify, or delete a Transaction after it has been submitted by Member. All requests must be made by an individual pre-authorized by Member to make such requests, and delivered to Relay.

4.3.2. Member agrees that Relay will not be held responsible for any losses, directly or indirectly, incurred by Member or other third parties as a result of Relay's inability to accomplish the requested modification or deletion after the Transaction has been submitted by Member

#### 4.4. **Rejecting, Delaying or Returning Transactions.**

4.4.1. Relay reviews Relay Account and Transaction activity at various times, including when Transactions are initiated. This review checks for, among other things, suspicious or illegal activity, and whether a Member's Relay Account activity and the activity of other members with whom the Member has completed Transactions comply with the Agreement. In connection with Relay's review process, the Member may be required to provide Relay with additional information and/or documentation to verify the Member's identity and authorization to enter into one or more Transactions. Relay reserves the right to limit the activity in a Member's Relay Account and the Member's access to the Relay Account until verification is completed to Relay's satisfaction.

4.4.2. The review of a Relay Account or Transaction may result in (i) delayed, blocked or cancelled Transactions; (ii) money or payments being held by Relay; (iii) money or payments being applied to amounts you owe to Relay or used to offset loss incurred by Relay; (iv) Relay Account limitation, suspension or termination; (v) money in a Relay Account or payments being seized to comply with a court order, warrant or other legal process; and/or (vi) money or payments the Member previously received being reversed (i.e., sent back to the sender or account that was used to fund the payment). Among other reasons, Relay may take the above actions if the Member knowingly or unknowingly is or was a participant in a payment that was made from a compromised bank account, or compromised Relay account, or if you were a participant in a transaction not permitted under this Agreement.

4.4.3. Relay may reject, delay or return any Transaction without prior notification to Member for any reason permitted or required under any applicable Rules, Regulations, or Laws (as defined in Section 10 below) or if Relay believes that such Transaction is fraudulent or improperly authorized. Relay shall have no liability to Member by reason of such rejection, delay or return of any such Transaction. Relay shall

make available to Member details related to any such Transaction and the reasons for the rejection, delay, or return of any such Transaction. Relay may retransmit a returned or rejected Transaction at Member's request but shall have no obligation to do so.

4.4.4. If Relay is notified of a court order or other legal process (including garnishment or any equivalent process) affecting the Member, or if Relay otherwise believes it is required to do so in order to comply with applicable law or regulatory requirements, Relay may be required to take certain actions, including holding payments to/from Member's Relay Account, placing a reserve or limitation on Member's Relay Account, or releasing any funds in Member's Relay Account. Relay shall decide, in its sole and absolute discretion, which action is required of Relay. Unless the court order, applicable law, regulatory requirement or other legal process requires otherwise, Relay will notify Member of these actions. Relay does not have an obligation to contest or appeal any court order or legal process involving Member or Member's Relay Account. If Relay implements a hold, reserve or limitation as a result of a court order, applicable law, regulatory requirement or other legal process, Member acknowledges that such hold, reserve or limitation may remain in place longer than 180 days.

#### 4.5. ***Relay Account.***

4.5.1. Member agrees to fund a reserve account or "***Relay Account***" for Relay to facilitate the processing of Transactions for Member. The Relay Account may be used by Relay to offset any fees/fines, billing or other Member obligations to Relay that Relay is unable to collect from Member after written notice to Member of any amounts that are due and owing. Should Relay determine that a drawdown from the Relay Account is required, Relay shall provide notice to Member of such event. Member hereby grants Relay a security interest in all said accounts and authorizes Relay to make such withdrawals at such times and in such amounts as may be necessary under this Agreement.

4.5.2. The Relay Account may be funded through any or all of the following: (a) ACH payment by Member; or (b) Wire payment by Member. Member hereby instructs said financial institutions to honor any requests made by Relay under the terms of this provision.

