

# MerchantService.com Terms and Conditions Agreement

Last Updated April 10th, 2013

## 1. PARTIES TO THIS AGREEMENT

This MerchantService.com (MS) Agreement (Agreement) is between Merchant Service Payments, LLC, a Florida limited liability company, with offices at the Interstate Park Corporate Center, 341 Interstate Blvd., Sarasota, FL 34240 dba MerchantService.com, which term includes its affiliates, MerchantService.com, Inc., CompleteMerchantServices.com, Inc. and 1st American Leasing, LLC, e.g. entities controlling, controlled by or under common control with Merchant Service Payments, LLC and you.

## 2. THIS AGREEMENT IS A CONTRACT BETWEEN YOU AND MS

### 2.1

This Agreement is a contract between you and MS and applies to your use of the MS Services. BY USING ANY WEBSITES OR ELECTRONIC SERVICES OFFERED BY MS and Assigns (THE "SERVICE"), OR BY ELECTRONICALLY CLICKING AN "I ACCEPT" BUTTON OR CHECKBOX IN THE REGISTRATION PAGES OF THE SERVICES, YOU ARE HEREBY AGREEING TO ALL OF THESE TERMS, FEES AND CONDITIONS OF SERVICE (THE "TERMS") AND ANY TERMS INCORPORATED HEREIN BY SPECIFIC REFERENCE.

### 2.2

We may amend this Agreement at any time by posting a revised version on our website. The revised version will be effective at the time we post it. In addition, if the revised version includes a Substantial Change, we will provide you with 30 Days prior notice of any Substantial Change by posting notice on the POLICY Updates page of our web site.

### 2.3

This is an important document which you must consider carefully when choosing whether to use the MS Services. Please note the following risks of using the MS Services.

### 2.4

Bank or Processor may close, suspend or terminate your Merchant Account, and/or limit access to your funds for up to 180 days if you violate your terms and conditions of services.

### 2.5

MS may close, suspend, or limit your access to your MS Account or Services if you violate this Agreement, or any other Agreement you enter with MS.

### 2.6

If you wish to enter a Dispute with MS you must do so within 45 days of making your payment.

## 3. OUR RELATIONSHIP WITH YOU

### **3.1**

MerchantService.com is Only a Merchant Service Payments and Related Merchant Product and Services Marketing Company. MS helps you to accept payments from and make payments to third parties, and provides you solutions to help protect your business, accept more forms of payments to increase sales, reduce losses and collect more payments rightfully due you. MS is a independent contractor vendor to you for all purposes. MS is not a custodian of your funds. MS does not have control of, or liability for, the products and services provided by third parties including the Bank and Processors.

### **3.2 YOUR PRIVACY**

Protecting your privacy is very important to MS. Please review our Privacy Policy in order to better understand our commitment to maintaining your privacy, as well as our use and disclosure of your information.

### **3.3 PRIVACY OF OTHERS; MARKETING**

If you receive information about another User through MS Services, you must keep the information confidential and only use it in connection with the MS Services. You may not disclose or distribute a User's Information to a third party or use the information for marketing purposes unless you receive the User's express consent to do so.

### **3.4 INTELLECTUAL PROPERTY**

"MerchantService.com", Merchant Service Group", all "**eC Products™**" and all logos and marks related to the MS Services and Products are either trademarks or registered trademarks of MS or its licensors. You may not copy, imitate or use them without MS's prior written consent. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, and/or trade dress of MS. You may not copy or imitate them without our prior written consent. You may use HTML logos provided by MS through our MerchantService.com site without prior written consent for the purposes of directing web traffic to the MS Services. You may not alter, modify or change these HTML logos in any way, use them in a manner that is disparaging to MS or the MS Products and Services or display them in any manner that implies MS's sponsorship or endorsement. All rights, title and interest in and to the MS website, any content thereon, the MS Products and Services, the technology related to the MS Products and Services, and any and all technology and any content created or derived from any of the foregoing is the exclusive property of MS, its program providers and its licensors.

### **3.5 ASSIGNMENT**

You may not transfer or assign any rights or obligations you have under this Agreement without MS's prior written consent. MS reserves the right to transfer or assign this Agreement or any right or obligation.

