

# AcceptPay Account

## Terms of Use

*Last Modified: August 18, 2011*

*If You enrolled before November 11, 2010, [click here](#) for Your Terms of Service:*

*If You enrolled before August 25, 2011, [click here](#) for Your Terms of Use:*

By using this service ("Service"), the customer ("You," "Your" or "Company") agrees to be bound by these Terms of Use which You enter into with PaySimple, Inc. ("We," "Us," "Our" or "PaySimple"). We will provide either (a) the AcceptPay Free Demo service, or (b) the AcceptPay service at the "Service Level" You select from time to time (either AcceptPay Invoicing, AcceptPay Payments, or AcceptPay Free Demo), as provided in Section 1 below, under an arrangement with American Express Travel Related Services Company, Inc., its subsidiaries and affiliates ("American Express"). You indicate Your agreement, acknowledgment and acceptance of disclaimers, terms and conditions and that You shall comply with all applicable laws, rules, and regulations governing Your use of this Service.

**Unless indicated otherwise, all provisions apply to all AcceptPay Invoicing, AcceptPay Payments, and AcceptPay Free Demo Account subscribers (whether participating in AcceptPay Invoicing, AcceptPay Payments, or AcceptPay Free Demo Account). Provisions that are applicable only to subscribers of certain services provided under these Terms of Use will indicate the name of the service at the start of the paragraph, sentence or phrase that applies.**

### 1. DESCRIPTION OF SERVICES

**For AcceptPay Free Demo Account:** The **AcceptPay Free Demo Account** Service provides online invoicing software to assist in the management of Your invoicing. The AcceptPay Free Demo Account allows You to preview the full system, in which You can upgrade to AcceptPay Payments at any time. The Service allows You to electronically generate and transmit invoices via email to Your customers ("Payors"). We make the Service available to You as arranged by American Express. Your recipients of the invoices sent via the Service may pay invoices generated via the Service offline. We may stop making the **AcceptPay Free Demo Account** available at our discretion.

**For AcceptPay:** With the **AcceptPay** Service, We provide two levels of services online to assist in the management of Your accounts receivables, as follows:

- A. Service Level One – Simple Invoicing ("AcceptPay Invoicing"): Online Invoicing; and
- B. Service Level Two – Invoicing and Payment Acceptance ("AcceptPay"): Online Invoicing and Payment Acceptance.

**AcceptPay Invoicing** allows You to electronically generate and transmit invoices via email to Your customers (“Payors”). **AcceptPay** allows You to receive electronic payment on such invoices using one of the **AcceptPay** electronic payment methods You select (for example, via payment card or echeck). Payments You receive will be credited to the bank account number that You provide. With **AcceptPay**, Your customers can pay **AcceptPay** invoices using any of the **AcceptPay** payment acceptance options You select.

## 2. ELIGIBILITY

For all subscribers, You represent, warrant, and covenant that (1) the person(s) who has applied for the Service is a U.S. citizen, at least eighteen (18) years old; (2) such person(s) will access Our site(s) on the World Wide Web (the “Site”) utilizing the URL address We provide for this purpose from a computer with a U.S. IP address ; (3) You will provide complete and accurate information on which We will base the invoices issued in connection with the Service and You will timely resolve any disputes in connection therewith; (4) the schedule that You select for invoicing reflects the payment terms to which You have agreed with Your customers; (5) You do business in the United States of America and You will use the Service to provide invoices to, and receive payment from, Your customers that are U.S. businesses or residents only; (6) each of Your customers with respect to whom You utilize the Service has consented to receiving electronically all invoices, materials, disclosures, terms and other content delivered to them through the Service; is willing and capable of receiving, reviewing, printing and saving all such invoices, materials, disclosures, terms and other content; and has consented to Your disclosure in connection with the Service of the information required to create and distribute invoices to Your customers; and (7) You are the owner of the merchant company and have the power and authority to enter into this agreement on behalf of the merchant company.

And additionally for AcceptPay subscribers, You further represent, warrant, and covenant that: (8) You or Your Company is an American Express merchant already enrolled in the American Express merchant program or currently applying for a merchant account as a prerequisite to Your participation in the Service; (9) You will receive payments only from customers that are U.S. businesses or residents only; (10) each of Your customers from whom You will receive payments through the Service has consented to making payments through the Service; and (11) each of Your customers with respect to whom You utilize the Service has agreed to the Payor Terms of Use (see link to the Payor Terms of Use here or in Section 3, below) prior to making a payment using the Service.