4.5.3. If Member does not submit requests for Transactions through Member's Relay Account for an extended period of time and/or has not linked such Relay Account to a valid bank account, Member may have a balance in such Relay Account that is deemed "unclaimed" or "abandoned" under applicable Rules, Regulations, or Laws. If this occurs, Relay shall provide Member with notice as is required by applicable law and instructions for how to transfer any balance in Member's Relay Account. If funds still remain in Member's Relay Account a reasonable time after such notice, Relay may escheat such funds as required by applicable Rules, Regulations, or Laws, as permitted, to Relay.

#### 4.6 ***Impermissible Transactions.***

4.6.1. Member acknowledges and agrees not to use the Relay Account or Relay Services to fund or participate in activities that: (1) violate any Rules, Regulations, or Laws (as hereinafter defined); (2) relate to transactions involving (a) illegal narcotics, steroids, certain controlled substances or other products that present a risk to consumer safety, (b) illegal drug paraphernalia, (c) items that encourage, promote, facilitate or instruct others to engage in illegal activity, (d) stolen goods including digital and virtual goods, (e) the promotion of hate, violence, racial or other forms of intolerance that is discriminatory or the financial exploitation of a crime, (f) items that are considered obscene, (g) items that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction, (h) illegal sexually-oriented materials or services or human trafficking, or (i) illegal trafficking in ammunition, firearms, weapons, or certain firearm parts or accessories, or (j) certain weapons or knives regulated under applicable law; (3) relate to transactions that (a) show the personal information of third parties in violation of applicable law, (b) support illegal pyramid or ponzi schemes, matrix programs, other illegal financial schemes, (c) are associated with off-shore banking or transactions to finance or refinance debts funded by a credit card, (d) are by payment processors to collect payments on behalf of merchants, (e) are associated with the sale of traveler's checks or money orders, (f) involve currency exchanges or check cashing businesses, (g) involve certain credit repair, debt settlement services, credit transactions or insurance activities, or (h) involve offering or receiving payments for the purpose of bribery or corruption; or (4) involve the sales of products or services identified by government agencies as fraudulent or which have a high likelihood of being fraudulent.

4.6.2. Member acknowledges and agrees that Relay is not (1) an escrow agent with respect to any funds kept in Member's Relay Account; and (2) Member's agent, trustee, partner, joint venturer, or employee.

## 5. PRICING AND PAYMENT

5.1. Member shall pay for all Services as provided for in this Agreement. Fees will differ depending on the type of Services Member has requested.

5.2. Fees shall be immediately due and payable by Member upon receipt of Services unless otherwise agreed upon between the parties. Transaction Service Fees will be deducted from the Member's Relay Account for each Transaction processed by Relay. Other Service Fees will be automatically debited from Member's designated account on the 1st of each month for the prior month's activity unless agreed upon between the parties.

5.3. Relay may draw down from the Relay Account for any payments not made within three days of the due date. Member agrees to replenish the Relay Account, and to the extent that sufficient funds are not available in the Relay Account, Member shall be assessed a late fee of one and one-half percent (1.5%) per month of the amount due. In addition, lack of sufficient funds in the Relay Account shall constitute a material breach of this Agreement and in addition to imposing such late fees, Relay may elect to terminate Member's access to the Services.

5.4. Relay shall have the right to offset against any amount payable by Relay to Member under this Agreement by any amounts owed to Relay by Member.

5.5. In the event the funds in Member's designated account are insufficient to cover Member's obligations, Member agrees to submit payment of amounts owing to Relay upon demand and through alternative means. Relay may debit any alternative account maintained by Member for the amounts due and owing without further notice to or approval from Member.

5.6. Taxes. Member is solely responsible for payment of any taxes (including sales or use taxes, transfer taxes, excise taxes, intangible taxes, property taxes, and similar taxes and duties) resulting from Member's acceptance of the license granted hereunder and use of Relay's products and services, excluding, however, any taxes payable by Relay as a result of income earned by Relay hereunder. Member shall reimburse Relay should Relay be charged for any tax obligation of Member. Member shall hold Relay harmless from all claims and liability arising from Member's failure to report or pay such taxes.

