



## PREPAY POINT MERCHANT TERMS OF USE

Via One Technologies, Inc. and VIAONE POS, LLC (each referred to as "VIAONE" individually herein), are pleased to offer their respective authorized Merchants (hereinafter referred to as "You" or "Your"), services ("Services" or "Service") that enable You to purchase and sell products offered for sale by VIAONE, which may include but not be limited to prepaid airtime, equipment, equipment activation services, bill payment services, and money transfer ("Products"), at the point-of-sale using three systems: (a) Point-of-sale terminal (the "POS Terminal"), (b) Online pin dispensing terminal (the "Virtual Terminal") and (c) IVR-based pin dispensing terminal (the "Pin By Phone Terminal") (each may generically be referred to as a "Terminal").

In the event that VIAONE accepts Your Merchant Application Form ("Application Form"), as noted in the Application Form, such acceptance is conditioned upon Your compliance with these Terms of Use. As such, You agree that Your Application Form and VIAONE's acceptance, coupled with these Terms of Use shall be deemed a legally binding agreement ("Agreement") by and between You and VIAONE under which VIAONE agrees to make you an authorized Merchant and provide You with Products and Services as defined herein and You accept such appointment and such Products and Services.

### ENROLLMENT

To enroll to obtain Products and Services from VIAONE, You must have signed an Application Form, and have provided VIAONE with a signed Automated Clearing House Authorization Form (the "ACH Authorization"), which grants VIAONE and/or any of its partners, subsidiaries or affiliates the authorization to electronically debit or credit Your bank account for payments due from You to VIAONE and/or any of its partners in connection with Your use of Services provided by, or the purchase of any Products by You from, VIAONE. VIAONE may, in its sole discretion, refuse to enroll You in its program or otherwise refuse to offer specific Products of Services to You at any time. Additionally, VIAONE, may, in its absolute and sole discretion, condition your enrollment upon VIAONE's receipt of a deposit in an amount to be determined by VIAONE. You agree to notify VIAONE immediately in writing upon any changes to any information You have provided on Your Application Form or ACH Authorization.

By completing and signing the Application Form and accepting Services provided by VIAONE, You agree to abide by the terms and conditions of these Terms of Use and any other agreement signed with VIAONE. VIAONE reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms of Use, in which case, VIAONE will provide you with seven (7) days notice of such a change. Notice, for the purposes of informing you of such changes will be either by email, by post or by way of a notification posted to your Merchant Account (as defined below). Your continued use of the Services, including purchasing any Products from VIAONE after being notified of such a change shall constitute Your acceptance of all changes to these Terms of Use. You acknowledge and agree that a consumer report about the commercial and personal finances of the legal entity named on the Application Form and/or the authorized signor will be requested from a consumer and/or commercial credit reporting agency or other investigative agency by VIAONE.

### THE SERVICE; TRANSACTIONS

You will be solely responsible for all charges related to the Service, including the telephone line and access charges to connect to the Service. Once VIAONE accepts Your application, VIAONE will (i) contact You directly, (ii) send You a copy of its signed acceptance for Your records, (iii) set up Your terminal, (iv) provide You with basic training to use the Service and purchase Products, (v) will issue You a Merchant Identification Number ("Merchant ID"), (vi) will establish a Merchant account ("Merchant Account") in Your name on the VIAONE POS System, and (vii) will send you a link by email which shall enable You to access Your Merchant Account and create a password for this account ("POS Password"). You are responsible for ensuring that nobody uses Your Merchant Account, Merchant ID and/or POS Password. You will be responsible for any and all activity conducted using Your Merchant ID and POS Password and/or on Your Merchant Account. You agree to indemnify, defend and hold VIAONE harmless for any claims, losses, actions, demands liabilities and/or damages, including attorney's fees, resulting from any unauthorized use of Your Merchant ID, POS Password or Merchant Account.

The computer system that You will access to manage Your Merchant Account, purchase and sell Products is a proprietary system developed by VIAONE technologies (the "VIAONE POS System").