To be eligible and authorized to utilize the Service, You hereby agree to the terms of ALL of the applicable documents listed below:

### **AcceptPay Subscribers**

- i. The American Express Card Acceptance Agreement, which includes the [American Express Merchant Regulations – U.S.](#)
- ii. These Terms of Service
- iii. The [PaySimple Merchant Application](#)
- iv. The [National Processing Company \(“NPC”\) Merchant Processing Agreement](#)

- v. v. The ACH Processors Terms and Conditions. AcceptPay utilizes multiple ACH processors, and You shall be bound by the terms of the applicable ACH processor selected after Your application is accepted.
  - i. [ACH Direct, Inc.](#) ( Terms and Conditions)
  - ii. [Electronic Clearing House, Inc.](#) (Terms and Conditions)
  - iii. [National Processing Company](#) (Terms and Conditions)
  - iv. The [AcceptPay Enrollment Agreement](#)
  - v. The [PaySimple Privacy Policy](#)
  - vi. The [PaySimple Acceptable Use Policy](#)
  - vii. The Electronic Signature [Consumer Disclosure](#), regarding the electronic signature between You and PaySimple.
  - viii. [AcceptPay Pricing](#)
  - ix. [And, if downloaded on an authorized mobile device, the AcceptPay App End User License Agreement](#)

### **AcceptPay Free Demo Account Subscribers**

- i. These Terms of Use
- ii. The [PaySimple Privacy Policy](#)
- iii. The [PaySimple Acceptable Use Policy](#)

You may find complete URL addresses for all documents referenced and/or linked above in Appendix A. To the extent that there is a conflict between the terms of any of these documents, with the exception of items (iv), (v) and (xi) above which shall not be subject to this provision, the terms and conditions of the lower numbered document shall take precedence and supersede the higher numbered document.

### **3. RESPONSIBILITY FOR DISCLOSURE OF PAYOR TERMS OF USE**

Prior to any of Your Payors' use of the Site to access any invoice You have issued using the Service, You are responsible for informing each such Payor of, and shall provide to each such Payor, the terms and conditions that govern their use of the Site to pay invoices generated using the Service. You may view the Payor Terms of Use (i) by clicking [http://www.acceptpay.com/terms\\_payor](http://www.acceptpay.com/terms_payor) or (ii) under the URL address for the Payor Terms of Use, located in Appendix A, #7, at the end of this document. You shall make Your customers aware of such Payor Terms of Use and shall not, in any way, alter the Payor Terms of Use.

### **4. RESPONSIBILITY FOR ACCURACY AND TIMELINESS OF INVOICES**

When You use the Service, We will prepare the invoices to be sent to Your customers using information provided by You. You are responsible for the customization of invoices created using the Service and the accuracy and completeness of all information on which invoices to Your customers are based, including, but not limited to, the identity of, and contact information for, Your customers who are being invoiced; the transactions for which You are invoicing them; and the cost thereof, including applicable discounts. We will not entertain or handle disputes about the information provided by You on which invoices are based. You will be responsible for

promptly handling disputes with Your customers; You must inform PaySimple to correct any errors contained in any invoices created using the Service. You are also responsible for determining the schedule on which invoices will be created and distributed. You shall ensure that the schedule of invoicing that You select reflects the payment terms to which You have agreed with Your customers.

## **5. LAWS AND REGULATIONS**

Your access to and use of the Service and this Site is subject to all applicable international, federal, state, and local laws and regulations. We make no representation that the information or content available at or through the Service or this Site (collectively, "Content"), is appropriate or available for use in any particular location, and access to Content from territories where the Content may be illegal is prohibited. Those who choose to access and/or use this Site and the Service do so at their own initiative and risk and are responsible for compliance with all applicable laws.

