

# PinPay Merchant Account Services Agreement

THIS ENGLISH LANGUAGE PINPAY MERCHANT ACCOUNT SERVICES AGREEMENT, INCLUDING THE MERCHANT ACCOUNT SERVICES FEE SCHEDULE, THE PINPAY OPERATING RULES, ALL SCHEDULES AND EXHIBITS, AND AUTHORIZED CHANGES (THE "AGREEMENT") IS A LEGAL AND BINDING AGREEMENT. ANY OTHER VERSIONS, WHETHER IN ENGLISH OR A TRANSLATION TO ANOTHER LANGUAGE, ARE NOT BINDING WORDS OR INTERRUPTIVE MEANINGS OF THE TERMS OR CONDITIONS OF THIS AGREEMENT.

Your signature on an actual or electronic submitted copy of the PinPay Merchant Account Services Agreement Terms and Acceptance Signature Document is your acknowledgement and full acceptance of the terms and conditions of this AGREEMENT, effective upon the date of acceptance by PinPay. A copy of the Agreement, without the Confidential Terms and Acceptance Signature Document, is posted on the PinPay.net website.

THIS IS AN AGREEMENT made and entered into on the date accepted by PinPay as indicated with the signature date, by and between PinPay Inc., a corporation duly organized and existing under the laws of the State of California, USA and having principal offices at 18700 Main Street, Suite 204A, Huntington Beach, CA 92648; and doing business as PinPay Inc., and affiliates, (hereinafter "PinPay"), also known as "we," or "us," and the Individual, Business, Merchant, Company or Entity named in the Signature Document, having offices at the location and country identified on the electronically submitted merchant application and the Signature Document (hereinafter known as "Merchant", also known as "you").

WHEREAS, PINPAY is in the business of providing PIN and password based payment and money transfer services, and the associated merchant processing, card processing, clearing and settlement services,

WHEREAS, MERCHANT having reviewed and been fully satisfied as to PinPay's offered services, desires to utilize such services, and

NOW THEREFORE, based upon the mutual covenants contained herein, intending to be legally bound, the parties agree as follows:

## Section 1 Definitions

In this Agreement the following terms have the meanings set forth below.

"Agreement" shall mean this PinPay Merchant Account Services Agreement with the Terms and acceptance Signature Document, plus the Merchant Services Fee Schedule, and any amendments and all PinPay operating rules, procedures and regulations issued by PinPay (collectively, the "Agreement").

"Bill Payment" – shall mean the electronic movement of funds from a PinPay SoftCard holder's account to a PinPay merchant's SoftCard account.

"Cardholder" shall mean an individual or entity which is the owner and beneficiary of a "PinPay SoftCard account."

"Card Load" (also known as "Card Top-Off") shall mean a Merchant assisted, electronic transfer of credits, or funds, from the Merchant's account to a PinPay SoftCard account resulting in a credit being added to the account of a PinPay SoftCard, and the Merchant receiving cash in hand and a debit to the Merchant's SoftCard account.

“Card Withdrawal” (also known as “Cash out” or “Cash Withdrawal”) shall mean a Merchant assisted, electronic transfer of credits, or funds, from the PinPay SoftCard account of the withdrawer and placing them in the Merchant’s account resulting in a credit being added to the account of a Merchant and the PinPay SoftCard receiving cash in hand.

“Chargeback Fee” shall mean a fee charged to the merchant wherever a conditional approved payment transaction is voided, reversed, cancelled or the approval is retroactively denied. PinPay does not issue any chargebacks and does not collect a chargeback fee.

“Effective Date” shall mean the date this Agreement is accepted by PinPay as indicated by the date of acceptance recorded and the signature on the agreement by an authorized PinPay representative.

“Electronic Communication” shall mean any communication by electronic transmission, including a telephone, facsimile transmission, file transfers, emails, web text or image, instant messages or other computer or electronic device forms or formats.

“Funds Transaction” – shall mean the movement of credit or funds, from one PinPay SoftCard account to a destination SoftCard account using PinPay.

“In-Store” shall mean a SoftCard holder is present, occurs in a merchant assisted purchase transaction, normally in a brick and mortar or mobile sales site location, and during an in-store bill pay transaction.

“Merchant” shall mean any party who offer for sales, for action, for lease, for license or other form of ownership transfer or granting of rights or services to a third party and who accepts payment for such merchandise, products or services by means of the PinPay service for payment via a payment transaction. That payment transaction may be at an online store accessed by a customer from home, from a business, or any location where the customer has a computer or electronic device with Internet access. The payment transaction may also originate from an in-store, or on-site, location with both the merchant and the customer present, and the transaction being performed using a computer or electronic device with Internet access. The term merchant also means any party who (a) accepts cash from a cardholder for deposit onto the cardholder’s card or to be placed into the account of the cardholder and who (b) assists the cardholder in performing a transaction which utilizes PinPay to facilitate the transfer of funds from one card to another, to pay a bill or other authorized services.