### PRODUCT SALES AND FEES

You will be responsible for collecting the entire purchase price and any and all fees and applicable taxes due from the consumer ("End User") for any and all Products You obtain or procure from VIAONE. Before transacting any business on the VIAONE POS System, You shall be required to provide VIAONE with a resale certificate issued by the appropriate government authorities in Your State of operation and, if requested by VIAONE, sign a resale certificate form which shall be provided by VIAONE. The Purchase Price of Products procured for the purpose of resale to End Users from VIAONE shall be based on one of the following methods (each Product or Service offered will specify which method of pricing is applicable for such Product or Service):

(i) Discount Rate Pricing – Electronic PIN sales: Unless otherwise specified in writing, the purchase price for any electronic PIN purchased by You for resale shall be expressed in the form of a discount rate ("Discount Rate"), which refers to a discount off the face value of such a Product. Your purchase price or "Buy Rate" for a given Product may be determined by deducting Your Discount Rate ("Merchant Discount Rate") from the face value of the Product. By way of example, if Your Discount Rate is 10% on an electronic PIN whose face value is \$10, your Purchase Price or Buy Rate for this Product will be \$9.00. When sold at its face value, this Product will provide You with a gross profit of \$1.00.



(ii) **Base Price ("Base Price")** – For products which are not electronic PINS and do not specify a Discount Rate, such Products shall be offered to You for a Base Price. In such event, You will purchase such Products and resell them at a Price determined by You unless VIAONE pre-determines and requires You to sell such Products for a set retail price for End Users. In either such event, the difference between Your Base Price and the price that You sell such Products to End Users for shall be Your gross profit.

(iii) **Transaction Fee** – Certain Products may be structured such that they are purchased by You and sold to End Users by You with no Discount Rate and for which Your Base Price and selling price are required to be the same. In such event, VIAONE may provide You with a profit for the sale of such Products by way of providing You with a "Transaction Fee". For the purposes of this Agreement, a "Transaction Fee" shall be defined as a fee payable to a given party upon the consummation of a given transaction.

It is possible that VIAONE, a VIAONE representative or an independent distributor affiliated with VIAONE may have provided You with a list of Products with applicable Discount Rates, Product Prices and/or Transaction Fees that will or may be offered to you from VIAONE in accordance with this Agreement. You acknowledge and understand that any Products, and/or their applicable Discount Rates, Base Prices and/or Transaction Fees that may have been offered to You or that may be offered to You during the course of Your affiliation with VIAONE may be discontinued, changed or modified by VIAONE in its absolute and sole discretion for any reason whatsoever. In such event, VIAONE will provide You with three (3) day's notice of such change. For the purposes of this Agreement, You agree that such notice may be given to You in the form of an email, regular post, facsimile or a posting to Your Merchant Account. You agree that Your continued Use of the Service after receiving such notice, including purchasing any Products or Services from VIAONE shall be deemed Your acceptance of such changes. Additionally, VIAONE may from time to time add, subtract, modify or change any Products and/or Services offered to You at any time with or without Your consent for any reason whatsoever.

Your Application Form may specify certain fees that You are contractually obliged to pay VIAONE, including, but not limited to, set-up fees, monthly access fees or fees for a terminal that you may have leased or purchased from VIAONE ("Fees"). In addition to these Fees, at any time during the term of this Agreement, VIAONE may in its sole discretion impose additional fees ("Additional Fees") payable by You as a condition of continuing to using its Services or brands in connection with this Agreement by providing You with ten (10) days notice of such Additional Fees. Your continued Use of the Services, including purchasing any Products using the VIAONE POS System shall be deemed Your acceptance of such Additional Fees.

In accordance with the terms on Your ACH Authorization Form, in the event that an ACH of Your account fails, You grant VIAONE authority to debit Your account for all such charges and expenses incurred together with a \$25 administrative fee per failed ACH. Additionally, the failure of any ACH to post to Your account shall be deemed a material breach of this Agreement, and in addition to all other remedies at law, such a breach shall entitle VIAONE to immediately suspend or terminate this Agreement and Your Services. Additionally, in the event that You have provided VIAONE with a deposit, You permit VIAONE to off-set any amount You owe VIAONE against such deposit during or upon termination of Services or this Agreement. In the event that this Agreement is terminated, VIAONE shall be required to return any deposit or any remaining amount from any deposit, after offsetting any amounts due VIAONE by You no later than two (2) weeks after termination.

You acknowledge that You are liable to VIAONE for any and all Products purchased through the VIAONE POS System using Your terminal or Your Merchant Account. In the event that You wish to dispute an invoice or a charge to Your Merchant Account, You will submit written notice of such dispute, error or discrepancy within Ten (10) days of receipt of the disputed invoice, otherwise Your ability to dispute such a charge shall be deemed waived. Additionally, because You are liable for all uses of Your Merchant Account, the VIAONE POS System shall be the deciding authority in any dispute, it being understood that the only factor in determining liability for a purchase shall be whether a PIN was ordered using Your Merchant Account.