## 6. REPRESENTATIONS AND WARRANTIES

6.1. ***Member's Representations and Warranties.*** Member represents and warrants to Relay that:

6.1.1. Member's agreement to license Relay's products and services and to engage Relay to perform the Services hereunder does not violate any agreement or obligation between Member and any third party.

6.1.2. To the best of Member's knowledge, neither any information delivered by Member to Relay in support of the Agreement nor Member's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

6.1.3. None of the activities for which Member has engaged the services of Relay shall violate any international, federal, state, or local law or regulation. Neither Member nor any of its affiliates will use the Relay products and/or services for any unlawful, fraudulent, libelous, defamatory, threatening, abusive or otherwise objectionable usage of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or foreign law, including without limitation the U.S. export control laws and regulations.

6.1.4. The Agreement constitutes a legal, valid, and binding obligation of Member, enforceable in accordance with its terms.

## 7. CONFIDENTIALITY

7.1. ***Member's Confidentiality.*** Member acknowledges that the products, services and information relating to Relay's products and services contain confidential and proprietary information developed by, acquired by, or licensed to Relay ("***Relay's Confidential Information***"). Member will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of Relay's Confidential Information. Neither Member nor any of its affiliates will make any unauthorized use of Relay's Confidential Information or disclose, in whole or in part, Relay's Confidential Information to any individual or entity, except to those of Member's employees or affiliates who require access for Member's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions

applicable to Relay's Confidential Information. Member acknowledges that any unauthorized use or disclosure by it or any of its affiliates of Relay's Confidential Information may cause irreparable damage to Relay. As such, if Relay becomes aware of Member's breach or threatened breach of this Section 7, Relay may suspend any and all rights granted to Member under the Agreement and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to Relay. Upon termination of this Agreement, Member agrees to return or destroy any and all of Relay's Confidential Information in the Member's possession, custody, or control.

7.2. **Relay's Confidentiality.** Relay acknowledges that under this Agreement, Member will share certain information, including, but not limited to, banking information, loans, customer information, product information, driver information, ("**Member's Confidential Information**"). Relay will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of Member's Confidential Information. Neither Relay nor any of its affiliates will make any unauthorized use of Member's Confidential Information or disclose, in whole or in part, Member's Confidential Information to any individual or entity, except to those of Relay's employees or affiliates who require access for Member's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to Member's Confidential Information. Relay acknowledges that any unauthorized use or disclosure by it or any of its affiliates of Member's Confidential Information may cause irreparable damage to Member. As such, if Member becomes aware of Relay's breach or threatened breach of this Section 7, Member shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to Member. Upon termination of this Agreement, Relay agrees to return or destroy any and all of Member's Confidential Information in the Relay's possession, custody, or control. Member acknowledges and agrees that Relay may retain a record of any and all Transactions ordered by Member during the Term of this Agreement.

7.3 **Exceptions.** This Section 7 will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, (iii) is disclosed under force of law, governmental regulation or court order.

## 8. CUSTOMER AND THIRD PARTY DISPUTES

8.1 **Member Disputes with Member Customers or Other Third Parties.** All disputes between Member and its customer(s) or another third party related to any Transaction, the Relay System, or the Services will be settled by and between Member and its customer(s) and/or the third party unless the dispute is caused by Relay's gross negligent acts or recklessness. Relay shall be responsible only for performing the Services expressly as provided for in this Agreement, and shall be liable only for its acts or omissions in performing those Services. Member agrees that Relay bears no responsibility for the acts or omissions or alleged acts or omissions of Member, its customer(s) or another third party.

8.2 **Indemnification for Third Party Disputes.** Member shall indemnify, defend, and hold harmless Relay and its processors (and our respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a customer of a Member or any other third party that arises out of or relates to a Transaction, the Relay System, or the Services, unless such claim, action, audit, investigation, inquiry, or other proceeding is caused by Relay's gross negligence or Recklessness.

## 9. LIMITS OF LIABILITY

9.1. **Errors of Others.** Relay shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Transactions may be originated or through which Relay may receive or transmit information, and no such entity shall be deemed an agent of Relay.

