

GOEMERCHANT, LLC
SECURE INTERNET PAYMENT SERVICE AGREEMENT TERMS AND
CONDITIONS

This Agreement is made as of the Effective Date between GoMerchant, LLC and the Internet merchant that, personally or through an agent, accepts the Agreement as provided.

1. DEFINITIONS

- a) “GoMerchant, LLC Payment Server” means a system operated by or for GoMerchant, LLC that communicates with the Software to permit access to electronic payment services offered by GoMerchant, LLC.
- b) “Effective Date” means the date that Merchant accepts the terms of this Agreement in accordance with Section 12 below.
- c) “Payment Data” means data derived from Payment Messages transported by GoMerchant, LLC for Merchant.
- d) “Payment Message” means a message that relates to a payment card transaction as follows:
 - (i) Type 1 Messages:
 - Successful Merchant Initiated Authorization Transaction.
 - Successful Void Transaction.
 - Successful Credit Transaction.
 - Unsuccessful Processor Did Not Respond Transaction.
 - Successful Declined by Processor Transaction.
 - Successful Failed by Processor Transaction.
 - Reversal
 - ii) Type 2 Messages
 - Successful Settlement Request Transaction.
- e) “Processor” means a payment card processor that accepts Payment Messages from GoMerchant, LLC and processes payment card transactions for Merchant.
- f) “Service” means (i) the transport to a Processor of Payment Messages received by GoMerchant, LLC from Merchant (or its agent) and (ii) the operation of the GoMerchant, LLC Payment Server to manipulate, store, and provide access by Merchant to its Payment Data.
- g) “Software” means a software program that communicates with the GoMerchant, LLC Payment Server and complies with applicable interface requirements established by GoMerchant, LLC.

h)"State Agency" means an agency or instrumentality of a state or territory of the United States.

2. TERM; NON-EXCLUSIVE

a) Term. This Agreement shall become effective on the Effective Date and shall continue until it is terminated as provided below.

b) Non-exclusive. Nothing in this Agreement shall prohibit Merchant from obtaining from other parties services that are the same as, similar to, or competitive with, the Service. Nothing in this Agreement shall prohibit GoMerchant, LLC from furnishing the Service to others, including competitors of Merchant.

3. FEES

a) Generally. GoMerchant, LLC receives payment for the Service, either directly from merchants or through third party service providers such as processors, acquiring banks, Internet service providers, or card service organizations. During the registration process, GoMerchant, LLC will determine if it will receive payment directly from Merchant or from a service provider. If Merchant is to be billed by GoMerchant, LLC directly, Merchant will be presented with an addendum to this Agreement describing the fees and the method of payment (the "Payment Addendum") before the Service will be made available for use. If Merchant does not agree to the terms of the Payment Addendum as presented, this Agreement shall terminate.

b) Change in Billing Party.

i) If GoMerchant, LLC is to be paid for the Service by a service provider of Merchant, and if GoMerchant, LLC ceases to receive payment from that service provider for any reason, GoMerchant, LLC may charge Merchant the fees then applicable to the Service in accordance with the then current Payment Addendum. GoMerchant, LLC will provide Merchant the then current Service Agreement and Payment Addendum at least 10 days in advance of the date on which such fees are to become effective. Upon receipt of the then current Service Agreement and Payment Addendum, Merchant may elect either (A) to accept the terms of the then current Service Agreement and Payment Addendum and continue to receive the Service, or (B) terminate this Agreement as provided below. If Merchant fails to make either election, GoMerchant, LLC may terminate this Agreement without further notice to Merchant.

ii) If GoMerchant, LLC is to be paid for the Service by Merchant and Merchant elects to accept billing for the Service from a service provider with which GoMerchant, LLC has a billing relationship, Merchant or service provider shall notify GoMerchant, LLC of such election in writing and GoMerchant, LLC will cease billing Merchant for the Services commencing not later than the second month following the receipt of such notice.

4. UNDERTAKINGS OF GoMerchant, LLC

a) Payment Messages. GoMerchant, LLC will transport to Merchant's Processor for authorization and, if appropriate, for settlement those Payment Messages accepted by such processor. GoMerchant, LLC will receive and transport the processor's responses to Merchant. GoMerchant, LLC may, in its sole discretion, transport Type 2 Messages for which Type 1 Messages were not transported by GoMerchant, LLC using the Service.

b) Electronic Statement. If Merchant is presented with and accepts the terms of the Payment Addendum, GoMerchant, LLC will each month present Merchant an electronic statement in accordance with the payment Addendum.

c) Service Standard.

i) GoMerchant, LLC shall make all commercially reasonable efforts to maintain the Service in operation 24 hours a day, seven days a week, normal maintenance periods excluded.

ii) GoMerchant, LLC will provide the Service in a manner that (A) protects the confidentiality of data transmitted using the Software and (B) that will detect unauthorized modification or alteration of data that occurs during transmission.

iii) Except as authorized by Merchant, GoMerchant, LLC shall not disclose to any third party information in GoMerchant, LLC's possession regarding Merchant's Payment Messages; provided that GoMerchant, LLC may disclose (A) such information as is necessary to verify Merchant's identity, resolve disputes, to permit Processor to process transactions, or comply with the requirements of law or orders of a court or other governmental body; and (B) aggregate data about the Service provided that such data is not attributable to Merchant.

d) Limitations. GoMerchant, LLC's obligations described above are subject to the following limitations:

i) Messages that originate from the server of Merchant or its agent (e.g., a host) and received in the same form as sent are deemed to be authorized by Merchant.

ii) GoMerchant, LLC is not responsible for the security of data residing on the server of the Merchant, or a third party designated by a Merchant (e.g., a host).

iii) GoMerchant, LLC shall have no liability for any failure or delay in performing its obligations under Section 4(c) if such failure or delay results from (A) Merchant's act or omission; (B) actions GoMerchant, LLC takes in a reasonable good faith effort to avoid violating a law, rule or regulation of any governmental authority; or (c) circumstances beyond GoMerchant, LLC's control.

iv) Information regarding Merchant's account and transactions may be accessible using a password protected remote access system. GoMerchant, LLC is not responsible for the use, deletion, or modification of any such information if Merchant is registered by a third party, is billed through a third party, or otherwise permits a third party to access such information.

e) Compliance With Law. GoMerchant, LLC shall at all times comply with applicable laws, rules and regulations insofar as relevant to its provision of the Service.