In the event that You obtain an electronic Product through a Terminal and such electronic PIN does not work for any reason, You shall notify VIAONE of such occurrence within three (3) business days of obtaining such an electronic Product. Upon doing so, You will be required to provide VIAONE with the electronic PIN number, based upon which VIAONE shall determine the cause of the malfunction. In the event that VIAONE confirms that Product is defective, VIAONE will immediately credit Your account for the amount You paid for such electronic PIN. In the event that VIAONE determines that such Product is not defective, Your Merchant Account will not be credited.

**VIAONE AS YOUR EXCLUSIVE PROVIDER OF PRODUCTS AND SERVICES**

For the term of this Agreement, without the written consent of VIAONE, You agree that You will not procure any service or offer for sale any product that is competitive to or with any Product or Service offered to You by VIAONE under this Agreement.

**TERM AND TERMINATION**

Upon acceptance of Your Application Form by VIAONE, You agree that VIAONE will provide You with Services for an initial period of three (3) years ("Initial Term") after which the term of this Agreement shall automatically renew on an annual basis, with each such renewal lasting one (1) year and being based upon the same terms and conditions of this Agreement. Notwithstanding the foregoing, You may terminate Your affiliation with VIAONE or this Agreement, by



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providing VIAONE with notice of Your desire to terminate not less than sixty (60) days prior to the end of any then current term. Notwithstanding the foregoing, VIAONE may, in its sole discretion, terminate this Agreement, Your Services and/or Your ability to purchase Products from VIAONE at any time, for any reason or no reason, by providing You with three (3) days notice. Additionally, VIAONE, in its sole discretion may suspend or restrict Your ability to use the Service and/or purchase Products or any given Products at any time during the term of Your affiliation or this Agreement with VIAONE by providing you with three (3) days notice. VIAONE shall not be liable to You for termination or suspension of the Service or Your rights under this Agreement under any theory of law or equity, and You hereby release VIAONE from any and all liabilities for any losses or damages of any kind that arise out of such termination, restriction or suspension of Services. Upon termination of this Agreement, You shall cease using and shall return to VIAONE all sales, marketing and advertising materials provided to You by VIAONE relating to the Service. Any termination of this Agreement removes Your authorization to access or use the Service and terminates all rights granted to You under this Agreement. In the event that this Agreement is terminated by either party, or one party notifies the other of its intention to terminate this Agreement, VIAONE shall be permitted to ACH Your account for any and all amounts due VIAONE by You for any obligation from You to VIAONE that has arisen in connection with this Agreement or Services provided to You by VIAONE. In such event, if You have leased or purchased a terminal, and continue to owe VIAONE any money for such terminal, VIAONE shall be permitted to accelerate the term of payments for such terminal(s) and ACH Your account for the entire remaining balance of such lease and or any residual amount owed to VIAONE as soon as either party informs the other of its intent to terminate. In the event that such ACH is rejected or fails, VIAONE may at its option demand full payment for such terminal or equipment or the return of such terminal or equipment from You.

### CONFIDENTIALITY AND RESTRICTIONS

You agree that, during the term and after the termination of the Merchant Services Agreement, all confidential, proprietary and trade secret information (including without limitation technical, business or financial information) disclosed to You by VIAONE shall not be used by You, or disclosed or disseminated to any third party except for such information that (i) is publicly available without breach of these obligations, (ii) is rightfully obtained by You from third parties that are entitled to possess it without obligation to protect its confidentiality, (iii) is required to be disclosed by law or to regulatory authorities having jurisdiction over the receiving party, or (iv) VIAONE has granted You written permission to disclose. These confidentiality obligations will survive termination of this Agreement and Your use of the Service.

