

## Finance\_PCI\_DSS\_Agreement.pdf

### FINANCE AGREEMENT

This Finance Agreement (the "Agreement") is made and entered into as of January 1, 2025 (the "Effective Date"), by and between:

Company A, a Delaware corporation, with its principal place of business at [Client's Address] ("Client"),

AND

Vendor B, a California Limited Liability Company, with its principal place of business at [Vendor's Address] ("Vendor").

### RECITALS

WHEREAS, Client is engaged in the business of [Client's Business Description];

WHEREAS, Vendor is engaged in the business of providing [Vendor's Business Description] and possesses the necessary expertise and resources to perform the services described herein;

WHEREAS, Client desires to engage Vendor to provide certain services as set forth in this Agreement, and Vendor desires to provide such services to Client, all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1: DEFINITIONS

1.1 "Affiliate" means, with respect to any party, any other person or entity that directly or indirectly controls, is controlled by, or is under common control with such party. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, or otherwise.

1.2 "Cardholder Data" means all data associated with a credit card, debit card, or other payment card, including but not limited to cardholder name, primary account number (PAN), expiration date, service code, and any sensitive authentication data such as magnetic stripe data, track data, or the card verification value (CVV).

1.3 "Confidential Information" means, with respect to a disclosing party, all non-public information, whether tangible or intangible, and in whatever form or medium, including but not limited to business plans, financial information, customer lists, technical data, trade secrets, know-how, software, processes, and marketing strategies, that is disclosed by the disclosing party to the receiving party, or that the receiving party otherwise obtains or has access to in connection with this Agreement. Confidential Information shall not include information that: (a) is or becomes publicly known and made generally available in the public domain through no wrongful act or omission of the receiving party; (b) was in the receiving party's possession prior to its disclosure by the disclosing party, free of any obligation of confidence; (c) is rightfully obtained by the receiving party from a third party without breach of any confidentiality obligation; or (d) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

1.4 "Deliverables" means all goods, materials, reports, software, documentation, and other items developed, created, or provided by Vendor to Client under this Agreement.

1.5 "Effective Date" means January 1, 2025.

1.6 "Fees" means the amounts payable by Client to Vendor for the Services, as set forth in the applicable Statement of Work.

1.7 "Intellectual Property Rights" means all patents, copyrights, trademarks, service marks, trade names, trade secrets, know-how,

## **Finance\_PCI\_DSS\_Agreement.pdf**

moral rights, and all other intellectual property and proprietary rights, whether registered or unregistered, and all applications for any of the foregoing, in any jurisdiction.

1.8 "PCI-DSS" means the Payment Card Industry Data Security Standard, as it may be amended or updated from time to time.

1.9 "QSA" means a Qualified Security Assessor approved by the PCI Security Standards Council.

1.10 "Services" means the services to be performed by Vendor for Client as described in the applicable Statement of Work.

1.11

## Finance\_PCI\_DSS\_Agreement.pdf

"Statement of Work" or "SOW" means a written document executed by both parties that specifies the particular Services to be performed, Deliverables to be provided, Fees, and other terms and conditions relevant to a specific engagement under this Agreement. Each SOW shall be incorporated into and become a part of this Agreement.

1.12 "SOX" means the Sarbanes-Oxley Act of 2002, as amended.

1.13 "Term" means the period of time during which this Agreement is in effect, as defined in Article 3.

### ARTICLE 2: TERM AND RENEWAL

2.1 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years thereafter (the "Initial Term").

2.2 Automatic Renewal. Upon the expiration of the Initial Term, this Agreement shall automatically renew for successive periods of one (1) year each (each, a "Renewal Term"), unless either party provides written notice of its intent not to renew at least ninety (90) days prior to the end of the then-current term. The Initial Term and any Renewal Terms are collectively referred to as the "Term".

### ARTICLE 3: SERVICES / SCOPE OF WORK

3.1 Scope of Services. Vendor shall provide the Services and Deliverables to Client as described in each Statement of Work, which shall be attached hereto as Exhibit A and any subsequent SOWs. Each SOW shall detail the specific tasks, timelines, responsibilities, and acceptance criteria for the Services and Deliverables.

3.2 Performance Standards. Vendor shall perform the Services in a professional, workmanlike, and timely manner, consistent with industry standards and best practices.

3.3 Client Responsibilities. Client shall provide Vendor with timely access to all necessary information, personnel, and resources required for Vendor to perform the Services. Client shall also review and approve Deliverables in a timely manner as specified in each SOW.

### ARTICLE 4: PAYMENT TERMS

4.1 Fees. Client shall pay Vendor the Fees for the Services and Deliverables as set forth in each SOW.

4.2 Invoicing. Vendor shall invoice Client for Fees in accordance with the payment schedule specified in each SOW. Invoices shall be detailed and itemized.

4.3 Payment Due Date. All undisputed invoices shall be due and payable by Client within thirty (30) days of the date of invoice.

4.4 Late Payments. Any undisputed amounts not paid within thirty (30) days of the invoice date shall be subject to a late fee equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

4.5 Taxes. All Fees are exclusive of any sales, use, excise, or similar taxes, which shall be the responsibility of Client. Vendor shall remit any such taxes collected to the appropriate governmental authorities.

### ARTICLE 5: LIABILITY AND INDEMNIFICATION

5.1 Indemnification by Vendor. Vendor shall indemnify, defend, and hold harmless Client, its Affiliates, officers, directors, employees, agents, and successors from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) any breach by Vendor of any representation, warranty, or covenant made by Vendor in this Agreement; (b) any gross negligence or willful misconduct of Vendor or its employees or subcontractors in the performance of the Services; (c) any infringement or alleged infringement of any Intellectual Property Rights by the Deliverables or Services; or (d) any

## **Finance\_PCI\_DSS\_Agreement.pdf**

violation of applicable laws or regulations by Vendor in the performance of its obligations under this Agreement.

