

Last Updated: July 1, 2016

Vacation Rental Property Owner Client Service Agreement

This Vacation Rental Property Owner Client Service Agreement (this "**Agreement**") is made and entered into between YapStone, Inc., a Delaware corporation ("**YapStone**") and you ("**You**", "**Your**", or "**Client**") and is effective as of the date that You submitted the Registration Form (the "**Effective Date**"). You should read through all of the terms carefully. The terms constitute a legally binding agreement between You and YapStone.

BY CLICKING "I AGREE" AND COMPLETING THE ONLINE REGISTRATION FORM (the "**Registration Form**"), YOU AGREE TO BE BOUND BY THIS AGREEMENT, ALL POLICIES, NOTICES, AND OTHER CONTENT ON OUR WEBSITE: WWW.YAPSTONE.COM (the "**Website**"), YAPSTONE'S WEBSITE TERMS OF USE LOCATED AT: WWW.YAPSTONE.COM/TERMS-OF-USE/, AND YAPSTONE'S PRIVACY POLICY LOCATED AT: WWW.YAPSTONE.COM/PRIVACY-POLICY/. For purposes of this Agreement, capitalized terms used in this Agreement shall have the meanings given to them in this Agreement, except as expressly otherwise defined herein.

Background:

- YapStone provides online electronic payment services that facilitate the payment of long and short-term rents, deposits, lodging tax(es), and other rent-related expenses (collectively "**Rent**" or "**Rents**") between property owners/managers and the individuals who desire to rent the property and stay as guests (the "**Guests**") and such facilitation may be done via YapStone's application interface (collectively, the "**Services**");
- You own and/or manage the real estate properties set forth on the Registration Form and other forms (collectively "**Forms**") submitted to YapStone ("**Property**" or "**Properties**"); and
- You are owed Rents by a Guest as a result of a contract entered into between You and the Guest, and You would like YapStone to collect the Rents owed subject to the terms and conditions set forth in this Agreement.

You and YapStone agree to the following:

1. SERVICES.

1.1 Relationship With YapStone. You hereby appoint YapStone as Your limited agent for the limited purpose of receiving, facilitating, and/or processing Payments (as defined in Section 1.3) on Your behalf from Guests that authorize Payments to You. You acknowledge and agree that:

- A. Receipt of funds from Guests by YapStone on Your behalf in connection with Services transactions shall be deemed receipt of funds from Guests by You and will satisfy Guest's obligations to You in the amount of the applicable Payment by the Guest, even if YapStone fails to remit such funds received from Guest. YapStone or its designee will provide Guests with a receipt confirming that Payment has been made on the applicable date. You acknowledge YapStone is not a bank or other chartered depository institution. You also acknowledge that funds received by YapStone may be commingled with funds of others on whose behalf YapStone collects Payments and held by YapStone (or its service provider) on Your behalf and for the benefit of You in one or more pooled accounts at one or more FDIC-insured banks. U.S. dollar balances held in any pooled account are eligible for FDIC pass-through insurance, meaning that Your balance is insured up to the FDIC maximum. As between You and YapStone, YapStone has sole discretion over the establishment and maintenance of any pooled account. YapStone will not use funds held in such manner for YapStone's corporate purposes. You will not receive interest or any other earnings on any funds that YapStone holds for or on behalf of You.
- B. YapStone may order for You a merchant identification number ("**Merchant ID**") from a processor; and in such cases, YapStone does not receive funds from Guests, but YapStone simply transfers data to support the transfer of funds from Guests directly to You.
- C. YapStone may submit Payment transactions to any Card Network, NACHA, or Acquirer, and receive funds from any Card Network, NACHA, or Acquirer on behalf of You.
- D. YapStone may grant or deny any Guest the ability to use the Services, for any or no reason.

1.2 Your Responsibilities; Acquirer Relationship; Card Networks. During the Term of this Agreement, the Services will be provided by YapStone in conjunction with Vantiv, LLC and Paymentech, L.P. (or any other merchant acquirer or PIN debit acquirer) and their respective designated member bank(s) (collectively, "**Acquirer**"). You agree to comply with all YapStone policies with respect to the Services, and all applicable Visa U.S.A., Inc., Visa International, MasterCard International Incorporated, Discover Financial Services, Inc., American Express Travel Related Services Company Inc., (collectively, "**Card Networks**") and National Automated Clearing House Association (collectively, "**NACHA**") operating regulations, and other rules (collectively, "**Operating Regulations**"), and all applicable federal, state, or local laws, rules, regulations, and regulatory guidance relating to the conduct of its business. You agree and acknowledge that the Card Networks and NACHA reserve the right to amend the Operating Regulations without notice to You. If You choose to accept only certain types of Cards, it is the Your responsibility to properly indicate which Cards are accepted.