## **6. CHANGES TO THESE TERMS OF USE AND RELATED DOCUMENTS**

PaySimple reserves the right to revise, modify and/or supplement these Terms of Use, pricing/fees and/or any of the documents listed in Section 2 at any time in Our sole discretion. PaySimple will notify You that changes to any such documents are being made by sending an e-mail message to that effect to the e-mail address that You provided when enrolling (or Your updated email address) and such changes will apply to Your continued use of the Service. Additionally, the date indicated as "Last Modified" at the beginning of these Terms of Use or with respect to any other modified document will be updated to reflect the date as of which the last of any such revisions, modifications and supplementation occurred. Any changes shall be effective thirty (30) days after notice is sent to You. Your continued use of this Site and the Service thereafter shall be deemed to constitute Your affirmative acknowledgment of and agreement to abide and be bound by the modified terms, conditions and obligations therein. If You object to any of these documents listed in Section 2 or any subsequent modifications thereto or become dissatisfied with this Service in any way, Your sole recourse is to immediately discontinue Your use of the Service and this Site.

## **7. ENROLLMENT**

For **AcceptPay Free Demo Account**: Credit approval is not required. PaySimple reserves the right to reject any enrollment.

Enrollment is not automatic.

PaySimple reserves the right to reject any enrollment for any reason including, but not limited to, Your inability to meet applicable underwriting criteria. If You are not approved to open an account with PaySimple's primary payment processor(s), PaySimple may submit Your signed Merchant Service application(s) and supporting documents to an alternate processor for secondary review. Additional fees may apply, as provided in the signed Merchant Service Application (if You have subscribed to payment acceptance) which is approved by PaySimple's

alternate processor(s). Additionally, PaySimple reserves the right to change the processor(s) for credit card, and/or ACH/eCheck processing at any time in its sole discretion. You shall be provided thirty (30) days notice of such change if practicable under the circumstances.

**For both **AcceptPay** and **AcceptPay Free Demo Account**:**

Your enrollment information must be accurate and complete, and You shall update enrollment information as necessary to keep it accurate and complete. You shall not misrepresent Your identity, the identity of Your authorized users of the Service, Your ownership of, and authority to act on behalf of, Your Company, or any other enrollment information or information provided by You subsequent to the enrollment. Failure to provide accurate and complete information may result in the termination of Your ability to use the Service and/or result in errors.

PaySimple is not responsible or liable for any processing delays or damages which may result from any delays. Enrollment is activated upon Your receipt of the enrollment confirmation email including Your log-in information or You log into the password protected portion of the Site, whichever is first. The username and password provided in the enrollment confirmation email will be that assigned to the Master Administrator for Your account.

You, the Master Administrator, shall have a unique username and password. You, and any other authorized invoicer, shall not use a username or password that PaySimple, in its sole discretion, deems offensive or inappropriate. You shall provide PaySimple with true, accurate, and updated information. You are solely responsible for maintaining the confidentiality and security of usernames and passwords for Your account, and You assume all liability for sharing or disclosing such usernames and passwords. You agree to immediately contact PaySimple at **1-800-466-0995** if You become aware that the security of the usernames and/or passwords for Your account may have been compromised or if there has been unauthorized access to Your account or Your data. You are solely responsible for all activity occurring under the usernames and passwords for Your account. Access to and use of password-protected and/or secure areas of this Site and Service is restricted to authorized users only.

## **8. LICENSE AND USE OF THIS SITE**

You are hereby granted a limited license during the portion of the Term during which You have an active PaySimple account to utilize, including incidental copies arising from the operation of Your browser, the Service and Content solely to generate invoices to, and for AcceptPay subscribers, to receive payments from, Your Payors and to manage Your accounts receivable. You may only use the Service, the Site and the Content as directed in the tutorials on the Site. You may not resell or sublicense the Service, the Content, or any other services provided by PaySimple to any other person or entity. You are prohibited from modifying, copying, distributing, transmitting, displaying, publishing, selling, licensing, creating derivative works from, decompiling, reverse engineering, disassembling, transferring, or using any Service or Content available on or through this Site for any purposes, except You may make print copies of the Content for Your own benefit and internal business use but not for distribution to others. You agree that Your use of this Site is voluntary, non-assignable and non-transferable.

You may not (a) use this Site, Content or Service in any manner that could damage, disable, overburden, or impair the Site, Content or the Service, nor may You use this Site, Content or Service in any manner that could interfere with any other party's use and enjoyment thereof, (b) use any "robot," "spider" or other automatic device, or a program, algorithm, or methodology having similar processes or functionality, or any manual process to monitor or copy any of the web pages, data, or content found on this Site, Content or Service or (c) use the Content, Service or this Site in violation of, or to violate, any law, rule or regulation.