### **3.6 PASSWORD SECURITY AND CURRENT EMAIL ADDRESS**

You are responsible for maintaining adequate security and control of any and all ID's, passwords, personal identification numbers (PINs), or any other codes that you use to access the MS Products and services. You are responsible for keeping your bank account, mailing address and email address up to date in your Account Profile.

### ***3.7 NOTICES TO YOU***

You agree that MS may provide you Communications about your Account and the MS Products and Services electronically as described in our Electronic Communications Delivery Policy. Keeping you informed about your Account and the MS Product and Services is very important to MS, so please review the Electronic Communications Delivery Policy in order to better understand how we communicate with you. MS reserves the right to close your Account if you withdraw your consent to receive electronic Communications. Any electronic Communications will be considered to be received by you within 24 hours of the time we post it to our website or email it to you. Any communications sent you by postal mail will be considered to be received by you three (3) Business days after we send it.

### ***3.8 NOTICES TO MS***

Except as otherwise stated below, notices to MS must be sent by postal mail to: MerchantService.com, Attention: Office of the President, Interstate Park Corporate Center, 341 Interstate Blvd., Sarasota FL 34240.

### ***3.9 CALLS TO YOU; MOBILE TELEPHONE NUMBERS***

By providing MS a telephone number (including a mobile telephone number) you consent to receiving autodialed and prerecorded message calls from MS at that number. If we determine that a telephone number you have provided is a mobile telephone number, we may categorize it as such in our system and in your Account Profile, and you consent to receive text messages from us about your use of the MS Products and Services at that number.

#### **You are hereby notified:**

All directors, officers, employees, agents, vendors and associates of your company are hereby notified as required under the Florida Statutes 934 – SECURITY OF COMMUNICATIONS ACT that the MS phone system used in the ordinary course of business will record all inbound and outbound calls, and video recording will be made within the MS PCI DSS compliant office. And that placing or receiving any such call shall constitute your consenting to recording in compliance with the ACT.

### ***3.10 IDENTITY AUTHENTICATION***

You authorize MS, directly or through third parties, to make any inquires we consider necessary to validate your identity. This may include asking you for further identification, requiring you to provide a taxpayer identification number, requiring you to take steps to confirm ownership of your email account or financial instruments, ordering a credit report, or verifying your information against third party databases or through other sources.

### ***3.11 THIRD PARTY PERMISSIONS***

If you grant express permission to a third party to take specific actions on your behalf, or access particular information about your Account, either through your use of the third party's product or service or through your Account Profile, you acknowledge that MS may disclose the information about your Account that is specifically authorized by you to this third party. You also acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under this Agreement. Further, you acknowledge and agree that you will not hold MS responsible for, and will indemnify MS from, any liability arising from the actions or inactions of this third party in connection with the permissions you grant.

### **3.12 ACCURACY OF INFORMATION**

You are responsible for confirming the accuracy of all information you provide MS, including without limitation your Taxpayer Identification number, Bank account numbers, email address, telephone numbers, method of effecting sales, products and services you sell, and principals/owners of the business, as well as all other information you provide to MS. Further, you acknowledge and agree that you will not hold MS responsible for, and will indemnify MS from, any liability arising from the inaccuracy of any of your information.

## **4. RESTRICTED ACTIVITIES**

### **4.1 RESTRICTED ACTIVITIES**

In connection with your use of our web site, your Merchant Account, the MS Services, or in your course of interaction with MS, other users, or third parties, you will not:

- a.** Breach this Agreement, or any other agreement or policy that you have agreed to with MS;
- b.** Violate any law, statute, ordinance, or regulation (for example, those governing financial services. Consumer protection, unfair competition, anti-discrimination or false advertising);
- c.** Infringe MS's or any third parties copyright, patent, trademark, trade secrete or other intellectual property rights, or rights of publicity or privacy;
- d.** Act in a manner that is defamatory, trade libelous, threatening or harassing;
- e.** Provide false or misleading information;
- f.** Take any action that imposes an unreasonable or disproportionately large load on our infrastructure; facilitate any virus, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; use an anonymizing proxy; use any robot, spider, other automatic devise, or manual process to monitor or copy our website without our written permission; or use any devise, software or routine to bypass our robot exclusion headers, or interfere or attempt to interfere with our web site or the MS Services;
- g.** Take any action that may cause us to lose any of the services from our Internet service providers, payment processors, third party providers, or other suppliers.