1.3 Payments of Rent and Funding Timeline. During the Term of this Agreement, YapStone's Services will enable qualified Guests to make payments of Rent to You using the payment channels set forth in Section 2, which may include: credit cards, debit cards (collectively, "**Cards**") and ACH/eCheck or other methods of electronic funds transfer (collectively, "**ACH**") (collectively "**Payments**"). Upon receipt of the Registration Form, YapStone will review your application and determine whether it is able to offer You the Services, and the manner in which it will settle Payments of Rents in its sole discretion. Upon successful completion of the required screening, You will be offered either of the following settlement timelines:

1. **Advance Payments:** Subject to banking processing delays and any fraud or risk holds imposed by YapStone, You will typically receive the Guest's Payment (Fees) in Your bank account within 2-3 business days, subject to banking delays, following the day a Payment is posted to YapStone's accounts, in accordance with the terms of this Agreement.

Or

2. Check In Payments: Subject to bank processing delays and any fraud or risk holds imposed by YapStone, You will receive the Guest's Payment (minus Fees) in Your bank account within 2-3 business days, of the day after the scheduled check-in date for the Guest at Your Property; provided however, in the event a Guest provides proper notice to the website that the Property was booked through within 24 hours of the scheduled check in that the Property is not as described, or there is some other issue with the property, You authorize YapStone to return the Payment to the Guest.

In addition, for risk and fraud reasons, YapStone will generally hold all disbursements scheduled to occur within the 30 days after your first scheduled successful check-in date.

YapStone may change your settlement timeline between Advance Payments and Check In Payments at any time during the Term of this Agreement; provided, however, that you will be given notice of any such change.

1.4 Settlement. Acquirer will process all Card transactions for YapStone and You. You agree that settlement of funds to YapStone's designated bank account discharges Acquirer of its settlement obligation to You and that any dispute regarding the receipt or amount of settlement shall be between YapStone and You.

1.5 Authorization for Debits and Credits. You hereby authorize YapStone to credit and debit the bank accounts listed on the applicable Forms, including those bank accounts owned by You or any individual Property owner, for the following purposes:

- (i) to credit Payments to or as directed by You;
- (ii) to debit any Chargebacks, refunds, or Reversals; and,
- (iv) to debit any fees, charges, or other amounts owed by You to YapStone.

You represent that you have the legal right, power, and authority to authorize YapStone to credit and debit such bank accounts. You acknowledge that if You interfere with YapStone's ability to debit any of such bank accounts, YapStone may suspend or terminate the Services without notice.

1.6 Your Use of the Services. You agree that the Services shall be used solely for the collection and payment of Rents and for no other purpose. You must not (i) require a Guest to complete a postcard or similar device that includes in plain view the account number, Card expiration date, signature, or any other Card account data when mailed, (ii) add any tax to transactions, except as required by law, (iii) request or use an account number for any purpose other than as payment for Rents, (iv) disburse funds in the form of travelers checks if the sole purpose is to allow a cardholder to make a cash purchase of goods or services from You, (v) submit any transaction receipt for a transaction that was previously charged back and subsequently returned to You, (vi) submit a transaction that represents collection of a dishonored check, (vii) charge Guests for fees not authorized by the Guests, (viii) charge Guests for damages, losses, penalties, or fine of any kind without a separate authorization of such immediately before the charge, (ix) charge Guests for overdue amounts or amounts covering returned, previously dishonored or stop-payment checks, or (x) require cardholders or Guests to waive his/her right to charge back a Payment. For clarity, You further agree not to use the Services to process transactions involving either illegal activities or activities unrelated to the collection of Rents.

1.7 Modification of the Services. When YapStone determines that it is necessary to protect the integrity of the Website or its operations, to avoid harm to others or for any other reason, YapStone has the right, without notice or liability, (i) to change, suspend, or discontinue the Services or Website, and (ii) to impose limits on features or restrict access to any of the Services and Website; provided, however, that YapStone will not modify the Services in a manner that would, in its sole discretion, significantly adversely affect Your use thereof, without providing at least ten (10) days prior notice to You of any such modification.

