



Gateway Services Agreement

THIS **PUSH2PAY** GATEWAY SERVICES AGREEMENT (THE "AGREEMENT") IS A LEGAL AND BINDING AGREEMENT BETWEEN YOU AND PAPERLESS TRANSACTION CORP. (PTC) PLEASE READ IT CAREFULLY.

1. INTRODUCTION

1.1 Introduction. In this **push2pay** Gateway Services Agreement ("Agreement"), "Merchant", "you" and "your" refer to each customer ("Merchant") and its designated agents, including your administrative contact, and "we", "us" and "our" refer to Paperless Transaction Corp. This Agreement explains our obligations to you, and your obligations to us in relation to the **push2pay** Gateway Service(s) ("Services"). You agree that the administrative contact for any Services provided to you is your agent with full authority to act on your behalf with respect to such Services, as permitted by the Services and related documentation, including (but not limited to) the authority to terminate, transfer (where transfer is permitted by the Agreement), or modify such Services, or purchase additional Services.

1.2 Various Services. Sections 1 through 12 apply to any and all **push2pay** Gateway Services under the Agreement. The terms and conditions set forth in the attached schedules to the Agreement apply only to Merchants who have purchased the Services referenced in those schedules. Such schedules are incorporated into this Agreement by this reference. In the event of any inconsistency between the terms of Sections 1 through 12 and the terms of the schedules, the terms of the schedules shall control with regard to the applicable service. **IMPORTANT NOTICE CONCERNING BUNDLED SERVICES:** If you purchase separate Services that are sold together as a "bundled" package, as opposed to your purchasing such Services separately, termination of any part of the Services may result in termination of all Services provided as part of the bundled package unless arrangements are made to pay for the Services separately. Please see Section 10 of this Agreement for termination terms.

2. DEFINITIONS

2.1 "Financial Institution" shall mean banks or financial institutions having business relationships with one or more Financial Processors that have agreed to evaluate and provide merchant accounts and payment authorization services to merchants.

2.2 "Financial Processor" shall mean an entity with which **push2pay** has established a relationship that performs the back-end authorization and processing of Transactions between the Merchant's Financial Institution and the cardholder's bank.

2.3 "Services" shall mean the **push2pay** services used by Merchant and any add-on services specifically described in this Agreement.

2.4 "Software" shall mean the object code version of the client Software Development Kit ("SDK"), HTML code, application programming interfaces (APIs), related documentation and other client software or code which **push2pay** provides to Merchant, including updates, to enable push2pay to provide the Services to Merchant. Unless otherwise specified, Software shall not include any source code.

2.5 "Manager Web Site" means the online account management tools for merchants for the **push2pay** services that are part of the Services.

2.6 "Transaction" shall mean information related to the purchase of goods and services from Merchant by a third party. Specifically a Transaction is an authorization, delayed capture, sale, void, voice authorization or credit data transmission between **push2pay** and its back end processors.

3. MERCHANT OBLIGATIONS

3.1. General Service Requirements. Merchant shall be solely responsible for:

- A. Establishing, hosting and maintenance of its Web site(s) and its connection to the Internet (the "Merchant Web Site(s)"), fulfilling all orders

for products and services sold by Merchant to its users on the Merchant Web Site(s) or otherwise, including without limitation transmitting Merchant's registration information and Transaction data to **push2pay** servers or via the Manager Web Site and ensuring that any data stored or transmitted by Merchant in conjunction with the Services and for enrollment for the Services is accurate, complete and in the form as requested by **push2pay**, is securely collected and is not corrupted due to Merchant's systems. Merchant is also responsible for reviewing the Transactions in its account on a regular basis and notifying push2pay promptly of suspected unauthorized activity through its account;

- B. Establishing and maintaining a commercial banking relationship with one or more Financial Institutions. The terms of such relationship shall be determined solely by Merchant and the Financial Institution;
- C. Keeping its login name and password confidential. Merchant shall notify **push2pay** immediately upon learning of any unauthorized use of its user name or password. Merchant shall be solely responsible for (i) updating its passwords for access to the Services periodically, and (ii) creating passwords that are reasonably "strong" under the circumstances, both in accordance with **push2pay's** requirements. A "strong" password is at least six characters long, does not contain all or part of the users account name, and contains at least three of the four following categories of characters: uppercase characters, lowercase characters, base 10 digits, and symbols found on the keyboard (such as !, & #). Strong passwords should be generated in such a way that knowledge of one does not lead to knowledge of another.
- D. Maintaining commercially reasonable business practices in conjunction with use of the Services, collecting, storing and transmitting its customer data in a secure manner and protecting the privacy of its customer data. Merchant shall comply with **push2pay's** requests for reasonable action on Merchant's part, to the extent necessary, to maintain security and integrity of the Services;

- E. Updating to the most current Software version and security updates and patches necessary to properly operate the Services and keeping all Merchant enrollment and payment information current and updated on the **push2pay** Manager Web Site; and
- F. Merchant agrees, and hereby represents and warrants that Merchant shall (A) use the Services in accordance with the applicable user guides and other documentation; and (B) not use or permit others to use information obtained through the use of the Services for any purpose other than in conjunction with the Services and in a manner described in the documentation for the Services.