“Merchant Assisted Transaction” (also known as a “Counter Clerk Assisted Transaction) shall mean a PinPay transaction in which a PinPay merchant enters data on behalf of a PinPay SoftCard holder and in combination with the SoftCard holder approves and facilitates the transaction event.

“Online” shall mean SoftCard holder is “not present” for the transaction. This occurs when a SoftCard holder (customer) performs an online store purchase transaction or any type of online bill payment.

“Payment Discount Rate” shall mean a percent of the total dollar amount of a payment transferred in a transaction which is deducted from total amount received for the transaction and the balance, less other costs and fees is distributed to the Merchant’s PinPay funds management account.

“PinPay” shall mean a proprietary, independently operated, online and in-store payment and transaction service which are operated by PinPay Inc.

“PinPay SoftCard” shall mean electronic money secured by a PIN-based or password secured virtual debit card (also known as a stored value card). Issued online at [www.pinpay.net](http://www.pinpay.net), [www.softcard.biz](http://www.softcard.biz) or other websites authorized by PinPay, the users of this electronic money card are provided an online account, user name, password and a PIN code.

"Real-Time Payment" shall mean a payment or funds transaction which is made, cleared and settled at the time of the transaction. It shall mean if sufficient funds are not present in the identified payment account to immediately settle the transaction and provide "good funds" the transaction is not approved. If sufficient funds are present, and all the transaction data, account data is correct, the transaction is performed and the designated amounts are immediately removed from the designated payment account and transferred to the designated funds recipient accounts according to the PinPay payment rules and procedures.

"Service Provider" shall mean any service or transaction processor, network, routing switch, including, without limitation, any third party financial or data processors, or other entity that is utilized to facilitate the completion of the PinPay functions and services.

"SoftCard" shall mean the PinPay SoftCard account and any associated representation of a credit or debit balance.

"SoftCard Account" shall mean an electronic representation of a credit or debit balance, where the owner is the beneficiary. The account balance is accessible and controllable by a SoftCard number and a PIN code, or an account user name and Password.

"Software" shall mean the object code version of the client HTML code, application programming interfaces (APIs), related documentation and other client software or code which is provided to merchant, including updates, to enable the PinPay to provide payment and transaction option to the merchant. Unless otherwise specified, Software shall not include any source code. The Software is proprietary to PinPay and is licensed to merchant under a separate Client Software License Agreement (the "License Agreement"), to be entered into at the time of download of the software.

"Transaction" shall mean the transfer of information related to the purchase of goods or services and the transfer of funds for payment, if required to fulfill the transaction request. It can be a purchase event, a cash withdrawal, a bill pay, a deposit event, or other funds transaction event, and usually involves a SoftCard holder, a Merchant, PinPay, and as appropriate other financial and/or processors and parties required to complete the desired activity or transaction.

"Transaction Fee" shall mean a fee charged for each transaction which uses PinPay for facilitating the payment or the funds transaction activity which qualifies for such fee.

## **Section 2 Obligations**

**Online Services.** For online payment services, Merchant shall maintain in the appropriate location on the Merchant's payment checkout web page a PinPay payment button option. As appropriate, Merchant will provide text and other information to the online customer which will aid the shopper in understanding the PinPay payment option.

**In-Store Service.** For in-store payment services and merchant assisted services, Merchant shall maintain within the store facilities a location(s) which has Internet access and one or more counter clerks or authorized store personnel trained to assist a SoftCard holder in performing those functions and tasks which selected by the Merchant to be offered to SoftCard holders at the Merchant's store facilities or the Merchant's mobile facilities. As appropriate, Merchant will provide promotional information to assist the SoftCard holder in using the PinPay offered services.

**Management Account.** Open and maintain a PinPay merchant funds management account and obtain a PinPay SoftCard according to the PinPay operating rules, procedures and regulations, and paying all fees, discounts and costs incurred and owed to PinPay for services according to the terms of this Agreement, including all Exhibits and any amendments. All settlement payments from a purchase and funds transactions are made to your PinPay merchant SoftCard account.

From that account you may transfer money to any desired bank or other authorized entity according to the rules, procedures and regulations for such transaction. Your PinPay SoftCard account will be debited should you authorize the transfer of funds from your account. You hereby authorize PinPay to debit your account for such debit transactions and all costs and fees. Your failure to maintain a PinPay merchant SoftCard account may result in the immediate cancellation of your PinPay Merchant Account Services Agreement and your rights to offer PinPay as a payment option from your online store, in-store operations or any other operations.

**Cost and Fees.** Merchant is aware and agrees the Merchant's cost and fees are subject to change and amendment upon seven days notice, posted on the PinPay website at: [www.pinpay.net](http://www.pinpay.net) or by direct email notice to the merchant at the current email address on file with PinPay.