In addition, YapStone may from time to time without prior notice modify any of the Services or Website. YapStone will provide You notice, by email or by a posting on the Legal Center of the Website, of any such modification that would, in YapStone's sole discretion, significantly adversely affect Your use of the Services or Website.

1.8 Provision of Information. You will keep current all information identified on the Forms, including, without limitation, all bank account information. You also will provide any other information as may be reasonably requested by YapStone, from time to time, or otherwise as may be required to perform the Services. You acknowledge that failure to update such information may result in Payments being misdirected or delayed, or returned to the Guest. YapStone shall in no event be liable for any damages directly or indirectly resulting from Your failure to provide current and correct information.

1.9 No Relationship Between YapStone, Guests, and Individual Property Owners. You acknowledge and agree that YapStone is not a party to Your agreement with any Guest or individual Property owner on whose behalf You manage a Property. Therefore, in the event of a dispute between Client, a Guest, or any individual Property owner for any reason other than YapStone's performance of the Services, You agree to indemnify, defend and hold harmless YapStone, its affiliates, and its officers, directors, agents, employees, and other representatives from any claims related to the dispute.

2. FEES AND COLLECTION OF FEES.

2.1 Fees. You shall pay YapStone fees as set forth below ("**Fees**"). YapStone reserves the right to modify any fees upon ten (10) days' notice to You. You are responsible for disclosing to Guest, all fees that You charges to such Guest. If a dispute arises related to non-disclosure of Client-charged fees, You shall be liable to YapStone for any ensuing chargeback or reversal amount. You hereby authorize YapStone to automatically deduct all Fees due from the Payments collected by YapStone, as well as Fees related to Chargebacks and ACH Reversals prior to settlement to Your bank account.

Subscription Customer Fees

Card	YapStone Transaction Processing Rate
Visa/MasterCard/Discover/American Express	2.9% of transaction amount
International Surcharge	2% of transaction amount
Chargeback Fee	\$25.00 per chargeback

ACH/eCheck	YapStone Transaction Processing Rate
Basic ACH/eCheck Processing	0.0% of transaction amount
ACH Reversal Fee	\$25.00 per Reversal

Pay Per Booking Customer Fees

Card	YapStone Transaction Processing Rate
Visa/MasterCard/Discover/American Express	3% of transaction amount
Chargeback Fee	\$25.00 per chargeback

2.2 Right of Setoff. To the extent permitted by law, You authorize YapStone to withhold, without notice, from any payment due to You, any and all sums that You owe to YapStone, including without limitation: (i) Fees owed by You and (ii) amounts You owe YapStone in connection with any Reversal, refund, Chargeback or other adjustment to prior Payments.

2.3 Collection Actions. If You fail to pay YapStone any amounts owed to YapStone under this Agreement, YapStone reserves the right, on its own or through a third party collection agency, to initiate a collection action against You to recover such funds. In such event, You agree to pay all costs and expenses, including without limitation, reasonable attorneys' fees and other expenses, incurred by or on behalf of YapStone in connection with the collection action.

3. UNDERWRITING; CHARGEBACKS AND REVERSALS

3.1 Underwriting; Fraud and Risk Reviews. You authorize YapStone to collect and verify the information provided by You on the Forms. YapStone will use this information to perform customer due diligence, identity verification, and various underwriting, fraud, and credit risk reviews. You acknowledge that YapStone will continuously monitor the transactions through the Services for the purpose of identifying suspicious activity to prevent, detect and deter fraud and money laundering, and to protect the integrity of its systems and business. You further acknowledge that as a result of such monitoring YapStone may require additional due diligence with respect to You to ensure You continue to be eligible for the Services. If You become ineligible for the Services based on YapStone policies, or if You do not furnish the requested information in a timely manner, YapStone may suspend or terminate the Services immediately. You acknowledge and agree that YapStone may decline to process any Payment in connection with, among other reasons, fraud prevention activities, applicable law, or YapStone policies.

3.2 Adequate Security; Reserve. As a condition of continuing to provide Services to Client, You agree that YapStone may, at any time, require a guaranty or other form of adequate security, including requiring You to maintain with YapStone a separate reserve account (a "**Reserve**"). YapStone may set the Reserve in an amount that it reasonably determines is necessary to cover its or any Acquirer's risk in connection with providing the Services to You (including without limitation anticipated Chargebacks or credit risk). The Reserve may be raised, lowered, or removed from time to time in YapStone's sole discretion. You agree that YapStone may fund the Reserve from Rent Payments to You under this Agreement and grant YapStone the right to make any withdrawals or debits from the Reserve, without prior notice to You, to collect amounts owed to YapStone under this Agreement. You grant YapStone a security interest in and lien on all funds held in any Reserve. You will execute any additional documentation required for YapStone to perfect such security interest. This security interest survives for as long as YapStone holds funds in the Reserve. You acknowledge and agree that all interest or other earnings that accrue or are attributable to the Reserve will belong to YapStone.

