

## Pay Anywhere User Agreement

This Pay Anywhere User Agreement (“Agreement”) is a legal agreement between you (“you”, “your”) and Pay Anywhere (“PA”) governing your use of PA’s payment processing services and card reader (together, the “Services”).

1. Relationship: PA is what is called a “Payment Service Provider” or “Payment Facilitator”. As such, PA, and not you, will serve as the merchant of record with MasterCard International, Inc., Visa International, Discover Network, PayPal, American Express and other networks or associations (the “Card Associations”) with regard to purchases (each, a “Transaction”) by your customers in which credit or debit cards bearing the service mark of VISA, MasterCard, Discover Network, PayPal, American Express or another specified network or association (each, a “Card”) are presented for payment. PA is not a bank, it does not offer banking services as defined by the United States Department of the Treasury, and it is not in the business of providing money transmission or other money service business services as defined by the U.S. Department of the Treasury. PA serves as your agent in completing Transactions with your customers. In furtherance of this relationship, you authorize PA (i) to submit Transactions to, and receive settlement from, the Card Associations and the applicable payment processors and bank sponsors through which PA processes your Transactions (collectively, “PA Providers”), (ii) to hold, receive, and disburse funds on your behalf, and (iii) to generate a paper draft or an electronic funds transfer to process each Transaction that you authorize. Your authorizations will remain in full force and effect until your PA Account is closed or terminated.

2. Payment Transactions/Acceptance of Cards: You have been given a unique PA Account (the “PA Account”) through which your Transactions will be recorded by PA. Your PA Account will permit you to accept and submit Transactions on a compatible mobile device. Your use of the Services will be subject to, and you agree to be bound by, all of the rules and requirements of the PA Providers, as applicable to your activities under this Agreement. A summary of these requirements can be found at [http://images.payanywhere.com/pdf/cag\\_generic\\_12032013.pdf](http://images.payanywhere.com/pdf/cag_generic_12032013.pdf) (the “Provider Terms and Conditions”). Since the Provider Terms and Conditions may change from time to time, it is important that you review them with regularity. By continuing to use your PA Account, you agree to accept and abide by such changes.

Without limitation, you agree to abide by the following Provider Terms and Conditions:

- a. You will accept all Cards in accordance with the Provider Terms and Conditions.
- b. You will only submit valid and completed Transactions produced as a direct result of bona fide sales of goods or services made to a customer by you, and such Transactions will accurately describe the goods or services sold or delivered. All such Transactions shall be free of any liens, claims, and encumbrances other than ordinary sales taxes. You will not use the Services for any fraudulent or illegal undertaking. No Transaction will represent a sale to any principal, partner, proprietor, or owner of you, if you are an entity.
- c. You will maintain a fair policy for the exchange, refund and return of goods sold and the adjustment of services rendered. You will post that policy at or before the Transaction occurs and in accordance with the Provider Terms and Conditions, and such policy must comply with the Provider Terms and Conditions. You will not give cash refunds to a customer in connection with a Transaction, unless required by law, and not accept cash or any other item of value for preparing a Transaction refund.
- d. You will not bill or collect from any customer for any purchase or payment on a Card unless a chargeback has been exercised, you have fully paid for that chargeback, and you otherwise have the right to do so.
- e. You will ensure compliance with rules adopted by any Card Associations relating to the privacy and security of cardholder and card transaction data, including without limitation the Payment Application Data Security Standard (“PA DSS”) and the Payment Card Industry Data Security Standard (“PCI DSS”), as they may be amended from time to time;

- f. You will maintain fraud and chargebacks below thresholds set by the Card Associations;
- g. You will accept, without discrimination, all valid Cards properly presented by customers for payment for goods or services. With respect to VISA and MasterCard products, you may elect to accept credit cards or debit/prepaid cards or both, as reflected on the merchant application you completed with PA (the “PA Application”), and you must display appropriate signage to display the same. You agree to pay for any additional fees incurred as a result of your subsequent acceptance of Transactions with any VISA or MasterCard product that you have elected not to accept.
- h. You may establish a minimum Transaction size for accepting Cards so long as such amount does not exceed \$10, or such other amount established by law, and such minimum Transaction size requirement does not discriminate between Card issuers or between Card Associations. You may not impose a maximum Transaction size on Transactions, or add a fee to a Transaction.
- i. You may offer discounts or in-kind incentives for payment by the use of cash, checks or Cards, provided that the terms of the discount or in-kind incentives do not differentiate on the basis of the Card issuer or Card Association.
- j. You will not accept a Card as payment (other than for a preauthorized mail order, telephone order, or other sale), if the customer seeking to use the Card does not present the Card to permit you to examine it and obtain an imprint or otherwise use the physical Card to complete the transaction.
- k. You will comply with all requirements and restrictions regarding the display of Card Association marks.