**Access Codes.** Merchant is solely and fully responsible for all Merchant's operational access codes, which are issued by the Merchant to the Merchant's counter clerks, supervisors and staff members. This responsibility includes, but is not limited to issuing, changing, re-issuing, canceling and managing these Merchant access codes and staff access to the PinPay Network.

Merchant is solely and fully responsible for control and management of all pin codes, passwords and access controls provided to the Merchant.

**Public Image and Media Relations.** Any advertising or other promotional material of Merchant, including press releases, shall be in compliance with the provisions of this Agreement. The PinPay name, logos, graphic style and any registered or unregistered trademarks, trade names and service marks of PinPay shall remain the property of PinPay Inc., or its assignee, and shall not be used by Merchant except in compliance with this Agreement, or independent written authorization from PinPay, and shall in any event not be used by Merchant except during the term of this Agreement and in accordance with this Agreement.

**Currency Conversion.** Merchant agrees all transactions activities performed by the Merchant can be requested in nearly any currency, but the transaction activities utilizing PinPay and the Merchant's PinPay accounts are maintained in USD. If any currency conversion is required, that task or activity is the sole responsibility of the customer, SoftCard holder or the Merchant, and is a service which is not provided by PinPay.

**Records Access.** In support of actual or suspected fraud, money laundering and terrorist funding activities, PinPay shall have the right to request transaction records and data relating to transactions covered by the terms of this Agreement. For this purpose, Merchant shall preserve all records and data pertaining to PinPay serviced transactions for a period of at least one (1) year.

**Return of Property.** At the termination of this Agreement, Merchant shall no longer submit transactions to PinPay, nor use any of the PinPay materials issued or provided under this Agreement. At the request of PinPay, at Merchant's expense, Merchant shall return, or securely destroy any software or other items provided by PinPay under this Agreement.

**Operating Responsibility.** Merchant is solely and fully responsible for all materials used or displayed at the online store(s), the online store web site operations, the shopping cart operations, any and all in-store terminals. Merchant agrees all approved SoftCard loads and funds transactions performed by a Merchant on behalf of a SoftCard holder are fully funded by either the Merchant's SoftCard account or the customer's SoftCard account. Transactions are only approved by PinPay when full and complete, and instant funding of the requested transaction amount and all associated costs and fees are available to facilitate the transaction.

**Deliveries and Recourse.** Following a payment transaction, Merchant is solely and fully responsible for product and service delivery, and all returns or deficiency credit and debit adjustments, and relationships with its customers, and shall not seek dispute resolution, collection support or any recourse from PinPay.

**Names and Logos.** PinPay graphics, logos, trademarks, trade names and service marks are trademarks and service marks of PinPay Inc. These trademarks, trade names and service marks may not be used in connection with any product or service without the prior written consent of PinPay, and no names, logos or graphics shall be used in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits PinPay, its affiliates or is otherwise inconsistent with PinPay's trademark and service mark usage policies.

**Acknowledgements.** Merchant acknowledges that PinPay is not a bank or an escrow; PinPay merchant accounts may not be insured by any government agency or private insurance; PinPay is not subject to all the banking regulations; and PinPay will not pay interest on assets held in a PinPay Merchant's SoftCard account.

Merchant acknowledges that PinPay does not insure the quality, safety, or legality of the merchandise or service delivered, or that any delivered product or service is fit for the intended or desired use. However, the failure of Merchant to adequately address legitimate cardholder issues associated with a transaction may, at the sole discretion of PinPay and without recourse, result in termination of this Agreement.

Merchant acknowledges and accepts that if Merchant uses, or attempts to use the PinPay service for other than its intended purposes, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of PinPay, Merchant's SoftCard account may be terminated; merchant may be subject to damages and other penalties, including possible criminal prosecution.

**Timely Processing.** PinPay shall make reasonable efforts to ensure that requests for electronic debits and credits involving transactions are processed in a timely manner. However, PinPay makes no representations or warranties regarding the amount of time needed to complete processing, nor shall PinPay be liable for any actual or consequential damages arising from any actual or claim of delay.

PinPay reserves the right to hold funds due to you and those deposited into your PinPay merchant SoftCard account beyond the normal distribution periods for transactions which it deems suspicious, in violation of laws, and for reasons that address issues or disputes as to activities associated with your performance under the terms of this Agreement.