3.2 Proprietary Rights. as otherwise set forth herein, all right, title and interest in and to all, (i) registered and unregistered trademarks, service marks and logos; (ii) patents, patent applications, and patentable ideas, inventions, and/or improvements; (iii) trade secrets, proprietary information, and know-how; (iv) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired; (v) registered and unregistered copyrights including, without limitation, any forms, images, audiovisual displays, text, software and (vi) all other intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Services identified herein ("**push2pay** Intellectual Property Rights") are owned by **push2pay** or its licensors, and you agree to make no claim of interest in or ownership of any such **push2pay** Intellectual Property Rights. You acknowledge that no title to the **push2pay** Intellectual Property Rights is transferred to you, and that you do not obtain any rights, express or implied, in the **push2pay** or its licensors' service, other than the rights expressly granted in this Agreement. To the extent that you create any Derivative Work (any work that is based upon one or more preexisting versions of a work provided to you, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted) such Derivative Work shall be owned by **push2pay** and all right, title

and interest in and to each such Derivative Work shall automatically vest in **push2pay**. **push2pay** shall have no obligation to grant you any right in any such Derivative Work. Except to the extent permitted by applicable law, Merchant shall not disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time share the Services or any components thereof, or otherwise apply any procedure or process to the Services or components thereof in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings or any algorithm, data, process, procedure or other information contained therein. Merchant shall not rent, sell, resell, lease, sublicense, loan or otherwise transfer the Services or components thereof.

4. PUSH2PAY'S OBLIGATIONS

4.1 Services. Subject to the terms in this Agreement, **push2pay** agrees to (i) provide to Merchant the Services for which Merchant enrolls and pays the applicable fees, including without limitation the transmission of Transaction information to Financial Processors, and (ii) provide Merchant with access to standardized reports regarding Merchant's Transactions processed using the Services and certain reporting tools to assist Merchant in accounting activities. **push2pay** hereby grants to Merchant the right to access and use the Services in accordance with the Agreement.

4.2 Accounting. We will supply you a detailed statement reflecting the activity for your merchant account(s) by on line access (or otherwise if we agree). We will not be responsible for any error that you do not bring to our attention within 45 days from the date of such statement.

4.3 Modification of Terms; Changes to Services. Except as otherwise provided in this Agreement, Merchant agrees that **push2pay** may: (1) revise the terms and conditions of this Agreement, including without limitation modifying the service fees or payment terms; and/or (2) change part of the Services provided under this Agreement at any time. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by providing us with notice as set forth in this Agreement. Notice of your termination will be effective on receipt and processing by us. Any fees paid by you if you terminate your

Agreement with us are nonrefundable, except as otherwise expressly stated herein, but you will not incur any additional fees other than a \$250 cancellation fee. By continuing to use **push2pay** Services after any revision to this Agreement or change in Services, you agree to abide by and be bound by any such revisions or changes.

4.4 Secure Transactions. **push2pay** has implemented and will maintain security systems for the transmission of Merchant's Transactions, consisting of encryption and "firewall" technologies that are understood in the industry to provide adequate security for the transmission of such information over the Internet. **push2pay** does not guarantee the security of the Services or Transaction data, and **push2pay** will not be responsible in the event of any infiltration of its security systems, provided that **push2pay** has used commercially reasonable efforts to prevent any such infiltration. Merchant further acknowledges and agrees that Merchant, and not **push2pay**, is responsible for the security of Transaction data or information or any other information stored on Merchant's servers, and that **push2pay** is not responsible for any other party's servers (other than subcontractors of **push2pay** solely to the extent **push2pay** is liable for its own actions hereunder).

4.5 Technical Support for Services. **push2pay** shall provide the technical support services to Merchants, specific to the support package selected by Merchant during enrollment. **push2pay's** then-current, standard technical support descriptions for these Services shall be posted at the URL:
<https://www.push2pay.net>

5. PRIVACY

Our privacy statement is located on our Web site at <http://www.push2pay.net> and is incorporated herein by reference, as it is applicable to the Services. Merchant acknowledges and agrees that in the course of providing the Services, **push2pay** will capture certain transaction and user information (collectively, the "Data"). Merchant agrees to provide to **push2pay**, and **push2pay** shall capture, only the Data that is required by the Software and is necessary for **push2pay** to provide the Services. You represent and warrant that you have provided notice to, and obtained consent from, any third party individuals whose personal data you supply to us as part of our

services with regard to: (i) the purposes for which such third party's personal data has been collected, (ii) the intended recipients or categories of recipients of the third party's personal data, (iii) which parts of the third party's data are obligatory and which parts, if any, are voluntary; and (iv) how the third party can access and, if necessary, rectify the data you hold about them. You further agree to provide such notice and obtain such consent with regard to any third party personal data you supply to us in the future. We are not responsible for any consequences resulting from your failure to provide notice or receive consent from such individuals nor for your providing outdated, incomplete or inaccurate information.