9.2. **Damages Waiver.**

9.2.1. Except for breach of the confidentiality provisions hereof, neither Party shall be liable to the other or any third party for any special, consequential, incidental or punitive damages of any kind or nature

incurred in relation to the Agreement whether or not (i) any claim for these damages is based on tort or contract; or (ii) the other party knew or should have known the likelihood of such damages occurring under the circumstances. Neither party shall assert any such claim against the other party or its subsidiaries or affiliated companies or their respective officers, directors, or employees.

9.2.2. With the exceptions of claims for breach of the confidentiality provisions hereof and claims by Relay against Member for Member's improper use of Proprietary Information, either Party's maximum liability hereunder for any claims whatsoever shall not exceed the total amount of all fees paid or payable by Member to Relay during the twelve-month period preceding the origination of the claim giving rise to liability.

9.2.3. No claim may be brought against Relay or any of its affiliates more than one (1) year after the accrual of such claim. The limitations of liability contained in this section shall apply without regard to whether other provisions of the Terms and Conditions have been breached or have proven ineffective.

#### 10. **COMPLIANCE WITH RULES, REGULATIONS AND LAWS**

In performing its duties under this Agreement, each Party agrees to comply with all applicable Rules, Regulations, and Laws. Member agrees to cooperate, at Member's expense, and provide information requested by Relay to facilitate Relay's compliance with any applicable Rules, Regulations, and Laws. For purposes of this Agreement, the term Rules, Regulations, and Laws shall mean any and all applicable federal, state, local or municipal laws, rules, statutes, ordinances, codes, decrees, orders or regulations, including, without limitation, any permit or license requirements. Anti-money laundering and counter-terrorism financing laws may require that Relay verify any identifying information if a Member uses in connection with Relay Services and/or the Relay Account. Relay reserves the right to close, suspend, or limit access to Member's Relay Account and/or the Relay Services in the event that, after reasonable enquiries, Relay is unable to obtain information about Member or Member's Transactions required to verify Member's the identity of Member and/or the counterparty in any Transaction.

#### 11. **NOTICE OF ERRONEOUS OR UNAUTHORIZED TRANSFERS**

Member shall regularly and promptly review all Transactions and other communications from Relay and shall immediately notify Relay upon discovery of any and all discrepancies between Member's records and those provided by Relay, or with respect to any transfer that Member believes was made without proper authorization.

#### 12. **RELAY SERVICE POLICY**

Member acknowledges and understands that Relay does not warrant that the Services will be uninterrupted or error free and that Relay may occasionally experience delays or outages due to disruptions that are not within Relay's control. Any such interruption shall not be considered a breach of the Agreement by Relay. Relay shall use its best efforts to remedy any such interruption in service as quickly as possible.

#### 13. **USAGE**

13.1. ***Use Restricted to Lawful Purpose.*** Member agrees to use the Services solely for lawful purposes within the United States of America. Member agrees that it will submit transactions through Relay's Services in violation of any Rules, Regulations, and Laws. Relay reserves the right to use all means necessary to monitor

Member's actions in the event of a real or perceived security breach.

13.2. ***Proper Usage.*** Member agrees to comply with the reasonable and acceptable use policies, rules, regulations, terms and conditions of any networks accessed by Member through Relay's Services. Relay reserves the right to deny access to, or close any account(s) which, in Relay's opinion, is (are) causing or may cause, harm to or negatively affect a Relay server or third party network accessed through Relay. In the event of such an occurrence, Relay shall make reasonable efforts to notify Member prior to taking any such action, but is not required to do so.

#### 14. **AUDIT REQUIREMENTS**

Member agrees to cooperate fully with Relay in conducting a review of Member's use of the Services to verify that Member is using the services in compliance with this Agreement. Specifically, Member authorizes Relay to audit its use of Relay's systems and Services in order to comply with Relay's annual audit requirements. Relay agrees that upon Member's request, Relay will provide a record or history of transactions processed under Member's account(s).