**You hereby covenant and agree that You will not charge Payors to access Your invoices using the Service.**

## **9. PRICING & PAYMENTS FOR ACCEPTPAY FREE DEMO ACCOUNT ONLY**

There are NO charges in connection with the **AcceptPay Free Demo Account** service. The **AcceptPay Free Demo Account** service requires registration of Your name, Your Company name, Your email address, Your phone number, and certain demographic information about Your Company.

## **10. PRICING & PAYMENTS FOR ACCEPTPAY**

You are subject to two or more sets of fees.

1. As an American Express merchant You pay certain transactional and merchant account fees under Your card acceptance agreement(s) with American Express. These fees include, but are not limited to, the following:
  - a. American Express Merchant Discount Rate plus a fee per transaction; or a monthly flat fee. See Your American Express Card Acceptance Agreement, which includes the American Express Merchant Regulations – U.S. (together, the “Amex Card Acceptance Agreement”);
  - b. American Express Paper Statement Fee. Online statements are an option offered at no additional charge. See Your American Express Card Acceptance Agreement.
  - c. American Express Not Sufficient Funds (NSF) Return Fee. An NSF Return occurs when a transaction is returned for Not Sufficient Funds (NSF). We charge \$2.50 per transaction.

If You choose to request a copy of the Merchant Regulations, You will also be asked to reimburse American Express for its production costs (if in paper form, \$29.50, plus shipping and handling; if as a CD-ROM, \$8.00 plus shipping and handling).

2. As a merchant for other card acceptance service providers (including but not limited to Visa, MasterCard, Discover), You pay certain transactional and merchant account fees under Your card acceptance agreement(s) with such other card acceptance service providers. These fees include, but are not limited to, the following:
  - a. Merchant Discount Rate for Other Major Payment Cards: See Your card acceptance agreement(s) with other card acceptance service providers.

- b. Non-qualified Surcharge for Other Major Payment Cards: A percentage of the transaction fee; see Your card acceptance agreement(s) with other card acceptance service providers.
- 3. As a customer of AcceptPay Invoicing or AcceptPay , You pay certain fees to Us to access the AcceptPay service. These fees may be lower, or are excused, as the case may be, beginning in the first month after You elect to make Your active American Express Card the Enrolled Card (defined below) hereunder. When You elect to make an American Express Card Your Enrolled Card, You will be entitled to such lower or excused fees. If You do not maintain or cease to maintain an American Express card as Your Enrolled Card, We will impose the higher fees effective in the first such month that You do not maintain an American Express Card as Your Enrolled Card.
  - a. These fees include, but are not limited to, the following:

AcceptPay Service Levels:	Service Description	Pricing Public
<b>One: AcceptPay Invoicing</b>	Online Invoicing	\$11/month
<b>Two: AcceptPay Payments</b>	Online Invoicing and Payment Acceptance	<b>\$30</b>

- b. Plus, the following:
- c. ACH Initiation Fee: \$10.00 one-time (only applicable if You accept ACH payments)
- d. Processing Fee on All Payment Cards: \$0.29 per transaction For further details, [click here](#)

All payments must be made in US dollars. You should view, print and save this fee schedule along with these Terms of Use. Periodically check these Terms of Use for updates. **Note that We and American Express may add new fees or change existing fees upon notice to You as provided respectively in the Terms of Use and in the American Express Card Acceptance Agreement.**

Setup Fees for Service Level Two.

Setup fees, if any (except for the ACH initiation fee which is due upon enrollment for ACH acceptance) are due to Us upon activation of Your AcceptPay account and will be automatically charged to the credit card that You enroll with us using the American Express Card account information that You provide (the “Enrolled Card”) or, if unable to be charged to Your Enrolled Card, debited from the bank account for which You have provided applicable account information. You hereby authorize such charge or debit. Prices do not include sales, use, service, value-added or like taxes. You shall pay applicable taxes, unless You have provided to Us an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities.

Monthly Subscription Fees for Accept Pay.