6. FEES AND PAYMENT TERMS

As consideration for the services you purchased, you agree to pay **push2pay** the applicable service(s) fees set forth on our Web site, or as otherwise provided by **push2pay** concurrently with this Agreement, at the time of your selection, or, if applicable, upon receipt of your invoice from **push2pay**. All fees are due immediately and are non-refundable, except as otherwise expressly noted herein or in one or more attached Schedules. Unless otherwise specified herein or on our Web site, the Services are for a three-year initial term and renewable thereafter for successive one-year periods. Any renewal of your Services with us is subject to our then-current terms and conditions, including, but not limited to, successful completion of any applicable authentication procedure, and payment of all applicable service fees at the time of renewal. Additional payment terms may apply to the **push2pay** services you purchase, as set forth in the applicable Schedules to this Agreement. You are solely responsible for the credit card or Automated Clearinghouse ("ACH") account information you provide to **push2pay** and must promptly inform **push2pay** of any changes thereto (e.g., change of expiration date or account number). Changes should be communicated to **push2pay** by or contacting **push2pay** customer support. All payments shall be made in U.S. dollars. All fees are non-refundable unless otherwise explicitly stated in this Agreement. You agree to pay all value added, sales and other taxes (other than taxes based on **push2pay's** income) related to **push2pay** services or payments made by you hereunder. Set up fees, if any, will become payable on the applicable effective date for the applicable **push2pay** services. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest as a late charge of 1.5%

per month or the maximum amount allowed by law, whichever is less. Merchant hereby authorizes **push2pay** to charge Merchant's credit card provided to **push2pay** or debit Merchant's ACH account for the fees due for the Services, and Merchant shall provide to **push2pay** proper debit authorization for purposes of allowing **push2pay** to debit the applicable Merchant account to collect fees due under this Agreement. All fees owed by Merchant to third parties (for example, Financial Institutions, Financial Processors and merchant account providers), are Merchant's sole responsibility and are not covered by this Agreement.

7. WARRANTY; DISCLAIMER

7.1 push2pay represents and warrants that (a) it has all requisite corporate or other power to enter into this Agreement and to carry out the terms of this Agreement; (b) all corporate action on the part of **push2pay**, its officers, board of directors and stockholders necessary for the performance of its obligations under this Agreement has been taken. EXCEPT AS EXPRESSLY SET FORTH ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, **PUSH2PAY** AND ITS LICENSORS, AS APPLICABLE, MAKE NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES 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 **PUSH2PAY** AND ITS LICENSORS. MERCHANT ACKNOWLEDGES THAT NEITHER **PUSH2PAY** NOR ITS LICENSORS HAVE REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE SERVICES OR THAT ALL ERRORS WILL BE CORRECTED.

7.2 Merchant represents and warrants that it shall comply with all applicable privacy, consumer and other laws and regulations with respect to its (i) provision, use and disclosure of the Data; (ii) dealings with the users providing the Data; and (iii) use of the Services. Additionally, Merchant represents and warrants that (a) it has all requisite corporate or other power to enter into this Agreement and to carry out the terms of this Agreement; (b) all corporate action on the part of Merchant, its officers, board of directors and stockholders necessary for the

performance of its obligations under this Agreement has been taken; (c) this Agreement constitutes its valid and legally binding obligation, enforceable against it in accordance with the terms hereof; (d) if Merchant is a corporation, then it is a corporation in good standing in its jurisdiction of incorporation; (e) it has read and understands the entire Agreement and desires to be bound thereby, and it has been represented by counsel of its own choosing; and (f) it represents and warrants that, except as expressly set forth herein, no representations of any kind or character have been made to induce it to execute and enter into this Agreement.

8. INDEMNIFICATION. This section is subject to the terms of Section 9.

Either party will defend, indemnify, save and hold harmless the other party and the officers, directors, agents, Affiliates, distributors, franchisees and employees of the other party from any and all third party claims, demands, liabilities, costs or expenses, including reasonable attorneys' fees, resulting from the indemnifying party's material breach of any duty, representation or warranty of this Agreement. A party's right to indemnification under the Agreement ("indemnified party") is conditioned upon the following: prompt written notice to the party obligated to provide indemnification ("indemnifying party") of any claim, action or demand for which indemnity is sought; control of the investigation, preparation, defense and settlement thereof by the indemnifying party; and such reasonable cooperation by the indemnified part, at the indemnifying party's request and expense, in the defense of the claim. The indemnified party shall have the right to participate in the defense of a claim by the indemnifying party with counsel of the indemnified party's choice at the indemnified party's expense. The indemnifying party shall not, without the prior written consent of the indemnified party, settle compromise or consent to the entry of any judgment that makes any admissions in the indemnified party's name or imposes any liability upon the indemnified party.

9. LIMITATIONS ON LIABILITY

Merchant acknowledges that **push2pay** is not a bank or credit reporting institution. **push2pay** is responsible only for providing data transmission to effect or direct certain payment authorizations for Merchant and is not responsible for the

results of any credit inquiry, the operation of web sites of ISPs or Financial Institutions or the availability or 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 financial processor(s), Merchant's Financial Institution or any ISP. IN NO EVENT WILL **PUSH2PAY**'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE FEES PAID TO **PUSH2PAY** BY MERCHANT HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM FOR DAMAGES. IN NO EVENT WILL **PUSH2PAY** OR ITS LICENSORS HAVE ANY LIABILITY TO MERCHANT OR ANY OTHER PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), AND WHETHER OR NOT **PUSH2PAY** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Notwithstanding the above, the limitations set forth above shall be enforceable to the maximum extent allowed by applicable law.