## **5. FEES OVERVIEW**

MS will charge you fees based on your Merchant Service contracted program and other programs you may enroll in. Fees vary and may include as an example, among other fees to be collected, annual service fees, paper and supply fees for products you purchase, early termination fees, IRS TIN In-Validation fees, E-Merchant View monthly service fees and fees for other service programs you may enroll to use.

### 5.1

Our **eC PCI Compliance™** Certificate program to become compliant has recurring monthly billing of \$10.00. You should log onto MerchantService.com and register to access the **eC PCI Compliance™** Certificate compliance program site.

### 5.2

The **eC PCI Compliance™** Program also includes a monthly PCI Non-compliance fee. Should you choose NOT to complete the important **eC PCI Compliance™** Certificate program by the 20th of the fourth month after your account went live, you will be assessed a monthly PCI Non-compliance fee of \$19.95 on or before the 10th of the following month, and every month thereafter until you do become compliant. As an example, if your account went live on 9/10/2011, the 20th of the fourth month after your account went live would be 12/20/2011. And you would be billed the \$19.95 monthly fee on or before 1/10/2012, and every month thereafter until you completed the program and obtained your compliance Certificate

## 6. AUTHORIZATION TO CHARGE YOUR BANK ACCOUNT FOR FEES

### 6.1

By agreeing to these terms, you are giving MS permission to charge your bank account for fees and other amounts or charges that you authorize for MS. Depending on your Agreement with MS, MS may charge your bank account on a one-time, annual, sporadic, or recurring basis.

### 6.2

Your bank account will become your payment method on file with MS for automatic payment of your MS fees. If you previously had another payment method on file for automatic payment of fees, your bank account will replace that method.

### 6.3

If you change your merchant account from a MS provisioned account to a non MS provisioned account this Agreement will not be cancelled. Separate Cancellation Notice is required to terminate this Agreement as other service programs may continue on uninterrupted after you have terminated your MS provisioned merchant account.

### 6.4

If this Agreement is cancelled, or if payment of your MS fees through your bank account cannot be completed for any reason, you remain obligated to pay MS for all unpaid fees, and MS may charge a payment method previously on file with MS for payment of all unpaid fees, such as a credit card or other electronically accessible account.

### 6.5

You authorize MS to initiate debit and/or credit entries and if necessary, adjusting entries for any credit and/or debit entries made in error to your current checking account as provided for in the Merchant Agreement,

hereinafter called “Bank” to credit and/or debit the same to such account(s). You further authorize MS to debit said account for such amount allowed by law in the event an ACH Debit entry is rejected by the Bank. This authorization is to remain in full force and effect until MS has received written notification from you in such time, but no less than fifteen (15) business days before any payments are due to be made, and in such manner as to afford MS and Bank a reasonable opportunity to act on it. You also authorize your Bank to accept any correction or adjustment transaction made under this Agreement if an error has been made. You also understand that the Bank at which you have the designated account is required to provide to you the procedures for resolving errors on entries made under this Agreement. You hereby hold MS and Assigns harmless from any liability except for loss of funds transferred to an account not designated in the Merchant Agreement in force at the time of the transfer.

## **7. DISPUTES WITH MS**

### ***7.1 CONTACT MS FIRST***

If a dispute arises between you and MS, our goal is to learn about and address your concerns and respond promptly in an attempt to resolve the matter. If we are unable to do so to your satisfaction, we will provide you with a neutral and cost effective means of resolving the dispute quickly through the Better Business Bureau. Disputes between you and MS regarding the MS Services may be reported to Customer Service through email to [support@merchantservice.com](mailto:support@merchantservice.com), or by calling **888-288-3816** from 8:30 Am to 5 PM Monday through Friday, Eastern Time.