3.3 Chargebacks and Reversals. Any Payment by a Guest is subject to a right of (i) "**Reversal**" (the right of a bank account owner to seek the return funds for a transaction that was funded by a bank account – sometimes referred to as an ACH Return – for example, as a result of suspected unauthorized use of a bank account or insufficient funds) or (ii) "**Chargeback**" (the right of credit cardholders to file a claim for a refund with their Card issuer, for example, as a result of fraud or dissatisfaction with a purchase). These rights exist between the accountholders and their bank or Card issuer. In the event of a Chargeback or Reversal of any Payment by an accountholder, YapStone is authorized, without notice, to recapture such amount plus any fees associated with the Chargeback or Reversal from Your bank account or to withhold such amount from any payment due to You. You are liable for all refunds, Chargebacks, or Reversals of Payments processed or amounts paid to accountholders on Your behalf by YapStone, plus the applicable Chargeback and Reversal Fee in Section 2.1. YapStone shall have no obligation to pursue any collection action against any Guest or accountholder and therefore, YapStone's obligation to remit funds collected by YapStone on Your behalf shall be limited to funds that YapStone has actually received that are not subject to Chargeback or Reversal.

With respect to Chargebacks, YapStone will use commercially reasonable efforts to dispute the validity of the Chargeback on Your behalf and at Your expense. You agree to cooperate with YapStone and to provide any information that may be reasonably requested by YapStone in its investigation. You authorize YapStone to share information about a Chargeback with the Guest and accountholder, the accountholder's financial institution, and Your financial institution in order to investigate or mediate a Chargeback. If the Chargeback is resolved in Your favor and YapStone is in possession of the applicable funds, YapStone will place them into Your designated bank account. If a Chargeback dispute is not resolved in Your favor or You choose not to contest the Chargeback, You waive Your right to repayment. You acknowledge that Your failure to assist YapStone in a timely manner when investigating a transaction may result in an irreversible Chargeback. You acknowledge that chargeback or reversal decisions are made by the applicable issuing bank, Card Networks, or NACHA and all judgments as to the validity of the chargeback are made at the sole discretion of the applicable issuing bank, Card Networks, or NACHA.

3.4 Excessive Chargebacks/Reversals. If YapStone determines in its sole discretion that You have incurred an excessive number or amount of Chargebacks or Reversals, YapStone may: (i) increase the processing fees paid by You, (ii) require You to establish a Reserve, (iii) delay Payments to You, and/or (iv) suspend providing the Services to You.

4. DATA SECURITY AND PRIVACY

4.1 Data Security. You agree that Guest data will only be accessed by Your authorized employees and contractors, whose access shall be limited to those with a need-to-know that are based on their job responsibilities. You further agree that YapStone will not be responsible for any unauthorized use or access to Guest's personal

data or financial data by You, Your employees, any other party associated with You (such as contractors, vendors, suppliers, invitees, agents), or any person who uses or accesses such data through You or Your systems, except to the extent such use or access is due to YapStone's fault or negligence. You agree to meet all applicable data security standards (including not storing Guest's Card data), as required by law or regulatory authority, the Operating Regulations, any Acquirer, or the Payment Card Industry Data Security Standards ("**PCI DSS**") (Information on the PCI DSS can be found on the PCI Council's website (www.pcisecuritystandards.org)).

4.2 Privacy; Use of Information. You and YapStone are bound by the terms of the YapStone privacy policy (available at: www.yapstone.com/privacy-policy/) as it may be updated by YapStone from time to time. You warrant that all information provided to YapStone by You is provided with requisite consent, including the consent of YapStone's use of such information in accordance with YapStone's privacy policy. You shall provide evidence of such consent upon YapStone's request. You acknowledge and expressly agree that YapStone or its third party service providers and partners (including Acquirer, the Card Networks, and NACHA) may use the information gathered in the performance of the Services or the operation of the Websites in accordance with YapStone's privacy policy and applicable law, which use also may include marketing campaigns, promotions, and statistical analyses.