**Accuracy and Data Use.** Merchant acknowledges, accepts and agrees that (a) for fraud, anti-money laundering (AML), terrorist funding and other security purposes, Merchant records are kept by PINPAY even after this Agreement is terminated; (b) the submitted Merchant application and other information is complete and accurate to the best of knowledge; (c) that we will retain this application information and any information gathered in support of this application whether or not it is approved; (d) that we may rely on all gathered and supplied information, whether accurate or inaccurate in deciding whether to grant the requested Merchant PinPay participation and an account; (e) that you authorize us to request, obtain and retain credit, criminal and terrorist status data and reports and to check from all available sources and potential sources relevant data and activities history on an ongoing basis during the term of the issuance of this Agreement and you authorize us to provide and share all such collected information with appropriate authorities and affiliates.

**Customer Base.** PinPay shall provide to Merchant a real-time cash payment, money transfer and transaction service. The customers who can use this service shall be limited to parties who hold a PinPay SoftCard account. The service does not grant the SoftCard holder any right to reverse, cancel or void any payment, money transfer or transaction which is approved using PinPay. Any credits for merchandise returns, or other issues must be initiated by the Merchant as separate and independent transactions.

**Customer Service.** Merchant agrees any issues associated with any purchased produce or service, such as, but not limited to, failure of delivery, deficiencies in the quality, quantity, size,

color, or acceptability, or issues of returns, or product warranty, are strictly between the Merchant, the manufacturer of the product, and the purchasing or transacting SoftCard holder. PinPay and all of its agents, affiliates and representatives are not, and are not authorized to be, a participant in any dispute resolution, or an arbitrator of any dispute, between the PinPay SoftCard holder purchaser or transaction participant and any Merchant and we incur no liability for not participating in such a dispute resolution.

**Operating Rules.** Merchant agrees to comply with the PinPay policies, procedures, rules and regulations and all other directives and compliance guidance, as they may exist from time to time, and the rules and regulations of any debit network or federal or state department or agency having jurisdiction over the activities of PinPay or Merchant (commonly known as the "PinPay Operating Rules"). In the event of any inconsistency between any provision of this Agreement and the PinPay Operating Rules, the PinPay Operating Rules shall govern. Merchant hereby agrees to accept and abide by any amendments and revisions to the PinPay Operating Rules. Merchant will comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the PinPay services. Merchant shall use only those marketing and promotional materials that comply with the PinPay Operating Rules and all localized national, country, federal, providence, territory, state, local and any other applicable laws or regulations.

### **Section 3 Collection and Use of Customer Data**

The Merchant and PinPay shall collect from the customer, information ("data") that is necessary for PinPay to provide the SoftCard holder the requested payment or transaction services. Merchant and PinPay agree that they each will obtain prior consent from all customers which initiate transactions through their respective web sites for the collection by the Merchant or PinPay; the use of the data by Merchant and PinPay to process payment; money transfers and transactions; and the use of data by service providers under contract with PinPay to complete the transaction. Such consent may be obtained from customers by privacy disclosures on the appropriate web sites and by such other means as are authorized and appropriate.

PinPay shall not disclose data to third parties or use data, except PinPay shall have the rights (i) to use the data as necessary to perform the payment; money transfers and transaction services contemplated in this Agreement by distributing the data to third parties providing services requested by the SoftCard holder and Merchant, and to prevent fraud, money laundering, terrorist funding and violation of law; (ii) to maintain the data as long as necessary, or as required by law, and use internally for record keeping, internal reporting, and support purposes; and (iii) to provide the data as required by law or court order, or to defend either PinPay's or other parties' rights in a legal dispute. Subject to applicable law, PinPay shall be permitted to transfer the data to a service provider(s) under contract with PinPay solely for the internal use of such data service provider in providing the payment and transaction services to Merchant and/or cardholder.

### **Section 4 Fees and Payment Terms**

**Service Costs and Fees.** Merchant agrees to pay to PinPay all discounts, service fees and costs according to the terms of this Agreement, including the PinPay Merchant Account Services Fee Schedule, Exhibit A, which by reference is a part of this Agreement. All fees collected are non-refundable unless otherwise explicitly stated in this Agreement. Merchant agrees to pay any and all value added, sales and other taxes (other than taxes based on PinPay's income) related to the provided transaction services. If Merchant uses PinPay services that are not included in the services defined in the Merchant Services Fee Schedule, then PinPay shall invoice and debit Merchant's SoftCard account for such additional fees and costs. Merchant agrees that PinPay shall have no obligation to provide the transaction services without payment of the discounts, service fees, and costs and grants PinPay the right, power and authority to collect the discount fees and costs. All sums due and payable that remain unpaid after any applicable cure period, which shall not exceed seven days, will accrue interest as a late charge of 2.0% per month or the

maximum amount allowed by law, whichever is less. All fees are cumulative and payable in U.S. dollars.

**Payment Terms.** All discounts, fees and costs for the payment and transaction services which PinPay provides to Merchants shall be made in US dollars. All discount rate fees and transaction fees are due, payable and collectable at the time of the transaction. Merchant agrees and accepts all payment amounts due will be collected in USD with the amount owed rounded to the nearest one cent (\$0.01) in USD. Failure of the purchaser of a merchant's product or service, or bill payer to have adequate funds in the designated SoftCard account for payment shall result in the denial of the payment for the subject transaction.

