Pay Factory, Inc.
Sub-Merchant Agreement
Terms and Conditions

Last Updated: July 11, 2024

This agreement contains a limitation of liability and arbitration clause.

This Sub-Merchant Agreement (**Sub-Merchant Agreement**) is among the merchant seeking to obtain Acquiring Services (**Merchant**), First Data Merchant Services LLC (**First Data**), Pathward, N.A. (**Bank**), and Pay Factory, Inc. (**Company**).

1 Services and Roles

1.1 Services. Merchant and Company entered into a Card Services Agreement (**Agreement**) that allows Company to act as a payment facilitator for authorization, processing, and settlement services (**Acquiring Services**). In the event of any irreconcilable conflict between the Agreement and this Sub-Merchant Agreement, this Sub-Merchant Agreement shall control.

1.2 Company. Company will facilitate the provision of the Acquiring Services outlined in the Agreement, including, supporting chargebacks, reporting, status changes, and questions about the Acquiring Services.

1.3 First Data. First Data and/or Company, through a separate agreement between First Data and Company, will provide the Acquiring Services to Merchant.

1.4 Bank. Bank is the member of Visa and MasterCard Networks that sponsors Company, First Data, and Merchant's acceptance of Visa and MasterCard transactions. Bank will also facilitate a portion of the debit transactions as set forth in the Agreement. As between Bank and First Data and Bank and Company, only Bank is approved to extend acceptance of Visa and MasterCard transactions directly to Company and/or Sub-Merchant. Bank is responsible for providing Company (as allowed by the Network Rules) or Merchant with settlement funds for Visa and MasterCard transactions. The Acquiring Services that Merchant receives from any Network other than Visa, MasterCard, and certain debit Networks are provided by Company and/or First Data and not by Bank.

2 Additional Terms and Conditions

2.1 By entering into this Sub-Merchant Agreement, Merchant agrees to comply with Network Rules, Your Payments Acceptance Guide, and applicable Laws.

2.1.1 **Network Rules** are the rules, as amended from time to time by the Networks, that govern all Card processing.

2.1.2 **Your Payments Acceptance Guide** is a summary of the Network Rules provided by First Data for Company and Sub-Merchant.

2.1.3 **Laws** are all laws, rules, and regulations that are applicable to the parties' respective performance obligations under this Sub-Merchant Agreement.

2.2 Merchant represents and warrants to First Data, Bank, and Company that the receipt and handling of funds in settlement of transactions processed under the Agreement is solely in payment for Merchant's provision of bona fide goods and/or services to Merchant's customers (each, **Payor**). To the extent that Merchant's settlement funds are sent to Company and then by Company to Merchant, Merchant hereby designates Company, and Company hereby agrees to serve, as Merchant's limited agent for the sole purpose of receiving such payments on Merchant's behalf from Merchant's Payors. Merchant agrees that upon Company receiving payment from a Payor: (a) Merchant shall be deemed to have received payment from such Payor; (b) such Payor's obligation to Merchant in connection with such payment shall be satisfied in full; (c) any claim Merchant has for such payment against such Payor shall be extinguished; and (d) Merchant is obligated to deliver the applicable goods and/or services to the Payor, in each case regardless of whether or when Company remits such payment to Merchant. Company will remit to Merchant in accordance with the Agreement, or apply as an offset to any obligation Merchant may have to Company, any such payments Company receives on Merchant's behalf. Merchant shall identify to its Payors that Company is acting as Merchant's agent for purposes of receiving payment on Merchant's behalf. Any receipt provided to the Payor shall be binding on Merchant and shall satisfy all applicable regulatory requirements. This Section states the entirety of Company's duties as Merchant's agent for receipt of payment, and no other duties shall be implied by Company's undertaking to act in that capacity.

2.3 Additional Terms.

2.3.1 **Card** means a card, code, device, or other means allowing access to a credit, debit, prepaid, stored value, or similar account.

2.3.2 **Cardholder** means the individual who was issued a Card.

2.3.3 **Settlement Account** means a settlement account in which First Data, Bank, or Company will settle the transaction funds.

3 Settlement; Chargebacks

3.1 Upon First Data's receipt of the transaction data for transactions, First Data will process the transaction data to facilitate the funds transfer from the various Networks for Card sales. After First Data receives credit for such transaction data,

subject to each party's other rights under this Sub-Merchant Agreement, First Data, Bank, or Company (either itself or through a licensed money transmitter) will provide provisional credit to Merchant's Settlement Account. Merchant agrees that it will not submit transactions for payment until the goods are delivered, shipped, or the services are performed. If the Cardholder disputes charges for merchandise or services before receiving them, a chargeback may result.