5. INTELLECTUAL PROPERTY

5.1 Intellectual Property Rights. As between YapStone and You, YapStone is and all times will be deemed the exclusive owner of the Services, the Website, and any other material that YapStone may use or provide in connection with implementation and operation of the Services or the Website, as well as any and all current and future patent rights, copyrights, trademark trade name and logo rights, mask work rights, trade secret rights, database rights, moral rights, and all other intellectual and proprietary rights of any kind or nature anywhere in the world (whether or not registered or perfected) with respect to the foregoing. For clarity, You do not acquire, any right, title and interest in and to: (i) all inventions, methods, processes, technology and works of authorship that YapStone has developed, conceived, reduced to practice or otherwise acquired; (ii) all modifications, enhancements and derivative works thereof; and (iii) all intellectual property rights with respect to any of the foregoing.

You will not modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Website, the Services, or any other of YapStone's intellectual property.

6. INDEMNIFICATION.

6.1. Your Indemnification. You shall indemnify, defend, and hold harmless YapStone, the Acquirer, and their respective parent companies and subsidiaries, and the directors, officers, employees, and agents of each ("**YapStone Indemnified Parties**") from and against any and all Claims (as defined below) arising out of or in connection with (i) Your or any Guest's use of the Properties, Services, or Website; (ii) any breach (or, as to defense obligations only, any alleged breach) of this Agreement by You; (iii) Your gross negligence, fraud, misrepresentation, willful misconduct, violation of applicable law, or infringement of the rights of any person or entity; or (iv) a data breach, not caused by YapStone. The foregoing indemnity obligations are limited in each instance to the extent that any Claim is the result of the gross negligence or willful misconduct of any YapStone Indemnified Party. The foregoing indemnity obligations also are contingent upon YapStone providing prompt written notice to You of any such Claims, provided that Your indemnity obligation shall be relieved only to the extent You are prejudiced by any delay or failure of YapStone to provide such notice.

6.2. YapStone Indemnification. YapStone shall indemnify, defend, and hold harmless You and Your respective parent companies and subsidiaries, and the directors, officers, employees, and agents of each ("**Your Indemnified Parties**") from and against any and all Claims (as defined below) arising out of or in connection with (i) any breach (or, as to defense obligations only, any alleged breach) of this Agreement by YapStone; (ii) YapStone's gross negligence, fraud, misrepresentation, willful misconduct, violation of applicable law, or infringement of the rights of any person or entity; or (iii) a breach of data security occurring at, in, or through YapStone's Websites, Services, or premises that (through no fault of You Indemnified Parties or any Guest) results in the unauthorized disclosure of Your personal information or Guest's cardholder information. The foregoing indemnity obligations are limited in each instance to the extent that any Claim is the result of the gross negligence or willful misconduct of any Your Indemnified Party. The foregoing indemnity obligations also are contingent upon You providing prompt written notice to YapStone of any such Claims, provided that YapStone's indemnity obligation shall be relieved only to the extent YapStone is prejudiced by any delay or failure of You to provide such notice.

6.3. Indemnification Process. The party seeking indemnification pursuant to this Section 6 (the "**Indemnitee**") shall: (a) promptly notify the other party (the "**Indemnitor**") in writing of the Claim for which indemnification is sought, but in no event longer than five (5) business days of the Indemnitee's knowledge of the Claim; (b) make all reasonable efforts to provide Indemnitor with all information and material in Indemnitee's possession regarding the Claim; (c) furnish to Indemnitor such assistance as Indemnitor may reasonably request in connection with the investigation, settlement and defense of the Claim; and (d) grant Indemnitor sole control over the defense and settlement of the Claim; provided, however, that Indemnitee may participate in such defense at its option and expense. Within ten (10) days of Indemnitor's receipt of the notice of the Claim or demand, Indemnitor shall notify the Indemnitee as to whether Indemnitor is assuming the entire control (subject to this Section) of the defense, compromise or settlement of the matter, including the counsel that Indemnitor has selected. Any counsel retained by the Indemnitor for such purposes shall be reasonably acceptable to the Indemnitee, whose consent shall not be unreasonably withheld. The Indemnitor shall institute and maintain any such defense diligently and reasonably and shall keep the Indemnitee fully advised as to the status thereof. Further, Indemnitor shall not dispose of or settle any such Claim in Indemnitee's name or in any manner which may adversely affect Indemnitee's rights or interests (which includes, without limitation, any settlement that imposes pecuniary or other liability or an admission of fault or guilt on the Indemnitee or would require the Indemnitee to be bound by an injunction of any kind) without Indemnitee's prior written consent, which consent shall not be unreasonably withheld or delayed. Indemnitee shall not be liable hereunder for any settlement entered into without its prior written consent (which consent shall not be unreasonably withheld or delayed).