**Transfer Authority.** Merchant hereby authorizes PinPay to initiate and/or transmit credit and/or debit entries to the Merchant's SoftCard account. This authority includes, but is not limited to, transmitting such entries, request or orders as may be necessary to reverse or adjust any entries made in error or by mistake, and for any other reason. To facilitate such actions Merchant shall maintain a Merchant SoftCard account to which PinPay can make payment and transaction deposits and, if required, at the sole discretion of PinPay, to debit the account for costs, fees and charges owed to us. Merchant agrees that the Merchant's SoftCard account will not earn interest and will not be insured. PinPay makes no claim and has no responsibility to assure that any insurance is provided or obtained for such funds.

**Communications.** Merchant agrees any electronic communication between Merchant and PinPay will take place according to the provisions of this Agreement. PinPay shall consider and rely upon any electronic communication apparently received from Merchant, or in Merchant's name, to be duly authorized by Merchant. Merchant hereby authorizes PinPay to rely and act on any such communication. If the communication is by facsimile or electronic device transmission, PinPay shall be entitled to act upon any signature purporting to be an authorized signature. If PinPay tries to verify the signature on a facsimile or electronic device transmission or the validity of any instructions electronically communicated (though PinPay is not obligated to do so) and is unable to do so to PinPay's satisfaction, PinPay may delay in acting on, or refuse to act on, such instructions.

**Recording.** Merchant hereby consents to and approves of the recording by PinPay of any and all media, telephone calls, faxes and audio, video, optical and text, or other form of communications between Merchant and all other parties and PinPay. Merchant agrees that PinPay's records regarding any and all electronic communication or recording shall be admissible in any legal, administrative or other proceedings as if such records were original written documents and that PinPay's records will be conclusive proof of the information contained in such electronic communications.

**Financial Data.** Financial statements and transaction data will be posted to and available electronically at the Merchant's PinPay SoftCard account web page. PinPay may, at Merchant's request and costs, forward to Merchant copies of any statements, instruments or other documents by facsimile or other electronic transmission to the number or address provided by Merchant from time to time.

## **Section 5 Warranties and Disclaimers**

PinPay represents and warrants that the payment and transaction services which it provides to Merchant shall conform in all material respects to money transfers the function and purpose of a PIN-debit and password based, electronic, real-time settlement, payment and funds transfer network. Merchant's sole remedy for PinPay's breach of this warranty shall be PinPay's reasonable efforts to repair the defective service or replace the service with another payment service. EXCEPT AS EXPRESSLY SET FORTH ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PAYMENT, MONEY TRANSFER AND TRANSACTION SERVICE, AND THE SOFTWARE ARE BEING PROVIDED "AS IS;" PINPAY MAKES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE PAYMENT, MONEY

TRANSFER AND TRANSACTION SERVICE OR SOFTWARE, AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY PINPAY. MERCHANT ACKNOWLEDGES THAT PINPAY HAS NOT REPRESENTED OR WARRANTED THAT THE PAYMENT AND TRANSACTION SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE TRANSACTION SERVICES. TO THE EXTENT THAT MERCHANT ENTERS INTO THIS AGREEMENT WITH PINPAY FOR CERTAIN PAYMENT, MONEY TRANSFER AND TRANSACTION SERVICES, MERCHANT ACKNOWLEDGES AND AGREES THAT PINPAY HAS HAD NO OPPORTUNITY TO INSPECT OR VERIFY MERCHANT'S OPERATIONAL OR PAYMENT OPTION SOFTWARE, AND HAS NO CONTROL OVER, FUNCTIONALITY OF ANY SOFTWARE PROVIDED THEREUNDER AND USED BY MERCHANT, AND PROVIDES NO REPRESENTATIONS, WARRANTIES OR COVENANTS IN RESPECT THEREOF.

Merchant represents and warrants that, in addition to any specific obligations set out in this Agreement, Merchant shall comply with all applicable privacy and consumer protection laws and regulations with respect to its (i) collection, use and disclosure of data; (ii) dealings with the third party customers providing data; and (iii) use of the payment and transaction services.

## **Section 6 Indemnification**

Merchant will indemnify, defend and hold harmless PinPay, its officers, directors, agents, employees and affiliates from and against any and all third party claims, obligations, liabilities, damages, costs and expenses (including reasonable attorneys' fees), either arising out of or relating to (i) the breach of this Agreement by Merchant, (ii) the sale or use of any product or services sold or provided by Merchant, (iii) claims brought or damages suffered by any Financial Institution, PinPay or its agents, affiliates, third parties, and third party customers or prospective customers of Merchant relating to the misuse by Merchant, or its agents of the PinPay payment, money transfer and transaction services, or (iv) the breach of any representation or warranty by Merchant.