10. TERM AND TERMINATION

10.1 Term; Renewal. This Agreement will commence on the later of (i) the date Merchant accepts the terms of this Agreement (the "Effective Date"), or (ii) the date that Merchant's **push2pay** account is activated for live Transactions, if different; and will continue for a period of three (3) years unless terminated earlier or suspended according to the provisions of this Agreement. This Agreement will thereafter automatically renew for successive twelve (12) month terms, unless either party gives the other party written or electronic notice, in accordance with the terms herein, of its intention not to renew the Agreement at least thirty (30) days prior to the end of the then-current term or renewal term. Any renewal of your Services is subject to our then-current terms and conditions, successful completion of any applicable authentication procedure, if any, and payment of all applicable service fees at the time of renewal. Additional payment terms may apply to the **push2pay** services you purchase, as set forth herein and in the applicable Schedules to this Agreement.

10.2 Suspension and Termination. Either party hereto may, at its option, and without notice, terminate this Agreement, effective immediately, should the other party hereto (i) admit in writing its inability to pay its debts generally as they become due; (ii) make a general assignment for the benefit of creditors; (iii) institute proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or (vi) have a decree entered against it by a court of competent jurisdiction appointing a receiver liquidate, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such Party's property or providing for the liquidation of such party's property or business affairs.

- A. **By Merchant.** Merchant may terminate this Agreement upon prior written notice to **push2pay** by notifying **push2pay**'s customer support in writing and following the instructions for cancellation either (i) prior to the end of the initial annual period or any annual renewal period; or (ii) for convenience. Subject to the above, **push2pay** shall use commercially reasonable efforts to cancel the Services within seven (7) business days following such written notice from Merchant. Merchant shall be responsible for the payment of all fees due and payable through the effective date of termination including a termination fee of \$250. Termination requests for non-**push2pay**, third party services may not be made through **push2pay**. Merchant must instead contact such third parties directly to cancel such services.

- B. **By push2pay.** Notwithstanding Section 10.1, **push2pay** may suspend Merchant's access to the Services or terminate this Agreement as follows:
 - i. Following ten (10) days prior written notice (such as an overdue invoice) if (a) Merchant breaches the Agreement, (b) perpetrates fraud, (c) causes or fails to fix a security breach relating to the Services, (d) fails to comply with **push2pay**'s best practices requirements for security management or to respond to an inquiry from **push2pay**, concerning the accuracy or completeness of the

information Merchant is required to provide pursuant to this Agreement, (e) if **push2pay** reasonably suspects fraudulent activity on Merchant's payment services account, (if such breach is not cured within such 10-day period), (f) in the event that certain third party licenses or access to third party components of the Services are terminated, or (g) non payment of invoice; or

- ii. Immediately, without prior notice, if **push2pay** reasonably believes Merchant's breach compromises the security of the Services in any material fashion, if fraudulent Transactions are being run on your account, or Merchant's financial processor or Financial Institution with which Merchant has a merchant account requires such termination or suspension.

10.3 Effect of Termination. **push2pay** will cease providing the Services and cease debiting your bank account for any Service fees as of the expiration of the annual, bi-annual or monthly billing cycle in which the termination is effective. If termination of this Agreement is due to your default hereunder, you shall bear all costs of such termination, including any reasonable costs **push2pay** incurs in closing your account. You agree to pay any and all costs incurred by **push2pay** in enforcing your compliance with this Section. Upon termination, your rights to use the Services, and any other rights granted hereunder, shall immediately cease, and you shall destroy any copy of the materials licensed to you hereunder and referenced herein. Each party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that any termination of this Agreement will not relieve **push2pay** or Merchant from any liability arising prior to the termination of this Agreement. To the extent permitted by applicable law, you agree that upon termination for any reason, we may delete all information relating to your use of the Service. Notwithstanding the foregoing, Merchant's obligations to pay all fees due through the effective date of termination will survive any termination of this Agreement.

Bundled Services. In addition to the terms set forth above, if you purchase

Services which are sold together as part of a "bundled" package of services, any termination relating to such bundle will terminate all **push2pay** services included in such bundle. In such cases we may, in our sole discretion and subject to your agreeing to be bound by the applicable agreement(s) and to pay the applicable fees, allow you to convert certain services included in the bundled services to stand alone services. Notwithstanding the above, termination of the Services will terminate any add-on services.

Reinstatement of Services. If Services are suspended or terminated by **push2pay** due to lack of payment by Merchant, reinstatement of Services shall be subject to Merchant paying **push2pay** (i) new set-up fees, at **push2pay**'s then-current rates; and (ii) as applicable, all past due annual or monthly fees and Transaction fees.

11. CONFIDENTIALITY

11.1 Confidential Information. "Confidential Information" means any confidential, trade secret or proprietary information (which may be business, financial or technical information) disclosed by one party to the other under this Agreement that is marked confidential or if disclosed orally designated as confidential at the time of disclosure or that should be reasonably understood to be confidential. All source code and the terms of this Agreement will be considered Confidential Information.