#### 15. **DISCLAIMER OF WARRANTIES**

Except as otherwise specifically provided herein, Relay's products and services are provided hereunder "As Is" without warranty of any kind, and to the maximum extent permitted by law, Relay expressly disclaims any and all warranties, conditions, representations, and guarantees with respect to the Relay products and Services, whether express or implied, arising by law, custom, prior oral or written statements, or otherwise, including without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement. No representation or other affirmation of fact, including, without limitation, statements regarding capacity, suitability for use or performance of the Relay products or Services, whether made by employees of Relay or otherwise, which is not contained in these Terms and Conditions, shall be deemed to be a warranty by Relay for any purpose, or give rise to any liability of Relay whatsoever.

#### 16. **TERM AND TERMINATION**

16.1. **Term.** This Agreement will commence on the Effective Date and shall remain in effect until either Party terminates the Agreement as set forth herein. Each Order Form shall specify its Pilot Term, which shall be automatically renewed for the General Term, without limitation, unless either Party notifies the other fifteen (15) days before the end of the Pilot Term. After the General Term, the Agreement shall renew automatically on an annual basis (the "Renewal Term"), unless either Party notifies that other Party fifteen (15) days before the end of the Term then in effect. The "**Term**" as used herein shall mean the Pilot Term, General Term, any Renewal Term(s), and/or any portions of the forgoing, collectively. Upon termination, Member's Relay Account will be closed at the end of the then-current billing cycle.

16.2. **Early Termination.** Member agrees and acknowledges that should the Agreement be terminated for any reason, other than breach by Relay, prior to the expiration of the Term, Member shall be responsible for all fees listed on Order Form for the remainder of the Term. Member shall have the right to terminate this Agreement for any reason without penalty within the first 90 calendar days of the Pilot Term.

16.3. **Immediate Termination.** Relay may immediately terminate the Agreement with prompt written notice under the following conditions: (i) in the event Member is or becomes bankrupt or is unable to pay its debts as they become due; (ii) if Relay determines that Member has violated any term, condition, covenant, or warranty of this Agreement; (iii) Relay determines that the type of business in which Member is engaged is an industry or business that Relay is prohibited from providing its services to; or (iv) if Member is using the Services for a purpose other than a permissible use.

16.4. **Post-termination Rights and Obligations.** Upon the effective date of termination of the Agreement, Member's rights hereunder to use the Services shall cease, but Member's obligations in connection with any transaction processed by Relay on behalf of Member (whether before or after such termination) shall survive termination. Promptly upon termination of the Agreement for any reason, Member shall return or destroy, as requested by Relay.

16.5. **Impermissible Termination.** Member acknowledges and agrees that it is not entitled to terminate this Agreement or close the Relay Account (i) to evade an investigation; (ii) if Member has a pending Transaction or an open dispute or claim relating to a Transaction, its Relay Account, or the Relay Services; (iii) if Member's Relay Account has a negative balance; or (iv) if Member's Relay Account is subject to a hold, limitation or reserve.

## 17. INTELLECTUAL PROPERTY RIGHTS

17.1. **Reservation of Rights.** As between the parties, Relay retains all right, title and interest in and to the Services and its technology and all modifications, alterations, derivative works and enhancements and all intellectual property rights contained within. Except as otherwise expressly provided in this Agreement, Relay grants no license, right or intellectual property right in any Relay trademark, trade name or service mark pursuant to this Agreement.

17.2. **Content.** As between the parties, Member will be responsible for all Content, as defined herein, including maintaining backups and providing services and maintenance of such Content. “**Content**” means all data, regardless of format or owner (including, but not limited to, content, websites, applications and the like) sent or received using the Services, and content hosted, stored, or cached by Relay by or at the direction of Member or any of its respective affiliates, agents, customers, or end-users. Member grants to Relay the non-exclusive right and license to receive, retrieve, process, use and transmit any Content necessary or reasonably desirable to perform the Services.

