

## **Sub-Merchant Agreement**

### **(PFAC Settlement)**

NIC Services, LLC (**Payment Facilitator**), First Data Merchant Services LLC (**Provider**), and Pathward, N.A. (**Bank**) (Payment Facilitator, Provider and Bank collectively **we, us** or **our**) will provide City of St. Paul, MN (**Sub-Merchant, you** or **your**) with certain Card processing services. Capitalized terms used in this Agreement are referred to in Appendix 1.

Sub-Merchant is entering into this agreement to facilitate the agreement entered into between Payment Facilitator, or its affiliate, and Sub-Merchant (as amended, the **Master Contract**) in order to permit Payment Facilitator to provide payment processing services. By entering into this Sub-Merchant Processing Agreement (the **Agreement**), you agree to comply with the (1) Network Rules as they pertain to Card information you receive through the Payment Facilitator service and (2) Your Payments Acceptance Guide.

Bank and Provider are party to this Agreement for the sole purpose of facilitating funding of amounts owed for properly submitted transactions, less amounts owed to us under this Agreement. As such, Bank and Provider shall not be liable to you, payment facilitator or any third parties for claims or damages arising from or relating to this Agreement. Nothing in this paragraph will limit the rights and remedies available to Bank or Provider in this Agreement. In addition, Bank and Provider do not have any other obligations set forth in the Master Contract.

#### **1. Acceptance of Cards**

You agree to comply with Your Payments Acceptance Guide and all Network Rules, as such may be changed from time to time. You understand that we may be required to modify Your Payments Acceptance Guide and the Agreement from time to time in order to comply with requirements imposed by the Networks.

In offering payment options to your customers, you may elect any one of the following options: (1) Accept all types of Visa, Discover, and MasterCard cards, including consumer credit and debit/check cards, and commercial credit and debit/check cards; (2) Accept only Visa, Discover, and MasterCard credit cards and commercial cards (If you select this option, you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards); or (3) Accept only Visa, Discover, and MasterCard consumer debit/check cards (If you select this option, you must accept all consumer debit/check card products (but not business debit/check cards) and refuse to accept any kind of credit cards). The acceptance options above apply only to domestic transactions.

If you choose to limit the types of Visa, Discover, and MasterCard cards you accept, you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products).

For recurring transactions, you must obtain a written request or similar authentication from your customer for the goods and/or services to be charged to the customer's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made.

#### **2. Settlement**

Upon our receipt of the Transaction Data for Card transactions, we will process the Transaction Data to facilitate the funds transfer from the various Networks for the Card sales. After we receive credit for such Transaction Data, subject to our other rights under this Agreement, we will provide provisional credit to Payment Facilitator's Settlement Account. Payment Facilitator will be solely responsible for settling funds from its Settlement Account to Sub-Merchant's Settlement Account.

You must not submit transactions for payment until the goods are delivered, shipped, or the services are performed. If the Cardholder disputes being charged for merchandise or services before receiving them, a Chargeback may result.

### **3. Chargebacks**

Payment Facilitator will pay any Chargebacks resulting from Transactions submitted by Sub-Merchant under this Agreement. Sub-Merchant will reimburse Payment Facilitator for such Chargebacks as set forth in the Master Contract. Chargebacks can be received for a number of reasons. The following are some of the most common reasons for Chargebacks: (1) a refund is not issued to a customer upon the return or non-delivery of goods or services; (2) an authorization/approval code was required and not obtained; (3) the transaction was allegedly fraudulent; (4) the customer disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense or counterclaim; or (5) The customer refuses to make payment for a Card sale because in the customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner.

### **4. Fees**

You agree that Payment Facilitator is authorized to collect and retain the fees associated with the provision of the Services in accordance with your Master Contract. Payment Facilitator is responsible for paying any fees, assessments or other liabilities to Provider or Bank in accordance with its agreement with Provider and Bank.