Any inconsistency between the Provider Terms and Conditions and this Agreement shall be resolved in favor of the Provider Terms and Conditions. You may use the Services only to the extent that you obey all laws, rules, and regulations applicable to your use of the Services. You may only use the Services in the fifty states of the United States of America and the District of Columbia. You may not act as a payment intermediary, aggregator or service bureau or otherwise resell the Services on behalf of any third party. This means that you may not use the Services to handle, process or transmit funds for any third party. You also may not use the Services to process cash advances. PA reserves the right to reject any Transaction that you submit for settlement.

3. PA Fees: You agree to pay the applicable fees listed on the PA Application (“Fees”) whenever you use the Services. Subject to the terms of this Agreement, PA reserves the right to change Fees. If PA changes its Fees, it will give you thirty (30) days’ notice of any change. You will not be permitted to continue to use the Services unless you consent to the change in Fees. To withdraw your consent, you will need to close your PA Account.

4. Next Day Funding: PA will deposit to your PA Account the amounts actually received by PA for Transactions submitted through PA (less any applicable Fees). Once your bank account information is verified, PA will automatically deposit your money in your designated bank account. A deposit to your bank account in connection with a Transaction will normally occur one (1) business day after the completion of that Transaction. However, Transactions may not be deemed complete in PA’s discretion until PA has received or sent the funds and/or when PA or the designated financial institutions have accepted the Transaction or funds. PA may, in its discretion, provisionally credit amounts to your PA Account, subject to receipt of final payment by PA in respect of a Transaction.

5. Suspension/Reserve/Recovery/Pooling of Funds: PA may temporarily suspend or delay payments to you or withhold or reserve your funds in order to secure your performance of your obligations to PA. This action may arise for any reason, including the occurrence or suspected occurrence of Transaction chargebacks or refunds, for which you are responsible. A chargeback will occur if the Transaction (a) is disputed, (b) is reversed for any reason, (c) was not authorized or PA has any reason to believe that the Transaction was not authorized, or (d) is allegedly unlawful, suspicious, or in violation of this Agreement. The amounts suspended, delayed or reserved shall be initially determined, and may be increased or decreased, in PA’s reasonable discretion as necessary to cover potential financial

exposure on the part of PA. You grant PA a security interest in and lien on any and all funds held in any such reserve, and also authorize PA to make any withdrawals or debits from such reserve, without prior notice to you, to collect amounts that you owe PA. This security interest survives for as long as PA holds your funds in reserve.

PA may recover, recoup, set off or deduct the amount of any chargeback and any associated Fees, fines, or penalties listed in the PA Application or assessed by the PA Providers from your PA Account (including without limitation any reserve), any proceeds due to you, your bank account, or other payment instrument registered with PA. In furtherance of this right, you authorize PA to debit your bank and/or to initiate reversal or adjustment entries with respect to your bank account. If PA is unable to recover funds for which you are liable, you will pay PA the outstanding amount immediately upon demand. You agree to pay all costs and expenses, including without limitation attorneys' fees and other legal expenses, incurred by or on behalf of PA in connection with the collection of all such amounts, along with interest on the unpaid amount calculated at the highest legal rate.

You understand that your funds may be commingled and held with other PA merchant funds in one or more pooled accounts at one or more FDIC-insured banks by PA for the benefit of you and other PA merchants (each a "Pooled Account"). PA has sole discretion over the establishment and maintenance of any Pooled Account. You will not receive interest or any other earnings on any funds that PA handles for you. As consideration for using the services provided by PA, you irrevocably assign to PA all rights and legal interests to any interest and/or other earnings that may accrue or are attributable to its holding of your funds in a Pooled Account or reserve.