## 18. ASSIGNMENT

The rights granted under the Agreement are and shall be personal to Member and shall not be assigned by any act of Member or by operation of law, without the prior consent of Relay, which shall not be unreasonably withheld or delayed. Any attempt on the part of Member to sub-license or assign to third parties its rights or obligations hereunder without Relay’s consent shall constitute a material breach of this Agreement with Relay and grounds for termination of the Agreement. Relay may assign its rights and obligations under the Agreement without the approval of Member, but shall provide notice of such assignment to Member.

## 19. NOTICE

Any notice required to be given by either party hereunder, excluding notice of changes in fees (each a “Notice”), shall be in writing and delivered personally to the other designated Party, or sent by any commercially reasonable means of delivery, including email, addressed, to that Party at the address identified in the Relay Payments Member Services Agreement and Order Form most recently executed by Member. Either Party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph. Electronic Notices have the same meaning and effect as if Relay had provided Member with paper copies of such Notice. Any such Notice is deemed received by Member within twenty-four (24) hours of the time the Notice is posted to Relay’s website, or within twenty-four (24) hours of the time the Notice is emailed to Member unless Relay receives notice that the email was not delivered.

## 20. AMENDMENT, REVISION, AND CHANGES

Relay has the right to change, modify, amend, or add to these Terms and Conditions at any time, solely with prospective effect, and to change, delete, discontinue, or impose conditions on Member’s use of the Services by posting such changes on Relay’s website or any other website Relay maintains or owns. Relay shall provide Member with Notice of any changes through via email or through other reasonable means. Any such changes shall come into effect ten (10) days after Relay posts the changes to its website and/or provides Member with Notice of such changes. Member’s continued use of the Relay System more than ten (10) days after Relay publishes any such changes on its website, constitutes Member’s acceptance of the changed, modified, amended, and/or additional terms of the Terms and Conditions. Member shall be afforded access to a copy of the current Terms and Conditions on Relay’s website.



## **21. SECURITY**

21.1. Relay has implemented technical and organizational measures designed to secure Member's Relay Account information from accidental loss and from unauthorized access, use, alteration, or disclosure.

Relay does not, however, guarantee that unauthorized third parties will never be able to defeat those security measures or use Member's Relay Account information for improper purposes. Member is solely responsible for safeguarding Member's password for its Relay Account and for restricting access to the Relay Account and Relay Services from Member's compatible mobile devices and computer(s). Member agrees to immediately notify Relay of any unauthorized use of Member's password or Member's Relay Account or any other breach of security.

21.2. To protect the Member's Relay Account from unauthorized activity, Member agrees to regularly log into Member's Relay Account and review Member's Relay Account activity. Relay will notify Member of each Transaction by sending an email to the primary email address associated with Member's Relay Account, which initially, and until updated or changed by Member, shall be the email address for member listed on the Relay Payments Member Services Agreement and Form. Member agrees to review these Transaction notifications to ensure that each Transaction was authorized and accurately completed.

21.3. If Member believes its Relay Account login information has been lost or stolen, Member shall immediately please contact Relay customer service or call: 1(877) 735-2910. Member acknowledges and agrees that it shall inform Relay IMMEDIATELY if Member believes that a Transaction has been initiated or completed without Member's permission using Member's login information or by other means, or if any device containing Member's login information has been lost, stolen, or deactivated. Member acknowledges that such an occurrence creates a risk to Member that all funds in its Relay Account could be lost or depleted as a result of Member's compromised login information or others security breach.

21.4. Member acknowledges and agrees that any and all officers, employees, agents, representatives and others having access to Member's username and/or password to access Member's Relay Account and/or the Relay Services shall be vested by Member with the authority to use the Relay Account and/or the Relay Services to legally bind Member. Member shall be responsible for any and all actions by current and former officers, employees, agents, representatives and others, regardless of whether authorized by Member, that access the Relay Account or use the Relay Services using Member's username and password. MEMBER ASSUMES THE ENTIRE RISK FOR ANY FRAUDULENT, UNAUTHORIZED OR OTHERWISE IMPROPER USE OF MEMBER'S USERNAME AND/OR PASSWORD. RELAY SHALL BE ENTITLED TO RELY ON THE GENUINENESS AND AUTHORITY OF ALL INSTRUCTIONS RECEIVED BY US WHEN ACCOMPANIED BY SUCH USERNAME AND PASSWORD, AND TO ACT ON SUCH INSTRUCTIONS.