3.2 Merchant is solely responsible to pay the amount of any chargebacks resulting from transactions submitted by Merchant under this Agreement. Chargebacks can occur for a number of reasons. The following are some of the most common reasons for chargebacks: (1) a refund is not issued to Payor 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) Payor 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) Payor refuses to make payment for a Card sale because, in Payor's good faith opinion, a claim or complaint has not been resolved or has been resolved but in an unsatisfactory manner.

4 **Fees** Pursuant to the Agreement, Merchant agrees to pay Company the fees associated with the provision of the services under this Sub-Merchant Agreement. Pursuant to Merchant's Agreement with Company, these fees may be amended, revised, changed, or supplemented from time to time as specified in the Agreement.

5 **Reserve**

5.1 In addition to any holdback and/or reserve rights that Company may have in the Agreement, Bank or First Data may require Merchant to fund a cash reserve (**Reserve**) in an amount that reflects Bank's or First Data's assessment of risk, as each may determine in its discretion from time-to-time. The Reserve is a payment obligation of Bank and First Data, established by holding back transaction proceeds, requiring Merchant to send a wire payment for the Reserve amount, or debiting the Merchant Settlement Account in order to potentially offset any obligations that Merchant may have to Bank or First Data. The Reserve is not a segregated fund that Merchant may claim to own. Bank and First Data are obligated to pay to Merchant any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Merchant's payment transactions have expired (as provided for under the Network Rules).

5.2 The obligations due to Merchant from the Reserve will not accrue interest unless required by applicable Laws.

5.3 Bank or First Data will notify Merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

5.4 Bank or First Data may set off from the Reserve any obligations that Merchant owes to Bank or First Data from the Reserve.

5.5 Although Merchant acknowledges that the Reserve is a general obligation of Bank and First Data, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Merchant that is held by Bank or First Data, Merchant grants and acknowledges that Bank and First Data have a security interest in the Reserve and, at Bank's or First Data's request, will provide documentation to reflect this security interest.

5.6 Set-off. All funds that Bank or First Data owe to Merchant under this Sub-Merchant Agreement are subject to Merchant's payment obligations under this Sub-Merchant Agreement. Bank or First Data may set off amounts Merchant owes to either or both of Bank or First Data against any funds that either or both of Bank or First Data owe to Merchant.

6 **Data Security** Merchant represents that it does not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and will not request access to such Card information from First Data or Bank. In the event that Merchant receives such Card information in connection with the services provided under this Sub-Merchant Agreement, Merchant agrees not to 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 Merchant has reason to believe Card information has been compromised, Merchant will notify First Data and Bank promptly and assist in providing notification to the proper parties. Merchant will ensure its compliance and the compliance of any third party service provider utilized by Merchant with all security standards and guidelines that are applicable to Merchant or such third party service provider and published from time to time by Visa, MasterCard, 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 requires an audit of Merchant due to a data security compromise event or suspected event, Merchant will cooperate with such audit. Merchant may not use any Card information other than for the sole purpose of completing the transaction authorized by the Payor for which the information was provided or as specifically allowed by Network Rules, Your Card Acceptance Guide, or required by applicable Laws. Merchant will reimburse First Data and/or Bank for all fines, fees, penalties, assessments, or other obligations of any kind imposed by a Network or a regulator on First Data or Bank due to a data security compromise event (i) caused by Merchant or its third party service providers; or (ii) that otherwise takes place on Merchant or its third party service providers systems to the extent not caused by First Data or Bank.

7 Financial Information; Audit Merchant will promptly provide any financial or other information reasonably requested by First Data, Bank, or Company to perform credit risk, security, qualification, and other reviews related to the provision of the services, transactions submitted, fulfillment of obligations to Company, First Data, Bank, or Cardholders, or the financial condition of Merchant. Merchant authorizes Company and First Data to obtain information from third parties when performing credit risk, security, qualification, and other reviews. Company, First Data, Bank, or their designees may perform a reasonable audit of Company's records related to its performance under this Sub-Merchant Agreement with 30 days' advance written notice to Merchant, during Merchant's normal business hours, and at Company's, First Data's or Bank's expense, as applicable.

8 Notice of Material Change; Third Parties Merchant will provide Company and First Data with reasonable advance notice of any material change in the nature of Merchant's business (including any change in control or merger, any liquidation, any transfer or sale of substantially all of its assets, or any change to Merchant's operations that would materially affect the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to a Cardholder). Merchant will provide Company and First Data with written disclosure identifying the third parties, systems, and services Merchant uses to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, encryption or firewall providers) related to the transaction information or payment data processed in connection with this Sub-Merchant Agreement (these third parties must be registered providers with the Networks).