You agree to use the Service properly and only for the purposes set forth in this Agreement. Your right to use the Service is limited solely to procuring and selling to End Users Products provided by VIAONE. You agree that you will not (i) reverse compile, reverse assemble, disassemble or translate any component of the Service; (ii) access or attempt to access, distribute, disclose, market or copy in any form any information or data on the Service except as otherwise set forth herein, unless such information is otherwise available to You from sources other than the Service; or (iii) sublicense or provide the Service to other entities or persons for a fee. You acknowledge and agree that the VIAONE POS System and all of its components, are the sole property of VIAONE and that Your ability to use the VIAONE POS System is solely in connection and accordance with the Merchant Services Agreement and these Terms of Use. You agree not to claim any right to use, license and own any aspect of the VIAONE POS System at any time and You agree not to issue or sell and any license, ability or right to use any aspect of the VIAONE POS System, during or after termination of this Agreement. You further agree that any improvements or suggested improvements to the VIAONE POS System made by You shall be and remain the sole property of VIAONE and You agree not to claim any right of ownership use or license for any such improvement.

### TRADEMARKS AND BRANDS

You agree to prominently display the "Prepay Point" brand and appropriate marketing materials provided by VIAONE in accordance with standards established and modified from time-to-time by VIAONE. You acknowledge and agree that VIAONE is the sole owner of the brands "Prepay Point" and "Via One" and that VIAONE's ownership extends to all rights generally affiliated with ownership including but not limited to any and all copyright and trademark rights, all rights of possession and all rights of use of the Brand. You agree that You have no right to use or display the brand "Via One" in any form. Additionally, Your right to use the "Prepay Point" brand and any marketing materials of VIAONE, including those marked "Prepay Point", is restricted by that which is required to fulfill the terms of this Agreement. You will not use or claim any right to use the "Prepay Point" brand in any form if: (i) such form is not directed or approved in writing by VIAONE, (ii) this Agreement expires or is terminated by either party; or (iii) if You are instructed during the course of Your relationship with VIAONE not to use the brand for any reason whatsoever by VIAONE. VIAONE reserves the sole and absolute right to impose any restrictions or conditions on the right to use the Prepay Point in conjunction with this Agreement and or Services at any time.

### NO WARRANTIES AND LIABILITY LIMITATIONS

THE VIAONE POS SYSTEM AND ANY PRODUCT OR SERVICE SOLD USING THE VIAONE POS SYSTEM ARE PROVIDED "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED, OR BASED ON STATUTE, TORT OR ANY OTHER THEORY OF LAW. VIAONE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. YOU ACKNOWLEDGE AND AGREE THAT VIAONE MAKES NO REPRESENTATIONS AS TO THE REASONABLENESS, APPROPRIATENESS, QUALITY OR FUNCTIONALITY OF PRODUCTS AND SERVICES PROVIDED BY VIAONE THROUGH THE SERVICE OR THE VIAONE POS SYSTEM. ANY PRODUCT OR SERVICE PROVIDED BY VIAONE TO YOU IS ON AN "AS IS" BASIS AND SUBJECT TO THE TERMS AND CONDITIONS IMPOSED BY SUCH PRODUCT'S RESPECTIVE CARRIER AS WELL AS THE ABILITY OF SUCH CARRIER TO FULFILL SUCH TERMS AND CONDITIONS. IN NO EVENT SHALL VIAONE BE HELD LIABLE FOR THE QUALITY, THE TERMS OR CONDITIONS, OR THE FAILURE OF ANY CARRIER TO FULFILL ITS OBLIGATIONS OF ANY PRODUCT OR SERVICE SUPPLIED THROUGH THE SERVICE OR VIAONE POS SYSTEM.



IN NO EVENT WILL VIAONE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING THOSE RESULTING FROM INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA, VIRUSES, OR LOST PROFITS, ARISING FROM OR RELATED TO THE MERCHANT SERVICES AGREEMENT OR THE VIAONE POS SYSTEM WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. VIAONE'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO VIAONE DURING THE TERM OF THIS AGREEMENT. FOR THE PURPOSES OF THIS PARAGRAPH, FEES PAID TO VIAONE SHALL BE THE CUMULATIVE VALUE OF THE DIFFERENCE BETWEEN VIAONE'S BUY-RATES AND MERCHANT'S BUY RATES FOR ALL PRODUCTS SOLD IN ACCORDANCE WITH THE MERCHANT SERVICES AGREEMENT, LESS ANY THIRD PARTY AND/OR DISTRIBUTOR CHARGES PAID BY VIAONE AND DIRECTLY APPLICABLE TO SALES CONSUMMATED BY YOU. You agree that THESE LIMITATIONS ON LIABILITY WILL SURVIVE TERMINATION OF THIS AGREEMENT AND CESSATION OF YOUR USE OF THE SERVICE

**INDEMNIFICATION**

You agree to indemnify and hold VIAONE, their parents, subsidiaries, affiliates, officers and employees and agents, harmless from and against any claim or demand, including reasonable attorneys' fees, made by any third party resulting from or arising out of Your use of the Service, Your violation of this Agreement or the infringement by You of any intellectual property, copyright, trademark or other proprietary rights of any person or entity. This indemnification will survive termination of this Agreement.