PinPay will indemnify, defend and hold harmless Merchant, its officers, directors, agents and employees, from and against any claims, obligations, liabilities, damages, costs and expenses (including reasonable attorney's fees) relating to a third party claim that the Software or PinPay payment and transaction services infringe a United States patent, copyright or confidentiality right of a third party. Merchant's sole remedies for a claim of infringement shall be PinPay's replacement of the infringing Software or PinPay payment, money transfer and transaction services, PinPay's obtaining a license for Merchant's continued use of the Software or PinPay payment, money transfer and transaction services or the termination, at the option of PinPay, of the affected licenses granted hereunder.

The indemnification obligations set forth in this Agreement shall survive the termination of this Agreement and are contingent upon (a) the indemnified party giving prompt written notice to the indemnifying party of a claim for which the indemnified party is seeking indemnification, (b) the indemnified party allowing the indemnifying party to control the defense and related settlement negotiations for any such claim, and (c) the indemnified party fully assisting and cooperating in the defense so long as the indemnifying party pays the indemnified party's out-of-pocket expenses. The indemnifying party shall not settle a claim without the written consent of the indemnified party, where such consent shall not to be unreasonably withheld.

Merchant agrees to pay PinPay for any cost to recover amounts owed to PinPay. These costs include court costs and fees, collection costs, legal fees owed for retained legal services, and those reasonable counsel fees incurred by PinPay's internal legal and collections departments. If you fail to pay such costs and fees, you hereby grant PinPay the authority to deduct such costs and/or fees owed from your Merchant SoftCard account.

## **Section 7 Limitation on Liability**

Merchant acknowledges that PinPay is not a bank or credit reporting institution. PinPay is only responsible for providing data transmission to effect certain payment, money transfer and transaction authorizations for Merchant and is not responsible for the results of any credit or depository balance inquiry, the operation of web sites or Internet Service Providers (ISPs) or financial or data processors, or the availability, or the performance of the Internet, or for any damages or costs Merchant suffers or incurs as a result of any instructions given, actions taken, or omissions made, by Merchant, Merchant's processor(s), Merchant's financial institutions, or any ISPs or any service providers. IN NO EVENT WILL PINPAY'S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE ACTUAL AMOUNT OF FEES PAID BY MERCHANT TO PINPAY HEREUNDER DURING THE FOUR (4) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO ANY CLAIM. IN NO EVENT WILL PINPAY OR ITS LICENSORS, AGENTS AND AFFILIATES HAVE ANY LIABILITY TO MERCHANT OR ANY OTHER PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, OR TRANSACTION SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), AND WHETHER OR NOT PINPAY AND/OR AGENTS AND AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY, LIMITED REMEDY.

Other than as stated in this Agreement, Merchant acknowledges and agrees that in no event shall PinPay have any liability whatsoever for Software or transaction services provided directly to Merchant. The limitations on liability in this Agreement shall survive termination of this Agreement and shall apply whether or not the alleged breach, default, non-performance, failure or liability is a result of a breach of warranty, condition or fundamental term, or a fundamental breach. The parties agree and confirm that: (i) such restrictions are fair and reasonable in the commercial circumstances of this Agreement; (ii) such limitations have been taken into account in the pricing of the PinPay payment, money transfer and transaction services provided to Merchant; and (iii) PinPay would not have entered into this Agreement but for Merchant's acceptance of such limitations and agreement that such limitations have been an inducement to PinPay to enter into this Agreement.

Merchant acknowledges and agrees PinPay is not a bank and is not in the business of conducting banking operations. By this Agreement the participating parties have retained PinPay to arrange for funds to be dispensed from the PinPay SoftCard holder's account and transferred to the Merchant's SoftCard account.

## **Section 8 Terms and Termination**

**Termination.** This Agreement shall remain in full force and effect until terminated in writing by either party or for cause. A termination of this Agreement, without cause, shall be effectuated by a party providing notice in writing to the other party, of its intent to terminate this Agreement. The termination notice must be delivered according to the Notice terms of this Agreement. Such notice must be provided at least thirty (30) days prior to the effective date of termination.