6.4. Definition of "Claim". "**Claim**" means an action, allegation, assessment, cause of action, cease and desist letter, charge, citation, claim, demand, directive, fine, lawsuit or other litigation or proceeding, or notice issued or submitted by, from or on behalf of a third party and all resulting judgments, bona fide settlements, penalties, damages (including consequential, indirect, special, incidental or punitive damages), losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees, expenses and costs) incurred in connection therewith.

7. LIMITATION OF LIABILITY

7.1 YAPSTONE SHALL NOT BE LIABLE FOR: ANY FAILURES CAUSED BY ANY PERSON OR ENTITY OTHER THAN YAPSTONE THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION, OR SETTLEMENT OF A PAYMENT OR THE SERVICES.

7.2 EXCEPT WHERE THE CLAIM: (i) IS SUBJECT TO INDEMNIFICATION UNDER SECTION 6 OF THIS AGREEMENT; (ii) ARISES OUT OF A BREACH OF CONFIDENTIALITY; OR (iii) ARISES OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, IN NO EVENT WILL EITHER PARTY OR ACQUIRER OR ANY CARD NETWORKS, OR THEIR RESPECTIVE AFFILIATES OR SUPPLIERS, BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR LOST PROFITS OR FOR CONSEQUENTIAL, EXEMPLARY,

INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT THE PARTY OTHERWISE LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN NO EVENT WILL YAPSTONE'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE FEES THAT YAPSTONE HAS EARNED UNDER THIS AGREEMENT DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ARISES, PLUS, WHERE YAPSTONE HAS FAILED TO MAKE ANY PAYMENT (as defined in Section 1.3) DUE TO YOU, THE AMOUNT OF SUCH PAYMENT DUE. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated in this paragraph and that these limitations are an essential basis of the bargain between the parties.

8. DISCLAIMERS.

EXCEPT FOR ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT: (i) THE SERVICES, WEBSITES, AND ALL CONTENT, SOFTWARE, MATERIALS AND OTHER INFORMATION PROVIDED BY YAPSTONE OR OTHERWISE ACCESSIBLE TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, ARE PROVIDED "AS IS;" AND (ii) ACQUIRER, YAPSTONE, AND THEIR RESPECTIVE AFFILIATES AND SUPPLIERS MAKE NO WARRANTY OF ANY KIND (AND DISCLAIM ALL WARRANTIES OF ANY KIND) WITH RESPECT TO THE FOREGOING, WHETHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, YAPSTONE MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. YAPSTONE MAKES NO WARRANTY REGARDING THE QUALITY OF THE PAYMENT SERVICES.

YOU ACKNOWLEDGE AND AGREE THAT ACQUIRER IS NOT A PARTY TO THIS AGREEMENT AND THAT YOU SHALL HAVE NO RECOURSE AGAINST ACQUIRER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

World Wide Web Usage. YapStone and its suppliers make no warranties regarding the quality, reliability, timeliness or security of the world wide web, the internet and other globally linked computer networks, or the web sites established thereon including the Web Site, will be uninterrupted or error free.

9. TERM AND TERMINATION.

9.1 **Term.** This Agreement will commence on the Effective Date and shall continue until terminated by either party in accordance with Section 9.2 below ("**Term**").

9.2 **Termination.** Either party may terminate this Agreement at any time for convenience upon written notice, which may be made pursuant with section 12.9.

9.3 **Effect of Termination.** Termination of this Agreement will not relieve either party of any obligation to pay the other party any Fees or other compensation due to the other party prior to such termination. YapStone will complete any Payments in process at the time of termination and will deduct any Fees owed to it at that time. However, You will remain liable for Chargeback's, Reversals, charges, and any other obligations incurred by You after the expiration or termination of this Agreement and You authorize YapStone to automatically, without prior notice to You, deduct such amounts from Your bank account. Upon termination, YapStone will disable Your access to the Services. Upon termination, You will remove all references to YapStone from Your website and/software.

10. ARBITRATION: Please read this Section carefully. It affects Your rights and will impact how claims You and YapStone have against each other are resolved.