11.2 Confidentiality Obligations. Each party (i) shall not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement and for purposes of performing this Agreement, and (ii) shall take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own proprietary information or Confidential Information of similar importance. Each party further agrees to use the other party's Confidential Information only for the purpose of its performance under this Agreement. In addition, the receiving party shall not reverse engineer, disassemble or decompile any prototypes, software or other intangible objects which embody

Confidential Information and which are provided to the receiving party hereunder.

11.3 Limitation of Confidentiality. The Obligations set forth in Section 11.2 ("Confidentiality Obligations") above do not apply to information that (i) is in or enters the public domain without breach of this Agreement, (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation, (iii) the receiving party knew prior to receiving such information from the disclosing party or develops independently without access or reference to the Confidential Information, (iv) is disclosed with the written approval of the disclosing party, or (v) is disclosed five (5) years from the effective date of termination or expiration of this Agreement.

11.4 Exceptions to Confidentiality. Notwithstanding the Confidentiality Obligations set forth in Section 11.2 above, each party may disclose Confidential Information of the other party (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law but only after alerting the other party of such disclosure requirement and, prior to any such disclosure, allowing (where practicable to do so) the other party a reasonable period of time within which to seek a protective order against the proposed disclosure, or (ii) on a "need-to-know" basis under an obligation of confidentiality substantially similar in all material respects to those confidentiality obligations in this Section 10 to its legal counsel, accountants, contractors, consultants, banks and other financing sources.

12. MISCELLANEOUS TERMS

12.1 Force Majeure (Events Beyond the Parties' Control). Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder, except for Merchant's payment obligations hereunder, due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, or boycott, provided that the party relying upon this Section shall give the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof, and (ii) shall take all steps reasonably necessary under

the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided, however, that in the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, either party may immediately terminate the Agreement.

12.2 Entire Agreement and Modification. The terms in this Agreement constitute the entire agreement between **push2pay** and Merchant regarding its subject matter and its terms supersede any prior or simultaneous agreement, terms, negotiations, whether written or oral, or whether established by custom, practice, policy or precedent, between the parties hereto. Except as otherwise provided for herein, any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties herein. Merchant acknowledges and agrees that in the event a purchase order ("PO") contains additional terms, provisions or language ("PO Terms"), those PO Terms shall be null and void and the terms of the Agreement shall prevail.

12.3 Severability. In the event that any provision of this Agreement is unenforceable or invalid such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

12.4 No Assignment. Merchant may not assign this Agreement without the prior written consent of **push2pay**.

12.5 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to its conflicts of laws principles. Each party consents to the exclusive venue and jurisdiction of the appropriate state or Federal courts in Dallas County, Dallas, Texas for any dispute arising out of or related to this Agreement. The parties acknowledge and agree that this Agreement is made and performed in Dallas, Texas. The parties hereby waive any right to jury trial with respect to any action brought in connection with this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

12.6 Export Restrictions. Merchant acknowledges and agrees that it shall not import, export, or re-export directly or indirectly, any commodity, including Merchant's products incorporating or using any **push2pay** products in violation of the laws and regulations of any applicable jurisdiction.

12.7 Notice. Except as otherwise expressly stated in this Agreement, all notices to **push2pay** shall be in writing and delivered, via courier or certified or registered mail, to PTC 400 E. Royal Ln., Suite 201, Irving, Texas 75039 or any other address provided by **push2pay**. All notices to you shall be delivered to your mailing address or e-mail address as provided by you in your account information, as updated by you pursuant to this Agreement. Unless you choose to opt-out of receiving marketing notices, you authorize **push2pay** to notify you as our customer, via commercial e-mails, telephone calls and other means of communication, of information that we deem is of potential interest to you, including without limitation communications describing upgrades, new products and services or other information pertaining to the Services or other **push2pay** offerings relating to Internet security or to enhancing your identity on the Internet. Notwithstanding the above, Merchant shall not have the right to opt-out of service or support notices relating to the Services, including without limitation, notices of service modifications, security, performance issues or technical difficulties.

12.8 Government Use. If you are a branch or agency of the United States Government, the following provision applies. The software and any related documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995).

12.9 Headings. The section headings appearing in the 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.

12.10 Independent Contractors. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint ventures of the other party, and they do not have any authority to bind the other party by contract or otherwise to any obligation. Each party shall ensure that the foregoing persons shall not represent to the contrary, either expressly, implicitly, by appearance or otherwise.

12.11 Non-Disparagement; Publicity. During the term of the Agreement, neither party will disparage the other party or the other party's trademarks, web sites, products or services, or display any such items in a derogatory or negative manner on any web site or in any public forum or press release. Unless otherwise stated herein, neither party shall issue a press release or otherwise advertise, make a public statement or disclose to any third party information pertaining to the relationship arising under this Agreement, the existence or terms of the Agreement, the underlying transactions between **push2pay** and Merchant, or referring to the other party in relation to the Agreement without the other party's prior written approval.

12.12 Costs. Except as expressly stated in the Agreement, each party shall be solely responsible for the costs and expenses of performing its obligations hereunder.

12.13 Marketing. Merchant hereby grants to **push2pay** a limited, non-transferable, royalty free, non-sublicenseable right to use and reproduce Merchant's name and logotype in identifying Merchant as a **push2pay** Merchant. At **push2pay**'s request and expense, Merchant will reasonably cooperate with **push2pay** to provide comments on the service and/or **push2pay** for use by **push2pay** in marketing and/or advertising.