9 Exclusion of Damages BANK, FIRST DATA, AND COMPANY ARE NOT 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.

10 Limitation of Liability BANK, FIRST DATA, AND COMPANY, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY MERCHANT, 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 SUB-MERCHANT AGREEMENT) 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 RECEIVED BY COMPANY FOR SERVICES PROVIDED UNDER THIS SUB-MERCHANT AGREEMENT IN THE IMMEDIATELY PRECEDING 12 MONTHS.

11 Indemnification Merchant will indemnify Company, First Data, and Bank (including their respective affiliates, directors, officers, managers, and employees) for losses, damages, costs, or expenses (together, Losses) due to third party claims that result from Merchant's or Merchant's third party service providers' gross negligence, willful misconduct, or breach of this Sub-Merchant Agreement. The indemnified party will promptly notify Merchant of any third party claim that is subject to indemnification under this Sub-Merchant Agreement. The indemnifying party will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts to the indemnified party. The parties will cooperate with regard to any other conditions of settlement as well as in providing records and access to personnel or other information reasonably necessary to defend any indemnified claims.

12 Assignment Bank or First Data may each, in whole or in part, assign or transfer this Sub-Merchant Agreement or delegate or subcontract its respective rights, duties, or obligations under this Sub-Merchant Agreement without Merchant's or Company's consent. Merchant further acknowledge that another financial institution may be substituted for Bank with respect to Bank's obligation.

13 Confidentiality

13.1 Confidentiality. No party will disclose non-public information about another party's business (including the terms of this Sub-Merchant Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

13.2 Disclosure. The recipient may disclose another party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors, or vendors) that need to know it in connection with the recipient's performance under this Sub-Merchant Agreement and that are bound by confidentiality obligations materially similar to those required under this Sub-Merchant Agreement; and (2) in response to a subpoena, court order,

request from a regulator, or as required under applicable Laws or Network Rules.

14 Term; Termination

14.1 Term. This Sub-Merchant Agreement shall be in effect upon acceptance by all parties and shall remain effective for the term of the Agreement unless terminated earlier pursuant to the terms of this Sub-Merchant Agreement.

14.2 Termination. In addition to the termination rights in the Agreement, Bank and/or First Data may terminate this Sub-Merchant Agreement without advance notice for any other reason, without cause.

15 MATCH Reporting

If this Sub-Merchant Agreement is terminated for cause, Merchant acknowledges that Bank or First Data may be required to report Merchant's business name and the names and other identification of Merchant's principals to the Networks. Merchant expressly agrees and consents to such reporting in the event Merchant is terminated as a result of Bank's, First Data's, or Company's termination for cause or for any reason specified by the Network(s) as cause. Furthermore, Merchant agrees to waive and hold Bank and First Data harmless from and against any and all claims which Merchant may have as a result of such reporting.

16 Arbitration

16.1 This arbitration provision will be broadly interpreted. If Merchant has a dispute with First Data or Bank that cannot be resolved informally, Merchant, Bank, or First Data may elect to arbitrate that dispute in accordance with the terms of this arbitration provision rather than litigate the dispute in court.

16.2 The parties agree that the following will not be subject to arbitration: (a) disputes relating to the scope, validity, or enforceability of this arbitration provision; (b) any claim filed by either party in which the amount in controversy is properly within the jurisdiction of a small claims court; and (c) any dispute related to the validity of any party's intellectual property rights.

16.3 If a party elects to resolve the dispute through arbitration pursuant to this arbitration provision, the party initiating the arbitration proceeding must open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-495-4185, www.adr.org.

16.4 Because the services provided to Merchant under this Sub-Merchant Agreement concern interstate commerce, the Federal Arbitration Act (**FAA**) will govern this arbitration provision, including the issue of whether the dispute is subject to arbitration. The Commercial Arbitration Rules of the American Arbitration Association (**AAA**) will govern any arbitration. If there is a conflict between this arbitration provision and the AAA Rules, this arbitration provision will govern. If the AAA will not administer a proceeding under this arbitration provision as written, it cannot serve as the arbitration organization to resolve the dispute. If this situation arises, the parties will agree on a substitute arbitration organization. If the parties are unable to agree, the parties will mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this arbitration provision as written. If there is a conflict between this arbitration provision and the rest of this Sub-Merchant Agreement, this arbitration provision will govern.

16.5 A single arbitrator will resolve the dispute. The arbitrator will honor claims of privilege recognized by applicable Law and will take reasonable steps to protect each party's information and other confidential or proprietary information. If the claim alleged in the dispute is for $10,000 or less and the dispute is not excluded based on Section 16.2 above, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.