### **5. Reserve**

You acknowledge that in addition to any other rights afforded us hereunder, we may establish a reserve account to satisfy your obligations or potential obligations under this Agreement (the **Reserve**), which may be funded by: (i) our demand and your immediate payment for such amounts; (ii) our debiting the account identified as the Settlement Account; (iii) our withholding your settlement payments until all amounts are paid, (iv) our delaying presentation of your refunds until you make a payment to us of a sufficient amount to cover the Reserve; and (v) our pursuit of any remedies we may have at law or in equity.

The Reserve will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. We may (but are not required to) apply funds in the Reserve toward, and may set off any funds that would otherwise be payable to you against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve will not bear interest, and you will have no right or interest in the funds in the Reserve; provided that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve. Any funds in the Reserve may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve, you irrevocably grant to us a security interest in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents that we may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive termination of this Agreement.

### **6. Financial Information**

You will provide us within six (6) months (180 days) of the end of your fiscal year, a copy of your Annual Comprehensive Financial Report (ACFR). Upon request, you will promptly provide us with any necessary permissions or consents, financial statements or other information reasonably requested by us to perform credit risk, security, qualification, and other reviews related to the provision of the Services, transactions submitted, fulfillment of obligations to us or Cardholders, or your financial condition. You authorize us and our processor to obtain information from third parties when performing credit risk, security, qualification, and other reviews. We may perform a reasonable audit of your records related to its performance under this Agreement with 30 business days' advance written notice to you, during your normal business hours. The ACFR shall be prepared in accordance with Governmental Accounting Standards Board accepted accounting principles. You will also

provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

## **7. Data Security and Privacy**

In the event that you receive Card information in connection with the acceptance or submittal of Card Transactions provided under this Agreement, you agree that you will not use it for any fraudulent purpose or in violation of any Network Rules, including but not limited to Payment Card Industry Data Security Standards (**PCI DSS**) or applicable law. If at any time you believe that Card information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must ensure your compliance and that of any third party service provider utilized by you, with all security standards and guidelines that are applicable to you and published from time to time by Visa, MasterCard, Discover, or any other Network, including, without limitation, the Visa U.S.A. Cardholder Information Security Program (**CISP**), the MasterCard Site Data Protection (**SDP**), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS (**Payment Application Data Security Standards**) (collectively, the **Security Guidelines**). If any Network requests an audit of you due to a data security compromise event or suspected event, you agree to cooperate with such audit. You may not use any Card information other than for the sole purpose of completing the Transaction authorized by the customer for which the information was provided to you, or as specifically allowed by Network Rules, Your Payments Acceptance Guide or required by law.

## **8. Term; Events of Default**

This Agreement shall be in effect upon signing by all parties and shall remain effective through the earlier of (a) termination of the Master Contract, and (b) termination of the Payment Solutions Agreement among Payment Facilitator, Provider and Bank.

If any of the following events shall occur (each an **Event of Default**):

- (i) a material adverse change in your financial condition, operating procedures, products or services; or
- (ii) reserved; or
- (iii) reserved; or
- (iv) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, of any Network, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or
- (v) any of your conditions, covenants, obligations or representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
- (vi) you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (vii) a violation by you of any applicable law or Network Rule or our reasonable belief that termination of this Agreement or suspension of services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of your requirement to comply with all applicable laws.

then, upon the occurrence of (1) an Event of Default specified in subsections (iv), (vi), or (vii) we may consider this Agreement to be terminated immediately without notice and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable demand.

Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All your obligations associated with transactions submitted by you are intended to survive termination of this Agreement.

If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement.

The Networks often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Networks for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by the Networks. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

We or you may terminate this Agreement at any time and for any or no reason upon the provision of sixty (60) days prior notice. We may, also temporarily suspend or delay payments to you during our investigation of any issue, and/or designate an amount of funds that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks arising under this Agreement or other amounts that may be owing to us under this Agreement.

#### ***9. Warranties; Exclusion of Consequential Damages; Limitation on Liability***

This Agreement and any addenda is an agreement for services and except as expressly provided in this Agreement, and any addenda, we and our Affiliates disclaim all representations or warranties, express or implied, made to you or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any services or any goods provided incidental to the Services provided under this Agreement.