6. Transaction Errors. You are responsible for monitoring your Transactions and ensuring that PA's payments to you are correct. You must notify PA of any errors in payments made to you within sixty (60) days of the error first appearing on your electronic transaction history. Failure to notify PA of such an error will be deemed a waiver of any right to amounts owed to you.

7. Information: You authorize PA to disclose all Transaction data and other information about you as required by the PA Providers, and their affiliates, agents, subcontractors and employees, in order to process your Transactions. You also authorize each of the foregoing parties to use such information to perform their responsibilities in connection with the programs offered by them and for such other purposes as they may reasonably deem necessary, including such purposes as are described in the Provider Terms and Conditions. PA may request additional information and documentation from you at any time. PA may also ask for permission to inspect your business location. You agree to advise PA immediately of any change in the ownership or nature of your business, or in your or your business' financial condition or location, or in your approved monthly Transaction volume and average ticket. You authorize PA, at any time during which this Agreement remains in effect, to make any credit inquiries of you or your business, including but not limited to requesting reports from third party credit reporting bureaus.

8. Conversion to Direct Merchant: You acknowledge that you will be converted from being a merchant of PA to a direct card acceptance relationship with the applicable Card Association or PA Provider, as applicable, under the following circumstances:

- a. With regard to American Express, if and when you become what American Express calls a "High CV Merchant". Upon such conversion, (i) you will be bound by American Express' then-current card acceptance agreement, (ii) American Express will set the discount and other fees payable by you for its Card acceptance, and (iii) you will have the option of continuing to use PA to provide Services to you subject to the terms and conditions contained in the Provider Terms and Conditions. A High CV Merchant is one that has greater than \$1,000,000 in charge volume in a rolling 12 month period, or greater than \$100,000 in charge volume in any three consecutive months.
- b. With regard to Visa, MasterCard, Discover, and/or PayPal if and when you exceed \$100,000 in charge volume for the applicable Card brand in a rolling 12 month period. Upon such conversion, and in the event that

you wish to continue to accept and submit Visa, MasterCard, Discover, and PayPal Transactions, you will be bound by the then current card acceptance agreement of the applicable PA Provider, at discount and other fees to be determined at the time.

9. Representations and Warranties: You confirm that: (i) you are at least 18 years of age; (ii) you are either a legal resident of the United States, a United States citizen, or a business entity authorized to conduct business by the state in which it operates; (iii) you are eligible to register for and use the Services; (iv) the name identified by you when registering for the Services is your legal name or business name under which you sell goods and services; (v) all information contained in your completed PA Application is true and correct in all respects; and (vi) this Agreement is your valid and binding obligation, and does not violate any provisions of law, or conflict with any other obligations to which you are subject.

10. No Assignment: You may not assign or transfer to any third party this Agreement or any payments due to you in connection with your Transactions.

11. Third Party Rights: You hereby authorize the PA Providers, and their affiliates, agents, subcontractors and employees, to enforce the terms of this Agreement as against you, without establishing any obligation on their part to do so. You also authorize the PA Providers to use your name, address, and website address in any media from time to time.

12. PA Provider Agreements: PA is a party to certain other agreements with the PA Providers. You acknowledge that you are not a beneficiary under any of those agreements. You also agree to abide by all limitations of liability contained in those agreements with respect to such PA Providers.

13. Wireless Carriers: Mobile devices used in connection with the Services may not be modified contrary to the manufacturer's software or hardware guidelines, including but not limited to disabling hardware or software controls. You acknowledge that the use of a modified device to use the Services is expressly prohibited. PA does not warrant that the Services will be compatible with your mobile device or third party carrier. Your use of the Services may be subject to the terms of your agreements with your mobile device manufacturer and your carrier.

14. Privacy: Your privacy is very important to PA. You confirm that you have read, understood and accepted PA's Privacy Policy, available at <http://www.payanywhere.com/privacy>. PA's Privacy Policy includes important information on what information PA and the PA Providers collect about you, how each uses that information, and with whom each shares that information. Also, to ensure the quality of the Services and for other lawful purposes, PA may monitor or record calls between PA and you (for example, your conversations with PA's customer service or sales departments). PA's privacy policy may change from time to time, so please review PA's Privacy Policy with regularity.