16.6 If an award granted by the arbitrator exceeds $50,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within 30 days from the date of entry of the written arbitration award. The arbitration organization will then notify the other party that the award has been appealed. The members of the three-arbitrator panel will be selected according to the AAA's Commercial Arbitration Rules. The three-arbitrator panel will issue its decision within 120 days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel will be final and binding, except for any appellate right which exists under the FAA.

16.7 All parties to an arbitration must be individually named. There will be no right or authority for any claims to be arbitrated or litigated on a class action, joint, or consolidated basis or on a basis involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other clients, or persons.

16.8 The arbitrator may award injunctive or similar relief only in favor of the individually named party and only to the extent necessary to provide relief warranted by that individual party's claim. The arbitrator may not award injunctive relief applicable to any class or similarly situated individual or groups.

16.9 The arbitration will take place in Suffolk County, NY.

16.10 Bank or First Data will pay arbitration filing fees and arbitrator's costs and expenses of which Merchant provides notice to Bank or First Data prior to the commencement of the arbitration. Merchant is responsible for all additional costs that Merchant incurs in the arbitration, including fees for attorneys or expert witnesses. If the arbitration is resolved in Bank and First Data's favor, Merchant will reimburse Bank and First Data for the filing fees and costs paid to Merchant only up to the extent awardable in a judicial proceeding. If the arbitration is resolved in Merchant's favor, Merchant will not be required to reimburse Bank or First Data for any of the fees and costs paid by Bank or First Data. Notwithstanding anything to the contrary in this arbitration provision, Bank or First Data will pay all fees and costs that Bank or First Data are required by applicable Law to pay.

16.11 If Merchant does not wish to arbitrate disputes, Merchant must notify Bank and First Data in writing within 30 days of the date that Merchant first receives this Sub-Merchant Agreement by writing a notice including Merchant's name, address, and account number, as well as a clear statement that Merchant does not wish to resolve disputes through arbitration and sending that notice (a) by e-mail to arbitrationoptout@firstdata.com; (b) by fax to 402-916-2200; or (c) by mailing to "Arbitration Opt Out Notice, 3975 N.W. 120th Ave, Coral Springs, FL 33065 (These Fax Numbers and Addresses are only for submitting the notice described in this Section). Merchant's decision to opt out of arbitration will have no adverse effect on Merchant's relationship with Bank, First Data, or the services provided under this Sub-Merchant Agreement.

16.12 If a court of competent jurisdiction finds any part of Section 16.7 to be illegal or unenforceable, the entire arbitration provision will be unenforceable, and the dispute will be decided by a court. If any other clause in this arbitration provision is found to be illegal or unenforceable, that clause will be severed from this arbitration provision, and the remainder of this arbitration provision will be given full force and effect.

16.13 Merchant, First Data, and Bank have each agreed to waive the right to trial by jury.

17 Choice of Law The parties acknowledge and agree that all disputes and this Sub-Merchant Agreement will be governed by, and construed in accordance with, New York law (exclusive of any conflicts and choice of law rules set forth therein).

18 Notices

18.1 Notice to First Data will be sent to: First Data Merchant Services LLC, Attn: Executive Vice President – Operations, 5565 Glenridge Connector NE, Atlanta, Georgia 30342; with a copy to: First Data Merchant Services LLC, Attn: General Counsel's Office, 6855 Pacific Street, AK-32, Omaha, NE 68106. Emailed notices to First Data will be sent to: legalpapers@firstdata.com.

18.2 Notice to Bank will be sent to: Pathward, N.A., Attn: Vice President - Operations, 5501 South Broadband Lane, Sioux Falls, South Dakota 57108; with a copy to: Pathward, N.A., Attn: Legal, 5501 South Broadband Lane, Sioux Falls, South Dakota 57108.

18.3 Notice to Company will be sent to: Pay Factory, Inc., ATTN: Head of Finance and Operations 125 W 3rd St, Tulsa, OK 74103. Emailed notices to Company will be sent to: contracts@payfactory.io.

18.4 Notice to Merchant will be sent to the address or email address appearing in the Merchant's application.

19 Publicity No party will make any press release or other public disclosure concerning the terms and conditions of this Sub-Merchant Agreement without the prior written consent of the other party.

20 Entire Agreement; Waiver This Sub-Merchant Agreement constitutes the entire agreement between the parties with respect to the subject matter discussed in this Sub-Merchant Agreement and supersedes any previous agreements and understandings. Except as provided in this Sub-Merchant Agreement, this Sub-Merchant 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 Sub-Merchant Agreement will not be deemed a waiver of any subsequent breach of the same or another term or condition.

21 With respect to each of First Data and Bank, 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.