This Agreement may be terminated for cause under and according to any of the following contingencies:

a. **Breach of Agreement:** If either party fails to comply with a material term of this Agreement or otherwise fails to meet its obligations, that party shall be deemed in default. If the defaulting party does not cure the default within ten (10) business days after receipt of proper notice of the default, the other party may terminate the Agreement by providing proper notice to the defaulting party.

b. Insolvency: If a receiver shall be appointed for a party, or the party shall become insolvent, or seek protection under any state or federal bankruptcy or insolvency laws, or be involuntarily placed into bankruptcy, or make an assignment for the benefit of creditors, or go out of business, this Agreement shall immediately terminate.

c. Mutual Consent: Upon mutual written agreement, this Agreement may be terminated sooner than thirty days.

d. Third Party. One or more of PinPay's supporting financial institutions, processors, or third party service providers requires such termination.

e. Regulatory Directed. A regulation, guideline, law, or ruling by a regulatory agency, a court or authorized entity requires such termination or, at PinPay's the sole discretion, PinPay believes regulatory compliance requires such termination.

f. Failure to Comply with PinPay Operating Rules. PinPay may immediately terminate this Agreement for any material default knowingly or intentionally caused by Merchant with respect to its obligations to comply with the PinPay Operating Rules. This termination shall occur if PinPay reasonably determines that the default is of such a serious nature that an opportunity to cure such default is not practical or warranted. PinPay may, at its sole discretion, effect such termination upon delivery of notice to Merchant without regard to any provisions for cure of default.

Following termination, all parties shall remain obligated for the payment of any discount fees, costs, transaction payments, compensation and other debits and credits owed to another party for activities occurring prior to the termination date. Such fees shall be paid in the same manner as if the Agreement were still in effect. Any amounts due and payable to PinPay, whether from termination or other events that remain unpaid after any applicable cure period will accrue interest as a late charge of 2.0% per month or the maximum amount allowed by law, whichever is less. All fees are cumulative and payable in U.S. dollars.

PinPay may suspend the performance of the transaction services immediately, and without notice, if PinPay or one of its processors or service providers believes Merchant is sending data that corrupts the network or any of the computer systems or electronic devices of either PinPay or any processing participants of the PinPay Network.

## **Section 9 Additional Terms and Conditions**

**Relationship of the Parties.** The Merchant and PinPay are independent contractors and neither party is the legal representative, agent, joint venture party, partner, or employee of the other party for any purpose whatsoever.

**Third Party Beneficiary.** No provisions of this Agreement are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party, except as provided in this Agreement. Notwithstanding the foregoing, PinPay's suppliers of transaction services delivered hereunder shall enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such transaction services as does PinPay. Merchant is hereby notified that ACAP Security Inc., a California corporation, located at 18700 Main Street, Ste 204A, Huntington Beach, California 92648, is a third-party beneficiary to this Agreement. Such terms and provisions of this Agreement are made expressly for the benefit of PinPay and are enforceable by ACAP Security Inc. in addition to PinPay.

**Dispute Resolution.** All disputes arising under or in connection with the Agreement will initially be referred to the senior executives of each party. The senior executives will use their best efforts to resolve the dispute informally and amicably. If, after negotiating for 30 days (or for some longer period if the parties agree), no resolution of the dispute is reached by the senior executives, the

parties will submit the dispute to binding arbitration in Orange County, California, pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) and the procedures set forth in Arbitration Section of this Agreement.

**Arbitration.** All disputes that cannot be resolved pursuant to the internal issue resolution process identified above will be submitted to and settled by final and binding arbitration. The arbitration will take place in Orange County, California, and will apply the governing law of this Agreement. The final and binding arbitration will be performed by a panel of three arbitrators in accordance with and subject to the Commercial Arbitration Rules of the AAA then in effect. Following notice of a party’s election to require arbitration, each party will, within 30 days, select one arbitrator; and those two arbitrators will, within 30 days thereafter, select a third arbitrator. If the two arbitrators are unable to agree on a third arbitrator within 30 days, the AAA will, within 30 days thereafter, select the third arbitrator. The decision of the arbitrators will be final and binding, and judgment on the award may be entered in any court of competent jurisdiction. The arbitrators will be bound by the warranties, limitations of liability, and other provisions of this Agreement. Notwithstanding the foregoing, each party may seek injunctive relief in a court of competent jurisdiction, where appropriate, to protect its rights pending the outcome of the arbitration.

**Jurisdiction; Venue; Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California (irrespective of its choice of law principles). The parties hereby agree that any suit to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between the parties hereto shall be brought in federal or state court in Orange County, California. Each party hereby agrees that such courts shall have exclusive personal jurisdiction and venue with respect to such party and each party hereby submits to the exclusive personal jurisdiction and venue of such courts. PinPay reserves the right to change the jurisdiction, venue and governing law upon the assignment of this agreement to an affiliate located in another jurisdiction.

**Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.

**Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

**Assignment.** Neither this Agreement nor any rights or obligations in this Agreement may be assigned or delegated by Merchant without the prior written consent of PinPay. Subject to the foregoing, the rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors, executors and administrators.

**Amendments.** Except as otherwise provided in this Agreement, no provision of this Agreement may be amended, modified or waived except by a written agreement signed by both parties. PinPay may change this Agreement, without Merchant concurrence, by modification of the PinPay rules and amendment, and/or revision of this Agreement with 14 days notice delivered by publication and/or posting on any of the official PinPay websites.