You authorize Us to directly charge any monthly subscription fees to the Enrolled Card or bank account that You enroll with Us. In addition, You authorize Us to debit the bank account that You provide for any and all other owed fees, including but not limited to setup fees such as the one-time ACH initiation fee, transaction fees, and custom programming fees. If We are unable to charge the monthly subscription fees to Your Enrolled Card, You authorize PaySimple to debit the monthly subscription fees from the bank account for which You have provided applicable account information.

Other Merchant Fees for Service Level Two.

You are subject to all fees pursuant to the terms of the National Processing Company ("NPC") Merchant Processing Agreement (<https://images.paysimple.com/files/npc.pdf>)

Late or Insufficient Payments for Accept Pay.

All sums not paid to Us when due (as a result of non-sufficient funds ("NSF") or for any other reason) shall be subject to the NSF fee stated above in this Section 10. Additionally, We reserve the right to accrue interest daily at the lesser of a monthly rate of 1.50% or the highest rate permissible by law on the unpaid balance until paid in full. If We do not receive payment from You, We reserve the right to disable the login(s) and password(s) for Your account, to cancel Your account, and to pursue other collection or legal remedies.

## **11. TERM AND CANCELLATION**

This Agreement remains in effect until canceled by either party, as provided herein (the "Term"). PaySimple may cancel this Agreement or any aspect of the Service at any time upon ten (10) days advance notice for any reason. PaySimple may cancel this Agreement with You or any aspect of the Service provided to You immediately if You breach any obligations required of You in this Agreement, or any of the documents listed in Section 2, above.

You may cancel or terminate Your account and use of the Service at any time, in which case, You must cease using the Service. Cancellation or termination of Your enrollment or account must be made in writing and sent to PaySimple at: AcceptPay Billing, c/o PaySimple, Inc., 1433 17th Street, Suite 300, Denver, CO 80202, by sending an email to [acceptpaybilling@paysimple.com](mailto:acceptpaybilling@paysimple.com) or via fax at 303-265-9432.

For **AcceptPay** only: Monthly subscription fees and transaction-related fees, including, but not limited to, ACH/electronic check transaction fees, credit card processing fees, and merchant account statement fees are non-refundable. Notwithstanding the foregoing, cancellation of the Service may require Your completion of certain forms designated by the applicable payment processor(s).

## **12. PROPERTY RIGHTS**

You acknowledge that PaySimple, its licensors, or third parties, as applicable, own all rights, title, and interest in and to Service and this Site, and portions thereof, including, but not limited

to, all Intellectual Property Rights, and that the trademarks, logos, and service marks ("Marks") displayed on this Site or through the Service are the property of PaySimple or such other parties. "Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, and any and all other proprietary rights, and any and all applications, renewals, extensions, and restorations thereof, now or hereafter in force and effect worldwide. You acknowledge and agree that no title to any Intellectual Property Rights of PaySimple or other third parties is transferred to You, and that You do not obtain any rights, express or implied, in this Site's Content other than the rights expressly granted in these Terms of Use. Content available on or through this Site is protected by copyright and other Intellectual Property Rights. You are prohibited from using any Marks for any purpose including, but not limited to, use as metatags on other pages or sites on the World Wide Web without the written permission of PaySimple or such third party that may own the Marks. You agree not to remove, obscure, or alter the copyright notice, trademarks, or other proprietary rights notices belonging to PaySimple and/or other third parties affixed to or contained within or accessed in conjunction with or through this Site. Your use of the Service, Content or Site is not an endorsement of You or Your business by PaySimple, and You shall not utilize the Marks of PaySimple or other third parties to suggest any endorsement or affiliation to them. You remain owner of all rights, title, and interest in and to the Intellectual Property Rights in Your logos or materials. If You upload any logo or material You thereby grant PaySimple a limited license to use such in conjunction with Your use of the Service, such as on Your invoices or web page displays generated by the Service, and to identify You as a user of the Service.

You agree that PaySimple and Our service providers and suppliers are third-party beneficiaries of the above provisions, with all rights to enforce such provisions as if they were each a party to this Agreement.

### **13. NO WARRANTIES**

YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. THE SERVICE AND ALL CONTENT MADE AVAILABLE ON OR THROUGH THIS SITE OR VIA THE SERVICES ARE PROVIDED TO YOU BY PAYSIMPLE "AS IS" ON AN "AS AVAILABLE BASIS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY, OR ACCURACY. PAYSIMPLE MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY SECURE OR ERROR-FREE.