(continued)

Schedule C

push2pay ACH Payment Service

Definitions

- A. "Account Requirements Document" means Merchant's Transaction and account limits and requirements set by **push2pay** and provided to Merchant via written or electronic notice upon **push2pay's** acceptance of Merchant's ACH application.
- B. "ACH Rules" shall mean the Operating Rules and Guidelines of the National Automated Clearinghouse Association and applicable Operating Rules and Guidelines of any local ACH Association, as they may be revised from time to time.
- C. "ACH Service" shall mean the **push2pay** ACH Payment Service as described in the applicable enrollment pages at the time of Merchant's enrollment.
- D. "Merchant Receiving Account" shall mean a Preauthorized Payment Deposit Account or Direct Deposit Account with one or more United States banks or other appropriate United States financial organizations for receipt and settlement of ACH entries to Merchant's account.
- E. "ODFI" shall mean an originating depository financial institution for the processing of the ACH transaction services contemplated herein.
- F. "RDFI" shall mean the receiving depository financial institution that provides depository bank account services to customers and accepts on behalf of their customers' electronic debits and credits.
- G. "NACHA" shall mean National Automated Clearinghouse association.
- H. "Territory" shall mean the United States.

Terms and Conditions

1. **Qualification Standards.** **push2pay** has established certain qualification standards for Merchants, which **push2pay** may change from time to time. Merchant shall supply financial and other data as **push2pay** may reasonably require from time to

time confirming Merchant's financial and other business status; and Merchant acknowledges that **push2pay** will not be required to provide the ACH Service, or continue the provision of the ACH Service, to Merchants that do not meet these qualification standards. Merchant shall operate and use the ACH Service in accordance with the Transaction limits provided by **push2pay** to Merchant at the time of **push2pay's** acceptance of Merchant's ACH application. In addition, if it becomes necessary, in **push2pay's** reasonable business judgment, to modify the Transaction limits set by **push2pay**, **push2pay** shall have the right during the term of this Agreement to review and modify such Transaction limits upon written or electronic notice to Merchant.

2. Obligations of Merchant.

(a) Maintain Merchant Receiving Account; Minimum Balance. During the term of the Agreement, Merchant will maintain a Merchant Receiving Account for receipt and settlement of ACH entries to Merchant's account, as applicable. **push2pay** has no obligation to provide or facilitate any such account or relationship with a financial institution. Prior to being permitted to use the ACH Service, Merchant must complete and return to **push2pay** the Automated Clearinghouse Debit Authorization Form authorizing **push2pay** to debit Merchant's Merchant Receiving Account in order to collect fees due under the Agreement and these terms and conditions. Merchant will advise **push2pay** in writing at least thirty (30) days in advance before switching its Merchant Receiving Account to another bank. At all times during the term hereof, Merchant will be required to maintain a minimum balance in its Merchant Receiving Account at or above the Reserve Percentage of Merchant's Daily Transaction Limit set by **push2pay** (the "Required Daily Balance") in the Account Requirements Document. Merchant will immediately make any additional deposits to its Merchant Receiving Account needed to maintain the Required Balance. Merchant shall be responsible for returned Debits, unfunded Credits, unpaid fees or other past due amounts, and other expenses or losses incurred by **push2pay** in connection with the **push2pay** Services. During the term hereof, Merchant shall provide, at **push2pay's** request, documentation from Merchant, including but not limited to bank statements from the Receiving Bank, verifying that the Required Balance is being maintained.

(b) Comply with ACH Rules. Merchant will operate in accordance with the ACH Rules. Merchant acknowledges that it has had an opportunity to review the ACH Rules, and Merchant is responsible for obtaining future amendments to the ACH Rules. Merchant will obtain from each person or company shown in an ACH entry an authorization for initiation of the entry and for crediting or debiting its account in the amount and on the effective date shown in the entry. Merchant will, on request, obtain and furnish to **push2pay** a copy of any such authorization.

(c) Comply with Transaction Limits. The total dollar amount of ACH transactions transmitted by Merchant to **push2pay** will not exceed Merchant's Daily Transaction Limits set by **push2pay** and provided via written or electronic notice to Merchant upon **push2pay's** acceptance of Merchant's ACH application. Merchant will so conduct its business that returned entries will not exceed Merchant's Returned Entries Limit, set by **push2pay** in the Account Requirements Document, in any month.

(d) Optional Reserve Account or Refundable Security Payment. In certain circumstances, in order for Merchant to qualify for an ACH Service account, **push2pay** may require, in **push2pay's** sole discretion, that Merchant either (i) submit to **push2pay** a refundable security payment in the amount set by **push2pay** and provided by **push2pay** to Merchant by electronic or written notice (the "Security Payment Amount") prior to the time **push2pay** accepts or rejects Merchant's ACH application, or (ii) open a reserve account with a minimum balance to be agreed upon that is accessible to **push2pay** in accordance with instructions from **push2pay**. In the event **push2pay** requests a Security Payment, **push2pay** shall maintain such payment in a **push2pay** bank account, and **push2pay** shall have the right to collect interest and to draw from such payment to cover unpaid fees and charges. The balance of such payment will be returned to Merchant, less any outstanding fees, charges or returns, within ninety-five days of termination of the Agreement or this Addendum.