10.1 **Dispute Resolution Procedure.** Most of Your concerns can be resolved quickly through YapStone's customer service department. YapStone's goal is to learn about and address the underlying causes of the concern and avoid it becoming a dispute. To that end, the parties shall cooperate and attempt in good faith to resolve any potential dispute promptly by discussions between persons who have authority to resolve the potential dispute. If the parties are unable to resolve the potential dispute amicably at that level, You shall report the potential dispute to YapStone's legal team at Legal@YapStone.com. Any of Your disputes related to billing or fees must be raised within 90 days of the relevant transaction or they are deemed permanently waived by You.

10.2 **Agreement to Arbitrate.** ANY DISPUTE ARISING BETWEEN YOU AND YAPSTONE THAT CANNOT BE RESOLVED INFORMALLY AS DESCRIBED IN SECTION 10.1 (INCLUDING WITHOUT LIMITATION ANY CONTROVERSY OR CLAIM ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE ALLEGED BREACH THEREOF) SHALL BE FINALLY RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING THE AAA'S SUPPLEMENTAL PROCEDURES FOR CONSUMER-RELATED DISPUTES, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE ARBITRATION WILL BE CONDUCTED IN THE ENGLISH LANGUAGE, BEFORE A SINGLE ARBITRATOR, IN THE CITY OF WALNUT CREEK, CALIFORNIA. THE ARBITRATOR SHALL DECIDE THE DISPUTE IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA. COSTS OF AAA WILL BE SHARED EQUALLY BY THE PARTIES, EXCEPT THAT THE ARBITRATOR SHALL AWARD YAPSTONE COSTS AND ATTORNEYS' FEES IN ANY ARBITRATION WHERE IT PREVAILS IN CONNECTION WITH CLAIMS THAT YOU FAILED TO TIMELY REMIT PAYMENTS DUE TO YAPSTONE. NOTWITHSTANDING THE FOREGOING, YAPSTONE MAY ASSIGN ANY COLLECTION DISPUTE OR CLAIM TO A THIRD-PARTY COLLECTION AGENCY. THE COLLECTION AGENCY MAY PURSUE, IN ANY COURT OF COMPETENT JURISDICTION, ANY CLAIM MADE BY OR ON BEHALF OF YAPSTONE THAT IS STRICTLY LIMITED TO THE COLLECTION OF PAST DUE AMOUNTS AND RELATED INTEREST AND COSTS OF COLLECTION, AS PERMITTED BY LAW OR THIS AGREEMENT. YAPSTONE IS ALSO ENTITLED TO PURSUE A CLAIM IN SMALL CLAIMS COURT (AND NOT BY ARBITRATION) IF YOU FAIL TO TIMELY REMIT RENTS TO YAPSTONE, PROVIDED THAT YAPSTONE'S CLAIM AMOUNT IS WITHIN THE JURISDICTIONAL LIMITATIONS OF SUCH COURTS.

10.3 **Opt-Out Procedure.** You can choose to reject this agreement to Arbitrate ("**opt out**") by sending YapStone a written opt-out notice by certified mail to the mailing address set forth in Section 12.9 of this Agreement. For new YapStone customers, the opt-out notice must be postmarked no later than 30 days after the Effective Date. The opt-out notice must state that You do not agree to Arbitrate and must include You name, address, phone number, and the email address(es) provided at registration or on file with YapStone. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way You can opt out of the agreement to Arbitrate. Opting out of the agreement to Arbitrate shall have no impact or effect upon any other provisions of this Agreement.

11. CONFIDENTIALITY.

11.1 Each party agrees to keep confidential and to use only for purposes of performing under this Agreement, any proprietary or confidential information disclosed by or on behalf of the other party in relation to this Agreement, as well as any other information that could reasonably be considered to be confidential. The obligation of confidentiality does not extend to information that is publicly available through authorized disclosure, is rightfully obtained from a third party that has the right to disclose it, or is required by law to be disclosed. All confidential information will remain the property of the disclosing party.

12. MISCELLANEOUS

12.1 **Binding Upon Successors and Permitted Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted

assigns. You may not assign this Agreement or any rights, obligations, or privileges under this Agreement without YapStone's prior written consent and such consent will not be unreasonably withheld. YapStone may assign its rights and obligations under this Agreement at any time, with or without notice to You.

12.2 Force Majeure. YapStone will not be responsible for delays, errors, failures to perform, interruptions or disruptions in the Services or Website resulting from any act, omission or condition beyond YapStone's reasonable control, whether or not foreseeable or identified, including without limitation acts of God, labor strikes, lockouts, riots, acts of war, governmental regulations, fire, power failure, earthquakes, severe weather, floods or other natural disasters, hackers, or the failure of Your, Guest's, or any third party's hardware, software or communications equipment or facilities.