### ***7.2 ARBITRATION***

Excluding claims for injunctive or other equitable relief, if we do not agree to provide you the relief you requested, you may elect to resolve the dispute in a cost effective manner through the Better Business Bureau online dispute resolution process at [www.BBBWestFlorida.org](http://www.BBBWestFlorida.org). We agree to make a good faith effort to resolve the dispute, which may include mediation if requested by the BBB at no charge to you. If our efforts to resolve the dispute fail and you disagree with the results of the BBB mediation, you may pursue a Binding Arbitration action. To proceed with the Binding Arbitration action you agree to pre-pay a fee of \$150.00 (or the fee then in effect as it may vary from time to time) to the [www.BBBWestFlorida.org](http://www.BBBWestFlorida.org) to start the process and we both agree to comply with any settlement, agreements or decisions reached as an outcome of the BBB Binding Arbitration dispute resolution process.

### ***7.3 ARBITRATION PROCESS***

When you elect to pursue BBB Binding Arbitration and pre-pay your \$150.00 fee, then we must both comply with the [BBB Rules of Binding Arbitration](#), which we agree to honor with you, and any judgment of a award rendered by the arbitrator may be entered in any court of competent jurisdiction.

### ***7.4 LAW AND FORUM FOR DISPUTES***

Except as otherwise agreed by the parties in Section 7.2 and 7.3 above, you agree that any claim or dispute you may have against MS must be resolved by a court located in Sarasota County, Florida. You agree to submit to the

personal jurisdiction of the court located in Sarasota County, Florida for the purpose of litigating all such claims or disputes. This Agreement shall be governed in all respects by the laws of the State of Florida.

You absolutely, unconditionally, knowingly and expressly waive:

1. Any right you may have to assert the doctrine of Forum Non Conveniens or to object to venue to the extent any action or proceeding is brought according to this section; and
2. The Parties specifically waive the right to a jury trial in any matter with respect to this Agreement or any instrument or document delivered pursuant to this Agreement. Each party shall bear its own expenses and attorneys' fees incurred in connection with this dispute resolution procedure and any court action. The prevailing party in any court action shall be entitled to an award for reasonable attorney fees and associated costs and expenses.

#### **7.5 IMPROPERLY FILED LITIGATION**

All claims you bring against MS must be resolved in accordance with Section 7 of this Agreement. All claims brought contrary to Section 7 shall be considered improperly filed and a breach of this Agreement. Should you file a claim contrary to Section 7, MS may recover attorney fees and costs (including in-house resources) up to \$2,500.00 USD, provided that MS has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

#### **7.6 INSOLVENCY PROCEEDINGS**

If any proceeding by or against you is commenced under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, MS will be entitled to recover all reasonable costs or expenses (including staff resource costs, reasonable attorney fees and expenses) incurred in the enforcement of this Agreement.

#### **7.7 NO WAIVER**

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

#### **7.8 INDEMNIFICATION**

You agree to defend, indemnify and hold MS, its parent, the officers, directors, agents joint ventures, employees, vendors and suppliers of MS or its parents, harmless from any claim or demand (including staff costs and attorney fees and expenses) made or incurred by any third party due to or arising out of your breach of this Agreement and/or your use of the MS Services.

#### **7.9 RELEASE OF MS**

If you have a dispute with one or more of our third party service providers including the Bank or Processor, you release MS (and our parent, the officers, directors, agents joint ventures, employees, vendors and suppliers of MS or its parents) from any and all Claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. In addition, you waive any protection available to you under California Civil Code §1542, which says: (a) general release does not extend to claims which the

creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor.

## **8. GENERAL PROVISIONS**

### ***8.1 LIMITATIONS OF LIABILITY***

IN NO EVENT SHALL WE, OUR PARENT, THE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES, VENDORS, THIRD PARTIES AND SUPPLIERS OF MS OR OUR PARENT BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH OUR WEBSITE, SERVICES, OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE). Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation or exclusion may not apply to you. OUR LIABILITY, AND THE LIABILITY OF OUR PARENT, THE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES, VENDORS, THIRD PARTIES AND SUPPLIERS OF MS OR OUR PARENT, TO YOU OR TO ANY THIRD PARTIES IN ANY CIRCUMSTANCES IS LIMITED TO THE ACTUAL AMOUNT OF DIRECT DAMAGES.