PAYSIMPLE DOES NOT ENDORSE NOR IS PAYSIMPLE RESPONSIBLE FOR (A) THE ACCURACY, TIMELINESS OR RELIABILITY OF ANY INVOICE OR STATEMENT GENERATED THROUGH THE SERVICE (B) THE ACCURACY, TIMELINESS OR RELIABILITY OF ANY INVOICE, OPINION, ADVICE, OR STATEMENT MADE THROUGH THE SERVICE OR THIS SITE BY ANY PARTY OTHER THAN PAYSIMPLE, (C) ANY CONTENT PROVIDED ON ANY THIRD PARTY SITE(S) LINKED TO THIS SITE, OR (D) THE CAPABILITIES OR RELIABILITY OF ANY PRODUCT OR SERVICE OBTAINED FROM ANY THIRD PARTY SITE(S) LINKED TO THIS SITE.

OTHER THAN AS REQUIRED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCE WILL PAYSIMPLE OR ANY OF THEIR RESPECTIVE AFFILIATES OR LICENSORS BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A YOUR RELIANCE ON INFORMATION OBTAINED THROUGH THE SERVICE OR THIS SITE, OR YOUR RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM A LINKED SITE. IT IS YOUR SOLE RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH THIS SITE, OR OBTAINED FROM A THIRD PARTY SITE LINKED TO THIS SITE. PLEASE SEEK THE ADVICE OF PROFESSIONALS, AS APPROPRIATE, REGARDING THE EVALUATION OF ANY SPECIFIC OPINION, ADVICE, PRODUCT, SERVICE, OR OTHER CONTENT.

PAYSIMPLE DOES NOT WARRANT THAT THIS SITE IS COMPATIBLE WITH YOUR EQUIPMENT OR THAT THIS SITE IS FREE OF VIRUSES, WORMS, BOTS, OR ANY OTHER HARMFUL, INVASIVE, OR CORRUPTED FILES. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW, THE UNIFORM COMMERCIAL CODE AND THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT SHALL NOT APPLY TO THIS AGREEMENT.

#### **14. LIMITATION OF LIABILITY**

THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES, SITE, CONTENT, AND DESCRIPTIONS OF SERVICES PUBLISHED ON THIS SITE OR A LINKED SITE MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS, AND PAYSIMPLE SPECIFICALLY DISCLAIMS ANY LIABILITY FOR SUCH INACCURACIES OR ERRORS. PAYSIMPLE DOES NOT WARRANT OR REPRESENT THAT THE CONTENT ON THIS SITE IS COMPLETE OR UP-TO-DATE. PAYSIMPLE IS UNDER NO OBLIGATION TO UPDATE THIS SITE, SERVICE OR CONTENT. PAYSIMPLE MAY CHANGE THE SITE, SERVICE OR CONTENT OR MAY MAKE IMPROVEMENTS OR CHANGES THERETO AT ANY TIME WITHOUT NOTICE.

YOU AGREE THAT PAYSIMPLE AND EACH OF ITS RESPECTIVE AGENCIES, AFFILIATES OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS WILL NOT BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, FOR ANY DIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, COST OF PROCURING SUBSTITUTE SERVICE OR LOST OPPORTUNITY) ARISING OUT OF OR IN CONNECTION WITH THE USE OF THIS SITE, SERVICE, CONTENT OR A LINKED SITE, OR WITH THE DELAY OR INABILITY TO USE THIS SITE OR A LINKED SITE, EVEN IF MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION ON LIABILITY INCLUDES, BUT IS NOT LIMITED TO, THE TRANSMISSION OF ANY VIRUSES WHICH MAY INFECT A USER'S EQUIPMENT, FAILURE OF MECHANICAL OR ELECTRONIC EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS (E.G., YOU CANNOT ACCESS YOUR INTERNET SERVICE PROVIDER), UNAUTHORIZED ACCESS, THEFT, DATA LOSS, OPERATOR ERRORS, STRIKES OR OTHER LABOR PROBLEMS, OR ANY

FORCE MAJEURE. PAYSIMPLE CANNOT AND DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED, OR SECURE ACCESS TO THE SITE, SERVICE OR CONTENT.