## **22. MAINTENANCE OF SERVICES**

Relay may perform maintenance on the Relay System which may result in service interruptions, delays, or errors. Relay shall not be liable for any such interruptions, delays, errors, or bugs. Relay may contact Member in order to assist Member with the Service and obtain information needed to identify and fix any errors. Relay may, at its discretion, release enhancements, improvements or other updates to any software or to the Relay System. If Relay notifies Member that such update requires an installation by Member, Member shall integrate and install such update into Member's systems within 30 days of Member's receipt of such notice. Failure to install any updates in a timely fashion may impair the functionality of the software or Relay System. Relay shall have no liability for any failure to properly install the most current version of any software or any update, and Relay shall have no obligation to provide support or services for any outdated versions. Certain software can automatically install, download, and/or deploy updated and/or

new components, which may include a new version of the software itself. Member shall not, in any event or in any manner, impede the update process. Member agrees to assume full responsibility and indemnify Relay for all damages and losses, of any nature, for all adverse results or third party claims arising from Member impeding the update process.

## 23. GENERAL PROVISIONS

**23.1. Binding Agreement.** The agreement between the parties hereto shall be binding on the parties only upon Relay's approval of Member's signed or e-signed application.

**23.2. Jurisdiction/Venue.** The Agreement shall be governed by and construed in accordance with the laws of the state of Georgia, without regard for the conflict of law provisions. The parties agree that any litigation or lawsuit arising under or related to the Agreement, the Relay System, any Transaction, shall be solely and exclusively brought in the federal or state courts sitting in Cobb County, Georgia. The parties further consent to the personal jurisdiction and venue of the federal and state courts sitting in Cobb County, Georgia. TO THE EXTENT ALLOWED BY LAW, THE PARTIES AGREE TO IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY OR TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING RELATING TO THIS AGREEMENT, ANY TRANSACTION, OR THE RELAY SERVICES.

**23.3. Fees and Costs.** In the event that an action of any kind is brought or an attorney is retained by Relay to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach hereof, Relay shall be entitled to recover, in addition to any other remedy, the reimbursement of reasonable attorneys' fees, court costs, costs of investigation and other related fees and expenses incurred in connection therewith.

**23.4. Force Majeure.** Neither party shall be liable for, or be considered in breach of or default under the Agreement on account of any delay or failure to perform its obligations hereunder as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

**23.5. Severability.** Should any term, clause or provision hereof be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the parties.

**23.6. Waiver.** The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

**23.7. Improper Conduct.** Member agrees not to (1) take any action that imposes an unreasonable or disproportionately large load on Relay's websites, software, systems (including any networks and servers used to provide any of the Relay Services) operated by Relay or on Relay's behalf; (2) facilitate any viruses, trojan horses, malware, worms or other computer programming routines that attempts to or may damage, disrupt, corrupt, misuse, detrimentally interfere with, surreptitiously intercept or expropriate, or gain unauthorized access to any Relay system, data, information or the Relay Services; (3) use an anonymizing proxy; (4) use any robot, spider, other automatic device, or manual process to monitor or copy Relay's websites, or use any device, software or routine to bypass any element of Relay's systems; (5) interfere or disrupt or attempt to interfere with or disrupt Relay's websites, software, systems (including any networks and servers used to provide any of the Relay Services); (6) take any action that may cause Relay to lose any of services from its internet service providers, payment processors, or other suppliers or

service providers; (7) circumvent any of Relay's policies or determinations about the Member's Relay Account such as temporary or indefinite suspensions or other account holds, limitations or restrictions; or (8) harass and/or threaten our employees, agents, or other users.

**24. ELECTRONIC SIGNATURES AND CONSENTS**

Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Member Services Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) Member's and/or its authorized representative(s)' electronic signature is associated with this Agreement and related documents, (2) Member consents and intends to be bound by this Agreement and related documents, and (3) this Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record).