15. Disclosures and Notices: You confirm that you have become a party to, and become bound by, this Agreement by completing the PA Application and accepting it electronically over the Internet or through your wireless carrier. This is done by clicking or entering "I Agree" where requested on an electronic version of the PA Application. By providing this consent, you acknowledge that you have received and reviewed all applicable pages, terms and conditions of this Agreement, including the Provider Terms and Conditions.

16. Termination: PA or you may terminate this Agreement for any or no reason, and at any time. In order to terminate this Agreement, you must close your PA Account, at which time all pending Transactions will be cancelled. This Agreement will immediately and automatically terminate to the extent any PA Provider deregisters PA. Any funds held by PA for you at the time of closure or termination, less any applicable Fees, will be paid out to you, subject to PA's rights to suspend, delay or reserve funds. All provisions of this Agreement necessary to accomplish or enforce this Agreement shall survive the termination of this Agreement.

17. PA Ownership/License: You agree that the “Pay Anywhere” name and mark, and the Services (and any suggestions, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services), are owned by PA, that PA owns the title, copyright and all other worldwide intellectual property rights associated with the Services, and that PA reserves all rights not expressly licensed to you in this Agreement. PA grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to electronically access and use the Services in accordance with this Agreement. You may not, nor may you permit any third party to do any of the following: (i) access or monitor any material or information on any PA system using any manual process or robot, spider, scraper, or other automated means unless expressly authorized by PA; (ii) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material or information from PA; (iii) permit any third party to use and benefit from the Services; (iv) transfer any rights granted to you under this Agreement; (v) work around, bypass, or circumvent any of the technical limitations of the Services, use any tool to enable features or functionalities that are otherwise disabled in the Services, or decompile, disassemble or otherwise reverse engineer the Services, except to the extent that such restriction is expressly prohibited by law; (vi) perform or attempt to perform any actions that would interfere with the proper working of the Services, prevent access to or use of the Services by PA’s other users, or impose an unreasonable or disproportionately large load on PA’s infrastructure; or (vii) otherwise use the Services except as expressly allowed under this Agreement. You may not export the Services directly or indirectly, and you acknowledge that the Services may be subject to export restrictions imposed by US law, including US Export Administration Regulations (15 C.F.R. Chapter VII).

18. Indemnification: You will indemnify, defend, and hold PA and the PA Providers harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, fines, interest, and expenses (including without limitation reasonable attorneys’ fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement; (b) your wrongful or improper use of the Services; (c) any transaction submitted by you through the Services; (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (e) your violation of the Provider Terms and Conditions, PA DSS, PCI DSS, or any law, rule or regulation of the United States or any other country; (f) any other party’s access and/or use of the Services with your username, password or other appropriate security code.

19. No Warranties: THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PA OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, PA DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

20. Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PA OR THE PA PROVIDERS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES THAT RESULT FROM THE USE

OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE. UNDER NO CIRCUMSTANCES WILL PA OR THE PA PROVIDERS BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR PA ACCOUNT, OR THE INFORMATION CONTAINED THEREIN. IN NO EVENT SHALL PA OR THE PA PROVIDERS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES EARNED BY PA IN CONNECTION WITH YOUR USE OF THE SERVICES DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

21. Governing Law: This Agreement and any dispute relating to it will be governed by Michigan law as applied to agreements entered into and to be performed entirely within Michigan, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction.

22. Disputes: PA and you each agree that any dispute or claim arising out of or relating to this Agreement or the Services (each, a "Dispute"), shall be settled by following the procedures:

a. The party initiating the Dispute shall contact the other party and provide a written description of the Dispute, all relevant documents/information and the proposed resolution (the "Claim Notice"). You agree to contact PA by calling or writing to: Claims Administrator, 250 Stephenson Hwy, Troy Michigan 48083, Tel. No. 1-855-733-7264.

b. The Claims Administrator for PA and you shall then seek in good faith to resolve the Dispute. As part of this process, each party to the Dispute shall provide a monetary amount that, if paid to the party initiating the Dispute, would settle the Dispute (the "Settlement Amount"). If the parties do not agree to a Settlement Amount, or the parties are otherwise unable to settle the Dispute within thirty (30) days of the date of delivery of the Claim Notice, then the parties shall proceed to arbitration, as set forth below.