**Force Majeure.** Except for payment and indemnity obligations hereunder, neither party will be liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as but not limited to, natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, communications systems and Internet breakdowns, power outages, or the inability to procure supplies or materials. If any of these causes continue to prevent or delay performance for more than thirty

(30) days, the affected party may terminate this Agreement, in whole or in part, effective immediately upon written notice to the other party.

**Drafting.** No provision of this Agreement shall be construed against any party merely because that party or counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

**Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

**Entire Agreement.** This Agreement, which includes the Merchant Account Services Agreement Terms and Acceptance Signature Page, the Merchant Services Fee Schedule, the PinPay Operating Rules, and written authorized Exhibits, which are included herein by reference, constitutes the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersedes all prior understandings, agreements, representations and warranties relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only as authorized by this Agreement.

**Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, courier delivery with signed receipt of delivery, email or fax copy with confirmed delivery, sent to the addresses set forth herein or as amended by the parties and provided to the other party in writing or by change of address in the business or personal information form section of the Merchant SoftCard account.

**Authority to Contract.** Each party represents it is duly authorized to execute this Agreement and it has the full power and authority to enter into this Agreement and convey the rights conveyed herein. Each party further represents that it has not entered into, nor will it enter into, any agreements that would conflict with its obligations hereunder or render it incapable of satisfactorily performing hereunder.

**Prevailing Party's Fees.** In any dispute among the parties, whether or not resulting in litigation, the party substantially prevailing shall be entitled to recover from the other party reasonable attorney fees, costs, and expenses; court costs; and other costs of action. For purposes of this Agreement, the terms "attorney fees or legal counsel fees" or "attorney fees or legal counsel fees and costs" shall mean the fees and expenses of counsel to the parties and may include, without limitation, printing, copying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. These terms shall also include, without limitation, all fees and expenses for appeals, arbitrations, and bankruptcy proceedings. The term "attorney" shall have the same meaning as the term "counsel," "legal counsel," and "barrister." This shall also apply in actions brought to enforce or enjoin activities or interrupt the agreement.

**Pronouns and Gender.** Any pronouns used in this Agreement shall be deemed to include the masculine, feminine, or neuter gender, all as the context and meaning of this Agreement may require. Any expression in the singular or plural shall, if appropriate in the context, include both the singular and the plural.

**Time of Essence.** Time is of the essence of this Agreement and all terms, covenants, conditions, and provisions set forth in this Agreement.

**Government Works.** No claim is made to any original government works; however, within this product, material, or publication, the following are subject to PinPay copyright: (1) the gathering, compilations, and arrangement of such governmental materials; (2) the electronic or magnetic or optical translation and digital conversion of the data and code, if applicable; (3) the historical, statutory and other notes and references; and (4) the commentary and other materials.

**Bank Relationships.** You acknowledge and agree that the cash value in your SoftCard account is not an individualized bank deposit or bank obligation, and is not guaranteed by any bank or financial institution or agency. No interest will be paid on the balances or amounts transferred to your SoftCard account; such balances and amounts are not insured and are not addressed by a bank guarantee. In certain situations the U.S. Federal Deposit Insurance Corporation (FDIC) may insure from loss some or all of the funds in a SoftCard account. The terms and conditions under which such loss coverage occurs and the comprehensiveness of such coverage are subject to change without notice, administrative and legal interpretations, and other factors.

**Binding Agreement.** The parties acknowledge the legally binding nature of this Agreement. By signing a copy or a faxed or electronic copy of the this Agreement provided under a separate document, the “Terms of Acceptance Signature Document” which is by reference incorporated into this agreement, the signing party is acknowledging and affirmatively stating that the party has read and understands the terms and that the party agrees to be bound by the terms and conditions.

**Non-Exclusive Agreement.** This Agreement does not imply an exclusive arrangement by the parties. Either party may enter into other arrangements that do not violate the obligations of this Agreement.

**Counterparts/Facsimile and Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile or electronic copies reflecting the party’s signature hereto, and any such facsimile or electronic copy shall be sufficient to evidence the signature of such party as if it were an original signature.

**Commencement and Interruption of Service.** Merchant is aware that many factors can impact the availability of PinPay service and accepts that service may be commenced, interrupted and re-established without notice, and at the discretion of the PinPay, all occurring without liability or recourse against PinPay for such events or occurrences.

**Effect of Illegality.** In the event that this Agreement or any of the obligations undertaken pursuant to it shall have been determined to be unlawful, then this Agreement shall cease without further obligation or recourse to either party, except for the confidentiality obligations.

**Survival.** All representations, covenants and warranties shall survive the execution of this Agreement, and Sections 5, 6, 7, 8 and 9 shall survive termination of this Agreement.

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