### ***8.2 NO WARRANTY***

THE MS SERVICES ARE PROVIDED “AS IS” AND WITHOUT ANY REPRESENTATION OF WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY. MS, OUR PARENT, THE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES, VENDORS, THIRD PARTIES AND SUPPLIERS OF MS OR OUR PARENT SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

MS does not have any control over the products and services that are paid for with the MS Services and MS cannot ensure that a buyer or a seller you are dealing with will actually complete the transaction or is authorized to do so. MS does not guarantee continuous, uninterrupted or secure access to any part of the MS Services, and operations of our site may be interfered with by numerous factors outside of our control. MS will make reasonable efforts to ensure that requests for electronic debits and credits involving bank accounts, credit cards, and checks are processed in a timely manner but MS makes no representations or warranties regarding the amount of time needed to complete processing because the MS Services are dependent upon many factors outside of our control, such as delays in the banking system or the U.S. or international mail service. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimers may not apply to you. This paragraph gives you specific legal rights and you may also have other legal rights that vary from state to state.

### ***8.3 COMPLETE AGREEMENT***

This Agreement, along with any applicable policies and agreements pages on the MS website, sets forth the entire understanding between you and MS with respect to the MS Services. Sections one through eight, as well as any other terms which by their nature should survive, will survive termination of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced.

## **9. eC PCI Compliance™**



### **9.1 TERMS OF USE**

These Terms of Use are made as of this day, by and between MS and its Assigns, Justified Data Security LLC, a Virginia limited liability company ("Assigns"), and you (the "Account Holder") on behalf of you and on behalf of the owners of any domains you administer.

### **9.2 APPLICABILITY OF THESE TERMS OF USE; AMENDMENT TO THESE TERMS OF USE**

These Terms of Use sets forth the terms and conditions that apply to your access and use of [www.MerchantService.com](http://www.MerchantService.com) and [www.JDSCompliance.com](http://www.JDSCompliance.com). MS and Assigns may amend or revise these Terms of Use at any time. By using these sites, you agree to be bound by the Terms of Use as in effect from time to time. Please review the Terms of Use regularly. Your continued access and use of [www.MerchantService.com](http://www.MerchantService.com) and [www.JDSCompliance.com](http://www.JDSCompliance.com) following the posting of any such changes shall be deemed your acceptance of the same.

### **9.3 ENTIRE AGREEMENT**

You acknowledge that these Terms constitute the entire agreement between you, MS and Assigns pertaining to your use of the Services. You agree that these terms supersede any prior agreements or statements made verbally or in writing concerning your use of the Services.

### **9.4 TERM AND TERMINATION**

You agree that the initial term of this agreement shall be twelve (12) months and shall remain in effect for as long after that as you subscribe to, renew, or use the Services. You agree that this agreement can only be terminated by you once you have stopped using the Services and have paid all monies owed to MS.

You agree that your termination request must be delivered via written notice to [MerchantService.com](http://MerchantService.com), 600 8<sup>th</sup> Avenue West, Suite 20, Palmetto, FL 34221 or via email at [compliance@MerchantService.com](mailto:compliance@MerchantService.com). Upon termination, the Account Holder will be responsible for current charges up to and including the day of termination, including outstanding balances and late fees. You agree that MS and Assigns can terminate this agreement at any time for any reason, with or without cause and that such termination will result in the termination of your account. Re-subscription shall again be subject to these or modified Terms in effect at the time of re-subscription.

### **9.5 AUTO RENEWAL**

The Paying Account Holder's account will automatically renew on a yearly basis, unless either party suspends or terminates the account ninety (90) days in advance of the monthly renewal date agreed to by the parties.

### **9.6 GOVERNING LAW; JURISDICTION AND VENUE**

Limited in regards to a dispute with the PCI Compliance Service, these Terms of Use are to be governed and construed in accordance with the laws of the State of Florida or Virginia as the MS chooses, without regard for principles of conflicts of laws. All provisions of Section 7 pertain herein.