(e) Notice of Claims. Merchant will advise **push2pay** promptly (and in no event more than 3 business days after Merchant receives notice) of any claim that an ACH entry was unauthorized.

(f) Reconstruction Data. Merchant will maintain data sufficient to reconstruct transaction data related to each ACH entry originated under this Agreement for a period of at least sixty (60) days after the applicable settlement date. Merchant will submit the reconstructed data to **push2pay** upon request.

(g) Territory. Merchant is authorized to use the ACH service solely for ACH Transactions within the Territory.

3. Obligations of **push2pay**.

(a) Originating Entries. **push2pay** will use commercially reasonable efforts to maintain an appropriate linkage with an ODFI for ACH transaction services. **push2pay** is responsible for accurate transmission of ACH data received from Merchant, but is not responsible for any act or omission of an ODFI, Receiving Depository Financial Institution ("RDFI"), ACH or any other party in connection with the ACH Service.

(b) Service Interruptions. In case of an interruption of the ACH Service, **push2pay** will restore the ACH Service as promptly as is reasonably possible, provided such interruption is within **push2pay's** control. **push2pay** does not guarantee that the ACH Service will be error free or uninterrupted.

(c) Secure Transmission. **push2pay** provides secure data transmission for Merchant to effect ACH payment transactions. Such data transmission will be secure in the sense that **push2pay** has implemented security systems consisting in part of encryption and "firewall" technologies, which are understood in the industry to provide adequate security for the transmission of sensitive information. **push2pay** does not guarantee that such systems are impregnable, and **push2pay** will not be responsible in case of an unlawful infiltration of its security systems, provided **push2pay** has used reasonable efforts to make the ACH Service secure as set forth above.

4. Fees.

As a condition to receiving the ACH Service, Merchant shall pay to **push2pay** the applicable set-up and monthly flat and per-transaction fees and charges as set forth in (i) these enrollment pages, or (ii) the fee schedule provided by **push2pay** via electronic or written notice to Merchant at the time of **push2pay's** acceptance of Merchant's ACH application. All payments shall be made in accordance with the terms of the Agreement, except as specifically set forth below.

(a) Payment. Set up fees, if any, will become payable on the date of **push2pay's** electronic or written notice to Merchant that **push2pay** has accepted Merchant's ACH application. All other fees are due immediately following the date of **push2pay's** written or electronic invoice and are non-refundable, except as otherwise expressly noted herein.

(b) Merchant acknowledges **push2pay's** requirement that fees due from Merchant for all Services provided by **push2pay** under the Agreement and in these terms and conditions for the ACH Service shall be collected using a single payment method. Therefore, Merchant hereby authorizes **push2pay** to debit Merchant's Merchant Receiving Account for all fees due to **push2pay** for the Services provided under the Agreement, including without limitation the ACH Service, in the amount indicated in the applicable invoice. If the balance in Merchant's Merchant Receiving Account is insufficient to cover the amount billed in the invoice, **push2pay** may invoice Merchant, and Merchant will promptly pay to **push2pay** the amount shown on such invoice upon receipt of the invoice. If any invoice is not paid when due, Merchant will pay an additional charge equal to the lesser of 1½% per month or the maximum rate allowed by law on the unpaid balance. Merchant shall be responsible to pay any federal, state or local taxes applicable to the ACH Service used by Merchant exclusive of taxes based on the net income of **push2pay**. Any renewal of your ACH Service is subject to **push2pay's** then-current terms and conditions, including, but not limited to, successful completion of any applicable authentication procedure, and payment of all applicable service fees at the time of renewal. Merchant is solely responsible for the credit card or Automated Clearinghouse ("ACH") account

information it provides to **push2pay** and must promptly inform **push2pay** of any changes thereto (e.g., change of expiration date or account number). All payments shall be made in U.S. dollars. If **push2pay** does issue a refund, it will only be via the same payment method used by Merchant to pay for the Services. All fees owed by Merchant to third parties (for example, Financial Institutions, Financial Processors and merchant account providers), are Merchant's sole responsibility and are not covered by this Agreement.

(c) Audit Rights. Merchant agrees to make and to maintain complete and accurate books, records and accounts, for a period of two (2) years from the end of a calendar month, to verify and confirm the amounts payable hereunder with respect to each calendar month. **push2pay** shall have the right at its expense, not more than once per calendar year, to have a reputable accounting firm (the "Auditor"), examine Merchant's books, records and accounts during its normal business hours solely to verify the amount of payments made to **push2pay** during the preceding twelve (12) months. The Auditor will be prohibited from divulging or using information obtained in connection with the inspection other than disclosing the audit results to **push2pay**.

5. Settlement.

(a) Provisional ACH Credit. Merchant acknowledges that the ACH Rules make provisional any credit given for an entry until the ODFI receives final settlement. If the ODFI does not receive final settlement, the ODFI is entitled to a refund from the credited party and the originator of the entry shall not be deemed to have paid the party. Merchant agrees that Merchant shall be responsible for all such refunds, and **push2pay** shall have the right to be reimbursed by Merchant for any and all such refunds that are charged to **push2pay** by the ODFI.