**ASSIGNMENT; TRANSFER**

You may not assign or transfer Your rights or obligations under this Agreement and any attempt to do so will be null and void. Notwithstanding the foregoing, VIAONE may freely transfer or assign its rights and/or obligations hereunder to another entity upon written notice to You. Your continued use of the Service after receiving such notice shall be deemed Your acceptance of such assignment. For the purposes of this paragraph, notice may be provided by mail, by post, by facsimile, or by posting a notification on Your Merchant Account within the VIAONE POS System.

**GENERAL PROVISIONS**

This Agreement and these Terms of Use, including any amendments made from time to time in accordance herewith, comprise the entire Agreement between You and VIAONE and shall supersede all prior or contemporaneous written or oral agreements between You and VIAONE regarding the subject matter contained herein. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. In performing their respective duties under the Merchant Services Agreement, You and VIAONE will be operating as an independent contractors and nothing in this Agreement shall be deemed or construed in any manner so as to establish a joint venture, partnership, association, franchisor/franchisee or other joint business relationship between You and VIAONE. You agree that any controversy, dispute or claim arising out of or relating to these Terms of Use or Your relationship with VIAONE, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and any judgment or award rendered by the arbitrator shall be final and binding on both parties, and such judgment may be entered in any court having jurisdiction thereof. In such event, the arbitrator shall not be authorized to award either party extra damages of any kind (ie: compensatory or punitive); provided however, that the arbitrator shall have the power to award the prevailing party all of its costs and fees incurred in arbitration, including reasonable attorney's fees

You agree that any headings used in the Application Form or these Terms of Use shall have no legal bearing whatsoever. Their primary objective is as a convenience to the reader. All provisions of this Agreement, however, shall be deemed binding whether or not such provisions have sufficient or any relationship to their heading or sub-heading.



**Electronic PINS:**

VIAONE shall provide electronic PINS through registered POS terminals based upon a discount ("Merchant Discount Rate") off the PIN face value. The Products and Services offered and the Merchant Discount Rates are subject to change without notice.

**Access Fee:**

There shall be a weekly or monthly access fee, as stated on the Merchant Application Form, charged by ACH at the beginning of each month.

**One-Time Setup Fee:**

There shall be a one-time set up fee as specified on the Merchant Application Form.

**ACH:**

VIAONE shall debit merchant accounts electronically for all electronic PINS purchased from VIAONE as well as any Fees that are due in accordance with Merchant Terms of Use.

**Deposit:**

A deposit of \$500 or more may be required from merchants based upon VIA ONE's credit check and criteria.

**Electronic PIN Errors:**

Via One must report defective PINS within 3 business days of transaction. VIAONE will issue credits for defective PINS at its sole discretion based upon verification with underlying service provider of PIN validity.

**Non Payment Fee:**

Via One shall charge a \$25 administrative fee for any ACH return, This charge shall be payable immediately and may be charged to the merchant account via ACH or the merchant credit card on file.

THIS FEE AND TRANSACTION SUMMARY IS NOT PART OF THE MERCHANT APPLICATION FORM, THE MERCHANT SERVICES AGREEMENT OR THE MERCHANT SERVICES TERMS OF USE WHICH DEFINE YOUR RELATIONSHIP WITH VIAONE AND WHICH YOU ARE ADVISED TO READ THOROUGHLY AND CONSULT WITH LEGAL COUNSEL BEFORE SIGNING.

THIS FEE AND TRANSACTION SUMMARY IS NOT A LEGAL DOCUMENT AND SHALL NOT BIND VIAONE OR MERCHANT IN ANY WAY WHATSOEVER. IN THE EVENT THAT THERE IS ANY CONFLICT BETWEEN THIS FEE AND TRANSACTION SUMMARY AND THE MERCHANT SERVICES AGREEMENT, TERMS OF USE AND/OR MERCHANT INFORMATION FORM, THE MERCHANT SERVICES AGREEMENT, TERMS OF USE AND/OR MERCHANT INFORMATION FORM SHALL GOVERN.

FAX COMPLETED AGREEMENT TO: 1.866.584.5623