Notwithstanding anything in this Agreement and any addenda to the contrary, in no event shall you, the Sub-merchant, or we or our Affiliates be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding the foregoing, other amounts for which a party is liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement) are not excluded by this Section.

Notwithstanding anything in this Agreement and any addenda to the contrary, we and our Affiliates' cumulative liability, in the aggregate to the Sub-Merchant (inclusive of any and all claims made by Sub-Merchant against us and/or our Affiliates, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement any addenda) and regardless of the form of action or legal theory shall not exceed the lesser of (i) \$100,000; or (ii) the amount of fees paid by you to Payment Facilitator under the Master Contract for the Services performed pursuant to this Agreement in the immediately preceding 12 months. Liability among Provider, Bank and Payment Facilitator is governed by other agreements among them.

In addition, Payment Facilitator is providing services under this Agreement to effectuate provision of a larger scope of services provided for in the Master Contract. Therefore, Payment Facilitator's liability to Sub-Merchant is limited to the same extent that Payment Facilitator's liability is limited in the Master Contract.

## **10. Confidentiality**

Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors, representatives and Affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this Agreement). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party; (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party or (e) is required to be disclosed by open records or freedom of information laws applicable to Sub-Merchant. We acknowledge that you may be subject to public records laws for the State in which you are located and any non-exempt public records, which may include our confidential information, are subject to inspection and copying upon request by the public. If a Public Records request is made for our confidential information, you will provide us 10 days' prior notice of your intent to disclose the records so that we may seek a protective order or take other court action. If no such action is filed, you may disclose the records. Furthermore, this section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, if receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party unless prohibited by law or court order.

## **11. Visa, Discover, and MasterCard Disclosure**

Member Bank Name: Pathward, N.A.

Bank mailing address: 5501 S. Broadband Lane, Sioux Falls, SD 57108

Bank Phone Number: 1-866-550-6382

### **Important Member Bank Responsibilities**

- (a) The Bank is the only entity approved to extend acceptance of Visa, Discover, and MasterCard products directly to a merchant.
- (b) The Bank must be a principal (signer) to the Sub-Merchant Agreement.
- (c) The Bank is responsible for educating Sub-Merchants on pertinent Visa Discover, and MasterCard Rules with which Sub-Merchants must comply; but this information may be provided to you by Payment Facilitator.
- (d) The Bank is responsible for and must provide settlement funds to the Payment Facilitator, for distribution to the Sub-Merchant.
- (e) The Bank is responsible for all funds held in reserve at Bank that are derived from settlement.

### **Important Sub-Merchant Responsibilities**

- (f) In the event Sub-Merchant obtains Card Information, ensure compliance with Cardholder data security and storage requirements.
- (g) Maintain fraud and chargebacks below Network thresholds.
- (h) Review and understand the terms of the Agreement.
- (i) Comply with Network Rules.
- (j) Retain a signed copy of this Disclosures Page.

**Acknowledge receipt of Visa, Discover and MasterCard Disclosures:**

City of St. Paul, MN  
**(Sub-Merchant)**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print or Type)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print or Type)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

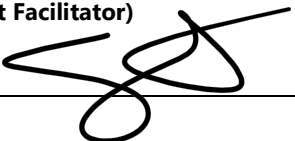
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By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print or Type)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NIC Services, LLC  
**(Payment Facilitator)**

By:  \_\_\_\_\_

Name and Title: Sloane Wright, President  
(Please Print or Type)