### **9.7 IDENTIFICATION OF IP ADDRESSES**

a. Because of the sensitive nature of performing security checks on IP addresses, Account Holder represents and warrants that it has full right, power, and authority to consent to have the service test for vulnerabilities ("scan")

the IP addresses identified to MS and Assigns for scanning, whether electronically or by any other means, whether at the time of initial purchase or thereafter. Account Holder further agrees to immediately notify MS and Assigns if, at any time, it changes the IP address of its primary website or any other that it has contracted with MS and Assigns to scan without limiting any other remedy that MS and Assigns may have, Account Holder agrees to indemnify and hold MS and Assigns, its employees, board of directors, shareholders and its partners harmless from and against any and all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorneys' fees and costs, incurred by MS and Assigns, its employees, board of directors or shareholders, or such partner resulting from Account Holder's breach of this section.

**b.** Account Holder also acknowledges and agrees that the scanning of such IP addresses may expose vulnerabilities and in some circumstances could result in the disruption of services at such site(s).

### ***9.8 OWNERSHIP, INTELLECTUAL PROPERTY, LINKS AND TRADEMARKS***

The Service is owned and operated by MS and Assigns. The trademarks, logos, service marks (the "Marks") displayed on the Website are owned by MS. Your use of the Website or the Service confers no rights to the Marks and you may not use, reproduce or display a Mark without MS's prior written consent.

### ***9.9 VALIDATION OF COMPLIANCE***

The MerchantService.com web portal provides a web based tool for Level 4 merchants to achieve and maintain compliance with the most current PCI DSS requirements. Self Assessment Questionnaires are answered by the User and the User attests that the answers provided are true and correct to the best of their knowledge. MS and Assigns relies on this information when validating compliance with the PCI DSS requirements. User agrees that information provided on the web portal was supplied by the User and to the best of our knowledge is correct.

In validating compliance MS and Assigns does not make any representation as to their currency or accuracy. MS and Assigns disclaims liability and responsibility for any and all loss, damage, or inconvenience suffered by any person, company, corporation or partnership or other entity as a result of use of such contact and descriptive details, as provided in this web portal. Anyone proposing to use or rely on such information should seek confirmation of the accuracy and currency of such information directly from the User concerned. The user hereby agrees that the use of the information provided therein is at his/its own risk and responsibility. MS and Assigns shall not be liable for any damages (including but not limited to damages resulting from loss of business or loss of profit) arising in contract, tort or otherwise, from the use or inability to use this web portal, or any link contained therein, or from any action or decision taken as a result of using such web portal or any link, material or information contained therein.

### ***9.10 RIGHT TO DISPLAY THE COMPANY AND ASSIGNS CERTIFICATION SEALS***

You agree to place the HTML source code only on sites provided by MS and Assigns for the display of the MS and Assigns Certification seals. You agree to only place this HTML code on sites that are approved by MS and Assigns. The MS and Assigns Certification seals shall at all times be served only from MS and Assigns 's designated servers and remain under the full control of you, MS and Assigns. MS and Assigns shall have the right to discontinue the serving of the MS and Assigns Certification seals should any Web site, or other device being scanned that is used in connection with the Web site or its services fail to meet the MS and Assigns certification guidelines. Removal of MS and Assigns Certification seals for reasons stated in the previous sentence does not relieve any financial

obligation you have to MS nor does it constitute any responsibility for MS and Assigns to provide refunds during the time that the seals are not displayed. Should you discontinue services with MS and Assigns you agree to immediately remove all HTML source code supplied by MS and Assigns from your servers. You are prohibited from using the MS and Assigns Certification seals for or on behalf of any other organization or in connection with any domain name and/or organization name other than those approved by MS and Assigns, and enrolled and established under your User Account. The MS and Assigns Certification Seals shall reside on MS and Assigns' server. You will not alter the MS and Assigns' seals in any form, change the data contained within the image, change the file name of the image, or artificially change the size or shape of the image(s). The right to display the Certification Seals is a non-exclusive, limited license which may be revoked at any time at the sole discretion of MS and Assigns.