(b) Merchant Account Entries. Within the period specified in the Account Requirements Document of the value date of any debit entries to Merchant's Merchant Receiving Account, **push2pay** will originate a credit entry to Merchant's customers' accounts. Within the period specified in the Account Requirements Document of the value date of any debit entries to Merchant's customers' accounts, **push2pay** will originate a credit entry to Merchant's

Merchant Receiving Account.

(c) Inconsistency of Name and Number. If an entry describes a financial institution or the receiver of an entry inconsistently by name and account or other identifying number, the account or other identifying number may be relied upon and the name disregarded.

(d) Cancellation or Amendment. Merchant shall not have the right to cancel or amend an entry after its receipt by **push2pay**, except to void the transaction prior to settlement.

(e) Satisfaction of Customer Debt. **push2pay** is a third-party service provider on behalf of Merchant. In that regard, **push2pay** holds merchant funds for the number of days specified in the Account Requirements Document following the value date of any debit or credit entry as security in the event that the RDFI should reverse the Transaction. Merchant acknowledges that, as between Merchant and its customer, the customer's debt to Merchant is satisfied when **push2pay** receives funds from the ODFI in payment of that debt, subject only to a reversal of such payment.

Schedule D

Fraud Protection Services

Only eligible merchants, as defined in the applicable Fraud Protection Services enrollment an/or user documentation, are authorized to use the Fraud Protection Services. Merchant agrees to comply with the following terms as applicable to the specific Fraud Protection Services and/or Account Monitoring Services licensed by Merchant:

- 1. Use of Services.** Merchant agrees, and hereby represents and warrants that Merchant shall (A) use the Fraud Protection Services in accordance with the applicable user guides and other documentation; and (B) not use or permit others to use information obtained through the use of the push2pay Fraud Protection Services for any purpose other than in conjunction with the Services and in a manner described in the documentation for the Services.

2. **Setting Preferences.** Merchant shall be solely responsible for setting preferences for the **push2pay** Fraud Protection Services. It is solely Merchant's responsibility to determine which Transactions it will accept or reject based on the authentication information provided by **push2pay**. Merchant shall not reject a Transaction unless, based on various combinations of authentication information, Merchant reasonably determines that the individual requesting the Transaction is likely not the consumer he is representing himself to be.
3. **Account Monitoring.** Merchant understands, acknowledges and agrees that **push2pay** does not guarantee that the **push2pay** Account Monitoring services will discover or prevent all non-valid, fraudulent transactions, and that **push2pay** shall not be responsible for any non-valid transaction that is processed unless otherwise explicitly provided elsewhere in the Agreement.
4. **Dispute Resolution.** Merchant acknowledges that in addition to **push2pay's** other permitted uses of the Data; **push2pay** shall have the right to provide Data to Financial Institutions and card associations for the purposes of dispute resolution.
5. **Best Practices.** The Risk and Security "best practices" suggestions features of the **push2pay** Fraud Protection Services are solely for illustrative purposes to show best industry practices, and Merchant shall be solely responsible for choosing the appropriate settings and parameters for the **push2pay** Fraud Protection Services.
6. **IP Address Verification Components.** The following additional restrictions apply. Except as permitted in the applicable documentation for the Services, Merchant shall not:
 - A. Modify, recast or create derivative works of any information obtained using the IP Address Verification components of this service;
 - B. Publicly display, upload or post any information obtained using the IP Address Verification components or transmit, broadcast or otherwise transfer such information to any other party;
 - C. License, sell, transfer or provide access to information obtained using the IP Address Verification components of the Services; and
 - D. Use, or authorize any third party to use, the information obtained using the IP Address Verification components to provide geo-location services to third parties.

7. **High Risk Filters.** **push2pay's** licensors of third party products or services used by Merchant as part of the High Risk Filters components of the Fraud Protection Services shall be considered third party beneficiaries of the Agreement and shall have the right to enforce Merchant's compliance with the Agreement.
8. **Account Monitoring.** Merchant acknowledges that **push2pay** does not represent or warrant that the Account Monitoring Service is error free or that it will identify all fraudulent activity. In addition, **push2pay** shall not be liable to Merchant if **push2pay** correctly identifies a transaction as fraudulent. Merchant shall be responsible for taking all final actions on transactions that have been identified by **push2pay** as potentially fraudulent. **push2pay** shall use commercially reasonable efforts to monitor and internally investigate and report on potentially fraudulent activity.
9. **Buyer Authentication.** In the event that the card associations modify their buyer authentication programs, **push2pay** will use commercially reasonable efforts to update the Fraud Protection Services at the next major release of the Fraud Protection Services that **push2pay** makes generally available.
10. **Third Party Components.** **push2pay** shall have the right to modify, substitute or remove third party components of the Fraud Protection Services on thirty (30) days prior written or electronic notice, provided that Merchant may terminate this Agreement following proper notice to **push2pay** in the event that such removal materially diminishes the functionality of the Fraud Protection Services.
11. **Deactivation.** If the Fraud Protection Services are terminated, **push2pay** shall have the right to immediately upon termination cancel Merchant's access to the Fraud Protection Services. It is Merchant's responsibility to clear all settings and download all reports prior to the effective date of any such termination.