## 12. Miscellaneous

- a. Compliance with Laws.** Each party agrees to comply with all laws, regulations and Network Rules applicable to it and each are responsible for its own costs and compliance with such.
- b. Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.
- c. Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing if to Sub-Merchant, at the address set forth below or by any electronic means, including but not limited to the e-mail address you have provided to us, if to Payment Facilitator at 7701 College Blvd., Overland Park, KS 66210, Attention: Legal Department or by e-mail at legal@tylertech.com, if to Provider at 3975 NW 120<sup>th</sup> Avenue, Coral Springs, FL 33065 and if to Bank, at the address provided above. Notice shall be deemed to have been given when received and if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner, including by electronic means, shall be effective when delivered.
- d. Responsibility.** You agree to be responsible for any losses, costs, liabilities, expenses, damages, sanctions, fines or penalties arising from: (i) your misrepresentation or breach of warranty, covenant, or any provision under this Agreement; or (ii) a you or your employees'/agents' fraud, gross negligence, willful misconduct or failure to comply with this Agreement and the Network Rules.
- e. Publicity.** No party shall make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).
- f. Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. Sub-Merchant's obligations to Payment Facilitator under this Agreement are intended to supplement those under the Master Contract. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- g. Severability.** The parties intend every provision of this Agreement and any addenda to be severable. If any part of this Agreement and any addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.
- h. Non-Discrimination:** During the performance of this contract, we agree as follows:

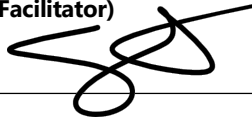
  - a. We will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of our business. We agree to post in conspicuous places, available to employees and

- applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. In all solicitations or advertisements for employees placed by or on behalf of us we will state that we are an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.
  - d. We will include the provisions of paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 related to this Agreement, so that the provisions will be binding upon each subcontractor or vendor.
- i.** Immigration Reform and Control Act Compliance: We do not, and shall not, during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.
- j.** Prohibition on the Use of Certain Products and Services. Sub-Merchant may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems.
- k.** Venue. Venue for any claim under a contract or arising out of an order under this Agreement is exclusively in the state or federal courts of Sub-Merchant's state of domicile.
- L** Choice of Law. This Agreement will be governed by and construed in accordance with the laws of Sub-Merchant's state, without regard to its rules on conflicts of law, or in the case of a U.S. Government Sub-Merchant, this Agreement will be governed by and construed in accordance with the applicable federal laws of the United States without regard to any conflicts of law provisions.

The parties hereto have caused this Agreement to be executed by their duly authorized officers. **THIS AGREEMENT IS NOT BINDING UPON THE PARTIES UNTIL FULLY EXECUTED BY ALL PARTIES.**

**With respect to each of Provider and Bank, commencement of performance of such party's obligations set forth in this Sub-Merchant Agreement constitutes such party's acceptance of the terms of this Sub-Merchant Agreement as if executed by the party.**

**NIC Services, LLC**  
**(Payment Facilitator)**

By:   
Name: Sloane Wright  
(Please Print or Type)  
Title: President

**Sub-Merchant Notice Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**City of St. Paul, MN**  
**(SUB-MERCHANT)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
(Please Print or Type)  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Appendix 1

### Definitions

**"Affiliate"** is an entity that, directly or indirectly, (i) owns or controls a party to this agreement or (ii) is under common ownership or control with a party to this agreement.

**"Card"** is an account, or evidence of an account, authorized and established between a customer and a Network, or representatives or members of a Network that is accepted from customers. Cards include, but are not limited to, other Card brands and debit cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

**"Chargeback"** is a Card transaction dispute (or disputed portion) that is returned to us by the Issuer. Sub-Merchant is responsible for payment to Payment Facilitator for all Chargebacks.

**"Network"** is any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide (**MasterCard**), Visa U.S.A., Inc. (**Visa**), DFS Services LLC (**Discover Network**) and any applicable debit networks.

**"Network Rules"** are the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Network-

**"Reserve"** means an account established and funded at our request or on your behalf, pursuant to the Reserve section of the Agreement.

**"Retrieval Request"** is a request for information by a customer or Network relating to a claim or complaint concerning a Transaction.

**"Settlement Account"** is an account or account(s) at a financial institution designated by Sub-Merchant as the account to be debited and credited by Payment Facilitator or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**"Transaction"** is a transaction conducted between a customer and Sub-Merchant utilizing a Card in which consideration is exchanged between the customer and Sub-Merchant.

**"Transaction Data"** is the written or electronic record of a Transaction.

**"Your Payments Acceptance Guide"** mean our operating rules and regulations, attached hereto and incorporated herein by reference, as may be changed by us from time to time.