5.2 Indemnification by Client. Client shall indemnify, defend, and hold harmless Vendor, its Affiliates, officers, directors, employees, agents, and successors from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) any breach by Client of any representation, warranty, or covenant made by Client in thi

## Finance\_PCI\_DSS\_Agreement.pdf

s Agreement; or (b) any gross negligence or willful misconduct of Client or its employees in the performance of its obligations under this Agreement.

5.3 Limitation of Liability. EXCEPT FOR LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS OR LOST REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TOTAL AGGREGATE LIABILITY OF VENDOR TO CLIENT UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS, LOSSES, OR DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED TO THE TOTAL FEES PAID BY CLIENT TO VENDOR UNDER THIS AGREEMENT IN THE THIRTY (30) DAY PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

### ARTICLE 6: CONFIDENTIALITY

6.1 Obligation of Confidentiality. Each party (the "Receiving Party") agrees to hold in strict confidence all Confidential Information of the other party (the "Disclosing Party") and to use such Confidential Information solely for the purpose of performing its obligations or exercising its rights under this Agreement. The Receiving Party shall not disclose any Confidential Information to any third party without the prior written consent of the Disclosing Party, except to its employees, agents, and subcontractors who have a need to know such information for the purposes of this Agreement and who are bound by confidentiality obligations at least as restrictive as those set forth herein.

6.2 Protection of Confidential Information. The Receiving Party shall exercise at least the same degree of care to protect the Disclosing Party's Confidential Information as it exercises to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

6.3 Return or Destruction of Confidential Information. Upon the termination or expiration of this Agreement, or upon the written request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party or, at the Disclosing Party's option, destroy all Confidential Information in its possession or control, and provide written certification of such destruction. Notwithstanding the foregoing, the Receiving Party may retain one (1) copy of the Disclosing Party's Confidential Information solely for archival purposes and to comply with legal or regulatory requirements, provided that such retained copies shall remain subject to the confidentiality obligations set forth in this Agreement.

### ARTICLE 7: TERMINATION

7.1 Termination for Cause. Either party may terminate this Agreement upon written notice to the other party if the other party: (a) materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (b) becomes insolvent, files a petition for bankruptcy, makes an assignment for the benefit of creditors, or has a receiver appointed for its assets.

7.2 Termination for Convenience by Vendor. Notwithstanding any other provision of this Agreement, Vendor may terminate this Agreement for any reason or no reason upon providing Client with sixty (60) days' prior written notice.

7.3 Effect of Termination. Upon termination or expiration of this Agreement: (a) Client shall pay Vendor for all Services performed and Deliverables accepted up to the effective date of termination; (b) Vendor shall promptly deliver to Client any Deliverables not yet delivered; and (c) each party shall return or destroy all Confidential Information of the other party as provided in Article 6. The provisions of Articles 5, 6, 8, and 9 shall survive the termination or expiration of this

Agreement.

**ARTICLE 8: GOVERNING LAW AND DISPUTE RESOLUTION**

8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

8.2 Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration shall take place in Wilmington, Delaware, and shall be conducted in the English language. The award of the arbitrator shall be final and binding upon the parties.

8.3 Attorneys' Fees. In any action or proceeding to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

**ARTICLE 9: GENERAL PROVISIONS**

9.1 Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given: (a) when delivered personally; (b) when sent by confirmed facsimile or email; (c) five (5) business days after being mailed by certified or registered mail, return receipt requested, postage prepaid; or (d) one (1) business day after being sent by overnight courier service, to the addresses set forth in the preamble to this Agreement or to such other address as either party may designate by written notice to the other.

9.2 Entire Agreement. This Agreement, including all Exhibits and SOWs attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, and representations, whether written or oral.

9.3 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

9.4 Waiver. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or of the right to enforce such provision in the future.

9.5 Independent Contractors. The parties are independent contractors and nothing in this Agreement shall be construed as creating a partnership, joint venture, agency, or employment relationship between them.

9.6 Assignment. Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to an Affiliate or in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement.

9.7 Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) caused by circumstances beyond its reasonable control, including but not limited to acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or other labor disputes, or inability to obtain necessary materials, equipment, or services.

9.8 PCI-DSS Compliance. Vendor shall at all times during the Term maintain PCI-DSS Level 1 certification. Vendor shall undergo annual Qualified Security Assessor (QSA) audits to verify compliance with PCI-DSS requirements and shall provide Client with copies of all such audit reports upon Client's request. Vendor shall implement appropriate network segmentation to isolate any cardholder data environment from other networks. In the event of any incident involving Cardholder Data that may affect Client or its customers, Vendor shall promptly notify Client within twenty-four (24) hours of becoming aware of such incident.

9.9 SOX

**Finance\_PCI\_DSS\_Agreement.pdf**

Compliance. Vendor shall maintain accurate and complete audit trails for all activities related to Client's financial data and transactions processed or stored by Vendor. Vendor shall cooperate fully with Client's internal control testing and provide reasonable access to its records, systems, and personnel as necessary to support Client's compliance with Sections 302 and 404 of the Sarbanes-Oxley Act of 2002. Vendor shall implement and maintain internal controls sufficient to ensure the accuracy and completeness of financial information and prevent fraud.

ARTICLE 10: SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Finance Agreement as of the Effective Date.

COMPANY A

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

VENDOR B

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_