### **9.11 COPYRIGHTS**

The Website and all its contents ("Content") are copyrighted, and such copyrights are owned by MS and Assigns or the author of such content. You are granted a non-exclusive, limited license to view, print, and/or distribute Content in hard copy from the Website provided that:

- a. you use the Content for your personal or internal business use and not for any purpose contrary to MS and Assigns' commercial interests;
- b. you do not copy, use or place any Content on any network or other website for any purpose other than as contemplated by this agreement.
- c. you do not modify, alter, or create derivative works of, the Content; and
- d. you include MS and Assigns' copyright notice on such Content as follows: Copyright MS and Assigns, All Rights Reserved. The license may be revoked at any time at the sole discretion of MS and Assigns and shall automatically be revoked if your User Account, as defined below, is revoked.

### **9.12 RIGHTS AND MARK**

Except as expressly provided herein, nothing included in the Website or the Service is intended, nor shall be construed, as conferring any rights under any Mark, copyright, or patent.

### **9.13 LINKS TO THIRD-PARTY SITES**

The Website may contain links to third-party sites. You acknowledge and agree that MS and Assigns is not responsible or liable for the content, information, services, or products of such third-party sites. You expressly assume all risk of accessing third-party sites. Links to a third-party site do not constitute endorsement of that site by MS and Assigns.

### **9.14 ACKNOWLEDGEMENT AND CONSENT TO INTRUSION**

Account Holder understands and acknowledges that, in some situations, based on analysis of Account Holder practices by MS and Assigns, certain automated or manual system probes to identify website and network vulnerabilities (the "Evaluation Services")

1. Will be inherently invasive and intrusive, and include attempts by MS and Assigns or its agents, as applicable, to gain unauthorized access to Account Holder's systems in an effort to make Account Holder aware of those areas in which Account Holder's system is vulnerable to intrusion, damage, and/or unauthorized use,
2. May result in inadvertent damage to Account Holder's system as a result of dissimilarities among network systems,
3. May cause excessive amounts of log messages resulting in excessive disk space consumption, and
4. May cause degradation of Account Holder's system as a result of attempts to penetrate it including, but not limited to possible "slowdowns", "hanging" or "crashing" of Account Holder's system, possible failure of Account Holder's system as a result of attempts to invade it, or any other damage resulting from intrusive and/or invasive techniques used to gain access to Account Holder's system. Account Holder hereby gives its informed consent to intrusion into Account Holder's systems by MS and Assigns and its agents for the sole purpose of performing the Evaluation Services provided herein.

## ***9.15 REGISTRATION AND PAYMENT FOR THE SERVICE***

### **a. Accounts and Account Holders**

These Terms of Use are made as of this day, by and between the MS and the Account Holder. You agree to provide truthful and accurate account information for purposes of registration to use the Service and creation of a MS and Assigns Account.

### **b. Password and Security**

An Account Holder must select the login names for each "Account Holder." The Account Holder is solely responsible for all activity of the Account Holders it has authorized to use its MS and Assigns Account. Confidentiality of the passwords and login names is the sole responsibility of the Account Holder. The Account Holder agrees to immediately notify MS and Assigns if the security of his/her account is compromised. The user name and password shall be referred to as the User Account.

You acknowledge and agree MS and Assigns is not liable for any damages resulting from any other parties use of access of Account Holders' User Account regardless of whether other parties use or access is with or without the Account Holder's knowledge or consent. Account Holder may end authorization by administrating the user through the Website or by providing notice to [compliance@MerchantService.com](mailto:compliance@MerchantService.com). Such notice will be effective upon confirmation by MS and Assigns, via email, of receipt.

### **c. Default**

Account Holder will be in default under these Terms if it, without limitation

1. Is a Account Holder who fails to pay any amount when due,
2. Fails to comply with any provision of these Terms, or
3. Makes any representation that is or becomes inaccurate or untrue. Upon default, MS and Assigns may
  1. Terminate all or any part of the Service and the User Account, and/or
  2. Take any other lawful action MS and Assigns deems appropriate to enforce Account Holder's performance of these Terms and/or obtain damages for Account Holder's breach. In the event of default, Account Holder agrees to pay all costs and reasonable attorney's fees MS and Assigns incurs in enforcing its rights or collecting payment under this Agreement. Nothing in this paragraph is meant to limit MS and Assigns' rights under the contract, common law or equity.

### **9.16 CONFIDENTIALITY**

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