c. IN THE ABSENCE OF RESOLVING THE DISPUTE, AND INSTEAD OF SUING IN COURT, PA AND YOU AGREE TO SETTLE AND RESOLVE FULLY AND FINALLY ALL DISPUTES EXCLUSIVELY BY ARBITRATION, EXCEPT IN THE FOLLOWING LIMITED CIRCUMSTANCES: (I) PA OR YOU MAY COMMENCE AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT WHERE THE AMOUNT OF THE DISPUTE DOES NOT EXCEED THE JURISDICTIONAL LIMIT OF SUCH COURT; AND (II) YOU MAY FILE A DISPUTE WITH ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY THAT CAN, IF THE LAW SO AUTHORIZES, SEEK RELIEF AGAINST PA. THE AGREEMENT TO HAVE DISPUTES RESOLVED BY ARBITRATION IS MADE WITH THE UNDERSTANDING THAT EACH PARTY IS IRREVOCABLY, KNOWINGLY AND INTELLIGENTLY WAIVING AND RELEASING ITS RIGHT TO LITIGATE DISPUTES THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE DISPUTES.

d. The foregoing arbitration shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules in effect when a Claim Notice is duly provided under this Section 22. If any AAA procedure or rule conflicts with the terms of this Agreement, the terms of this Agreement apply.

e. The arbitration set forth in this Agreement and any proceedings thereunder shall be governed by the Federal Arbitration Act (the “FAA”), 9 U.S.C. Sections 1-16. Any award by the arbitrator may be entered as a judgment in any court having jurisdiction. Any arbitrator’s decision and award is final and binding, subject only to those exceptions under the FAA. The award of the arbitrator shall be accompanied by a reasoned opinion. PA and you agree the FAA’s provisions, not state law, govern all questions of whether a Dispute is subject to arbitration.

f. Unless PA and you agree otherwise, the foregoing arbitration will be conducted by a single neutral arbitrator selected by utilizing the process provided in the AAA’s Commercial Arbitration Rules in effect when Claim Notice is duly filed. The arbitrator shall be a licensed attorney and/or retired judge. Except as otherwise provided below, the arbitration shall be conducted in the county where the principal address of the party against whom the Dispute is initially commenced is located – and for any claim against PA, that address shall be the address of the Claims Administrator. The federal or state law that applies to this Agreement will apply during the arbitration.

g. For Disputes of \$10,000.00 or less that are initiated by you (“Small Disputes”), the following rules shall apply notwithstanding anything to the contrary in the procedures or rules of the AAA and/or in this Agreement: (1) the arbitration shall be conducted in accordance with the AAA’s Expedited Procedures; (2) the arbitrator shall include a finding as to whether the initiation of such Dispute was frivolous and, if it is determined by the arbitrator not to be frivolous, then PA shall pay the fees and costs assessed by the AAA in administering the arbitration; (3) If the arbitrator finds that PA is liable to you for an amount greater than the Settlement Amount presented by PA prior to the commencement of arbitration (after all offsets and counterclaims are applied), then PA shall be required to pay in addition to any award of the arbitrator an amount equal to the greater of (x) \$1,000.00, or (y) twice the amount of your reasonable attorneys’ fees; (4) you may choose to conduct the arbitration in the state of your principal address.

h. PA AND YOU EACH AGREES NOT TO PURSUE ARBITRATION ON A CLASS-WIDE BASIS. ARBITRATION WILL BE CONDUCTED SOLELY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. PA and you each waives the right to trial by jury of any Dispute.

23. Right to Amend: PA may change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Services with notice that PA in its sole discretion deems to be reasonable in the circumstances. Any use of the Services after PA’s publication of any such changes shall constitute your acceptance of this Agreement as modified.

24. Entire Agreement. This Agreement, including the PA Application, any schedule of fees, the Provider Terms and Conditions, and information contained in websites or electronic links referenced in this Agreement, expresses the entire understanding of the parties with respect to its subject matter. Reference to "this Agreement" also includes all documents, websites and electronic links incorporated into this Agreement by reference.

25. Notices; Consent to Electronic Communications. You agree to the receipt of electronic communications by email or by the posting of such information by PA at one or more of its sponsored Internet websites. In addition, all notices and other communications required or permitted under this Agreement by PA to you may also be delivered by FAX, overnight carrier or first class mail, postage or other charges prepaid. All notices and other communications required or permitted under this Agreement by you to PA shall be delivered by you by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below.