12.3 Entire Agreement. This Agreement replaces and supersedes all previous and contemporaneous agreements between the parties, and You hereby waive all claims, refunds, credits, or damages related to or arising under any previous agreements between the parties.

12.4 Severability. If any provision of this Agreement is determined to be invalid or unenforceable by any court of competent jurisdiction or arbitrator pursuant to Section 10, the remaining provisions shall not be affected thereby and shall be binding upon the parties and shall be enforceable, as though such invalid or unenforceable provision (or portion thereof) were not contained in this Agreement. Notwithstanding the foregoing, this Agreement shall be interpreted to give effect to its fundamental terms and conditions. Any such invalid or unenforceable provision shall be reformed by the court or arbitrator as necessary to express as nearly as possible the original intent of the parties and achieve the same economic effect as the original provision.

12.5 Amendment and Changes. This Agreement may be changed or amended by YapStone or Acquirer at any time without notice, provided that, any changes that would significantly adversely affect You will be communicated to You by email, posting on the Website, or other writing. Your continued use of YapStone's Website or Services after the posting of any change or amendment on YapStone's Sites or by email will constitute Your agreement to such change or amendment; provided however, if You do not agree to such change or amendment, You can terminate the Agreement in accordance with Section 9.2 of this Agreement if You provide such notice of termination within thirty (30) days following the date of the amendment notice. Amendments or changes by made You are only effective by a writing signed by both parties. Acquirer may amend this Agreement as it relates to Acquirer's processing of Card transactions upon notice to You in accordance with Acquirer's standard operating procedures.

12.6 Waiver. The failure by a party to insist upon strict performance of any of the provisions contained in this Agreement shall in no way constitute a waiver of its rights as set forth in this Agreement, at law or in equity, or a waiver of any other provisions. No waiver of any provision or of any breach of this Agreement shall be deemed a further or continuing waiver of such provision, breach, or any other provision of this Agreement.

12.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflict of laws principles.

12.8 Survival. Sections 1.1A, 1.4, 1.5, 1.9, 2, 3.2, 3.3, 4, 5, 6, 7, 8, 9.3, 10, 11, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.9, 12.10, 12.11, and 12.12 shall survive termination of this Agreement.

12.9 Notices. All notices and other communications under this Agreement must be in writing and may be made by means of email or a posting on, or update to the legal center on the Website. Notices to You will be delivered to the email address provided on the Registration Form or as modified by You through notice to YapStone or by posting on or update to the legal center on the Website. Notices to YapStone can be made via email at legal@yapstone.com or via certified mail or overnight courier to: YapStone, Inc., Attn: Legal Department, 2121 N. California Blvd., Ste. 400, Walnut Creek, CA 94596.

12.10 Third Party Service Providers. YapStone may, without notice, change its third party service providers, including without limitation, any third party processor, Acquirer, or bank. All rights reserved for third party service providers herein apply to successor third party service providers. YapStone may use third party processors to provide some of the Services. You acknowledge and agree that these third party service providers are intended third party beneficiaries of this Agreement as and only to the extent as their interests appear. For clarity, each third party service provider shall have the right to enforce directly against You the terms of this Agreement which relate to the provision of the third party service provider's services to You and the ownership and protection of the intellectual property rights of the third party service provider and its licensors in and to its services. You acknowledge that the third party service providers shall have no responsibility or liability with regard to YapStone's obligations to You under this Agreement.

12.11 Taxes. You are responsible for determining, collecting, and reporting any and all taxes, including occupancy/lodging taxes, required to be collected, reported, or paid in connection with Your business and use of the Website and Services. YapStone may also have tax reporting responsibilities in connection with offering the Services. As a result, You warrant, represent, and agree to provide YapStone with a valid IRS Form W-9 and all other documents and information reasonably required for YapStone to file the applicable forms with the IRS (such as Form 1099). You also acknowledge and agree that Payments may be subject to back-up withholding taxes.

12.12 Commercial Entity Agreement. At such time as You processes more than one hundred thousand dollars (\$100,000) in Card volume in a calendar year through YapStone You are bound by the Commercial Entity Agreement ("**CEA**"), available at: www.yapstone.com/legal/cea. The CEA is not intended to change any transaction arrangements, fees, or other terms between You and YapStone under this Agreement.

12.13 American Express. You agree to be bound by the American Express Merchant Operation Regulations (available at: www.americanexpress.com/merchantopguide) and the American Express Terms, available at: www.yapstone.com/legal/americanexpressterms.