FOR ACCEPTPAY: THE MAXIMUM AGGREGATE LIABILITY OF PAYSIMPLE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS OR AGENTS WILL BE THE GREATER OF (i) THIRTY DOLLARS (\$30) AND (ii) THE AMOUNT OF THE MONTHLY SUBSCRIPTION FEES PAID PURSUANT TO SECTION 9 HEREOF IN THE TWO (2) MONTHS PRIOR TO THE EVENT(S) GIVING RISE TO THE CLAIM.

FOR ACCEPTPAY FREE DEMO SUBSCRIBERS: THE MAXIMUM AGGREGATE LIABILITY OF PAYSIMPLE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS WILL BE THIRTY DOLLARS (\$30).

## **15. INDEMNIFICATION**

You shall defend and indemnify and hold PaySimple; their respective agencies, service providers, parent, subsidiaries, affiliates, officers, employees, directors, representatives, and agents harmless from any claim, cause of action or demand, loss, liability, or damages (including reasonable attorneys' fees, accounting fees, and costs) made or brought by You or by any third party due to or arising out of any of the following: Your use of this Site (or the use of this Site by Your Payors), the Content or the Service or any other program offered on or through this Site; the violation of these Terms of Use by You, any of Your Payors or someone using Your computer or Your username and password; any user submission posted by You; or the infringement or violation by You, any of Your Payors or other user of the Service or this Site using Your computer or Your username and password, of any Intellectual Property Rights or other right of any person or entity.

## **16. VIOLATIONS OF SERVICE TERMS - TERMINATION**

PaySimple reserves the right to seek all remedies available at law and in equity for violations of these Terms of Use, including, but not limited to, the right to block access from a particular Internet address to this Site or Service. In addition, PaySimple may, in its sole discretion, immediately terminate Your use of this Site if we believe You are violating or have violated these Terms of Use or the terms and conditions of other documents listed in Section 2 to which You are a party. PaySimple reserves the right to terminate the Service and these Terms of Use immediately for any or no reason without notice and without PaySimple incurring any liability. Any such termination will be without prejudice to any other rights that PaySimple may have against You arising from a violation of these Terms of Use or of the documents listed in Section 2 to which You are a party.

## **17. JURISDICTION/GOVERNING LAW**

Users of this Site agree to submit to the laws of the State of New York, USA and applicable federal law without regard to conflicts of laws principles. You and PaySimple agree to submit to the exclusive jurisdiction of the federal and state courts of the State of New York.

## **18. ARBITRATION**

(A) Procedures: The parties agree that any and all disputes, claims or controversies arising out of or related to this Agreement, including any claims under any statute or regulation ("Disputes"), shall be submitted first to non-binding mediation. If the Disputes are not resolved through mediation, the Disputes then shall be submitted for binding arbitration. Unless the parties agree otherwise, any mediation and/or arbitration shall take place in the State of New York, New York County, and shall be administered by, and pursuant to the rules of, the American Arbitration Association ("AAA"). (B) Restrictions on Arbitration: Disputes shall be arbitrated on an individual basis. There shall be no right or authority for any Disputes to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public or other persons or entities similarly situated. The arbitrator's authority to resolve Disputes and to make awards is limited to Disputes between the parties to this Agreement alone, and is subject to the Limitations of Liability set forth in this Agreement. Furthermore, Disputes brought by either party to this Agreement against the other may not be joined or consolidated in arbitration with Disputes brought by or against any third party, unless agreed to in writing by all parties. No arbitration award or decision on any Disputes shall be given preclusive effect as to issues or claims in any dispute with anyone who is not a party to the arbitration. Should any portion of this Section B of this Alternative Dispute Resolution paragraph be stricken from this Agreement or deemed otherwise unenforceable, then this entire Alternative Dispute Resolution paragraph shall be stricken from this Agreement. (C) Enforcement: The provisions of this Alternative Dispute Resolution paragraph may be enforced in a court of competent jurisdiction and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses (including attorney fees) incurred in obtaining the enforcement of this provision, to be paid by the party against whom enforcement is ordered.

## **19. PRIVACY**

Any information collected from or about You through Your use of this Site or Service is subject to the Internet Privacy Statement of the PaySimple Privacy Policy. A link to the PaySimple Internet Privacy Statement can be found at the end of this document.

## **20. FORCE MAJEURE**

PaySimple shall not be responsible for delays, nonperformance, damages, lost profits, or other losses caused directly or indirectly by any Act of God, including without limitation, fires, earthquakes, tornadoes, or hurricanes, as well as wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss, data loss, failure or interception, incorrect data transmission, or any other event outside the direct control of PaySimple, its vendors or us.

## **21. ENTIRE AGREEMENT/SEVERABILITY/WAIVER**

These Terms of Use, the documents and policies incorporated herein, either in their entirety or by explicit reference, and any other terms and conditions on this Site, constitute the entire agreement between You and PaySimple with respect to this Site and govern Your use of this

Site. If any provision of these Terms of Use is found by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties, and the other provisions of these Terms of Use shall remain in full force and effect. The failure of PaySimple to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision unless acknowledged and agreed to by PaySimple in writing. These terms may not be altered, supplemented, or amended by You without the prior written consent of PaySimple. Your acceptance of payment using the payment options selected by You is governed by the applicable card acceptance agreements and the ACH acceptance agreement, if applicable.

## **22. GENERAL**

You acknowledge this is an online service. A printed version of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

You are solely responsible for ensuring that each of Your customers who receives invoices using the Service has consented to, is willing and capable of receiving, reviewing, printing and saving all materials, disclosures, terms or other content You deliver to them through the Service and has consented to Your use and disclosure of the information required to create and distribute invoices to such customer.

Notwithstanding any cancellation or termination of this Service, or of Your account or Your enrollment, Sections 1-5 and 11-22 of these Terms of Use shall survive any such cancellation or termination.

PaySimple reserves the right to modify or discontinue this Site with or without notice to You. PaySimple shall not be liable to You or to any third party in the event that the Service or Site is modified or discontinued.

Your acceptance of these Terms of Use and use of this Site do not create a joint venture, partnership, employment, or agency relationship between You and PaySimple. You shall not represent in any way that You are in partnership with, are a joint venturer of, or have any employment or agency relationship with, PaySimple. You may not assign, delegate, or transfer Your rights or obligations under these Terms of Use and any such prohibited assignment, delegation, or transfer shall be null and void.

You agree that regardless of any statute or law to the contrary, any claim or cause of action You bring arising out of or related to Your use of this Site or these Terms of Use must be filed within one (1) year after such claim or cause of action arose or such claim or cause will be forever barred.

The section titles in this Terms of Use are solely used for the convenience of the parties and have no legal or contractual significance.

## Terms and Conditions

### Appendix A - URL Addresses

Below is a list of all documents linked herein with complete URL addresses.

<b>Document</b>	<b>URL</b>
1) The American Express Merchant Regulations – U.S.	<a href="https://www.americanexpress.com/merchantpolicy">https://www.americanexpress.com/merchantpolicy</a>
2) The AcceptPay Enrollment Agreement	<a href="http://www.acceptpay.com/terms_ssu.html">http://www.acceptpay.com/terms_ssu.html</a>
3) The ACH Processors Terms and Conditions	URL for - ACH Direct, Inc. <a href="#">Terms and Conditions</a> URL for - Electronic Clearing House, Inc <a href="#">Terms and Conditions</a> URL for – National Processing Company <a href="#">Terms and Conditions</a>
4) The PaySimple Privacy Policy	<a href="http://www.paysimple.com/privacy.html">http://www.paysimple.com/privacy.html</a>
5) The PaySimple Acceptable Use Policy	<a href="http://www.paysimple.com/aup.html">http://www.paysimple.com/aup.html</a>
6) The Electronic Signature Terms and Conditions	<a href="http://www.acceptpay.com/terms_esig.pdf">http://www.acceptpay.com/terms_esig.pdf</a>
7) Payor Terms of Use	<a href="https://www.acceptpay.com/terms_payor.html">https://www.acceptpay.com/terms_payor.html</a>
8) AcceptPay Pricing	<a href="http://www.acceptpay.com/pricing">http://www.acceptpay.com/pricing</a>
9) AcceptPay App End User License Agreement	<a href="http://www.acceptpay.com/mobileappeula.html">http://www.acceptpay.com/mobileappeula.html</a>