5. UNDERTAKINGS OF MERCHANT

a) Authorization

- i) Merchant shall cause its Processor or acquiring financial institution to provide GoMerchant, LLC the identification numbers or codes that identify Merchant to its Processor and acquiring financial institution.
- ii) Merchant authorizes GoMerchant, LLC to transport Merchant's Payment Message to Merchant's Processor and to cancel any Payment Message sent to Merchant's Processor due to an error, fraud or unauthorized transaction.

b) Fees. If Merchant is presented with and accepts the terms of the Payment Addendum, Merchant will pay the fees specified in such addendum in accordance with the payment instructions therein.

c) Use of the Service

- i) Merchant shall not use the Service in any manner, or in furtherance of any activity, which constitutes a violation of any law or regulation or which may cause GoMerchant, LLC to be subject to investigation, prosecution or legal action.
- ii) If GoMerchant, LLC or its licensee has licensed the Software to Merchant or its agent, Merchant shall use, or shall cause its agent to use, the Software in accordance with the terms of the license.

d) Limitations. Merchant shall have no liability for any failure or delay in performing its obligations under this Agreement if such failure or delay results from (i) GoMerchant, LLC's act or omission; (ii) actions Merchant takes in a reasonable good faith effort to avoid violating a law, rule or regulation of any governmental authority; or (iii) circumstances beyond Merchant's control.

e) Customer Support. Merchant shall provide a commercially reasonable level of customer support to purchasers with respect to sales using the Service. Such support shall include appropriate notice to purchasers of (i) a means of contacting Merchant in the event the purchaser has questions regarding the nature or quality of the goods or services that Merchant offers for sale, and (ii) procedures for resolving disputes. If GoMerchant, LLC determines in good faith that Merchant's failure to comply with this paragraph is causing an unacceptable burden on its customer support facilities, GoMerchant, LLC may, after consulting with Merchant, suspend or terminate this Agreement on 30 days notice.

f) Compliance With Law. Merchant shall at all times comply with applicable laws, rules and regulations insofar as relevant to its use of the Service.

6. WARRANTY; DISCLAIMER OF WARRANTY

a) Year 2000 Compliance. GoMerchant, LLC warrants that the Service is "Year 2000 Compliant" in that it will (i) accept input and provide output of data involving dates or

portions of dates before, during and after January 1, 2000, in a consistent, defined, disclosed and unambiguous manner as to the appropriate century; (ii) manage, store, manipulate, sort, sequence and perform calculations with respect to data involving dates or portions of dates before, during and after January 1, 2000, consistently and accurately; and (iii) operate continuously and without error, malfunction or interruption caused by or resulting from the change of centuries from 1999 to 2000, or the transition from any date to any other date.

b) Limitations. Notwithstanding the foregoing, GoMerchant, LLC shall have no liability under this warranty to the extent that any failure of the Service to be Year 2000 Compliant results from (i) Merchant's failure to install within a reasonable period specified by GoMerchant, LLC any updates or modifications to any software provided by GoMerchant, LLC which is necessary to use the Service ("GoMerchant, LLC Software"); (ii) modification of GoMerchant, LLC Software by Merchant or its agent in a manner not expressly authorized by GoMerchant, LLC; (iii) the use, interaction, or interface of GoMerchant, LLC Software or the Service with any software, hardware, or data that is not Year 2000 Compliant; (iv) failure by software integrators to follow documented interface specifications for GoMerchant, LLC Software, or to use and configure GoMerchant, LLC Software for use in accordance with its related documentation; or (v) GoMerchant, LLC's having accepted input or provide output of data from the Service or the GoMerchant, LLC Software in a format or using a protocol that is not Year 2000 compliant and is specified by a Merchant, a payment processor, or a third party other than GoMerchant, LLC.

c) Remedy. GoMerchant, LLC's sole obligation, and Merchant's sole remedy, under this Section 6 is that GoMerchant, LLC will make commercially reasonable efforts to repair, or at its option to replace, any nonconforming software or systems with conforming software and systems, provided that GoMerchant, LLC does not warrant that such efforts will be successful. If GoMerchant, LLC's efforts are not successful, Merchant may terminate this Agreement in accordance with Section 10.

d) Disclaimer. GoMerchant, LLC **DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MERCHANT ACKNOWLEDGES THAT THE SERVICE MAY NOT BE UNINTERRUPTED OR ERROR FREE.**

7. LIMITATION OF LIABILITY

a) No Consequential Damages. The parties hereto and their vendors (and any officers, directors, employees and agents of the parties and their vendors) shall be liable only for direct, out-of-pocket damages, and shall not be liable for any consequential, incidental or indirect damages under any theory or cause of action whether in tort, contract or otherwise, regardless of whether the party has been advised of the possibility of such damages.

b) No Punitive Damages. Except for claims arising from criminal or willful misconduct, the parties agree not to seek punitive or exemplary damages.

c) Amount. The liability of GoMerchant, LLC with respect to any claim under this Agreement shall be limited to the amounts received by GoMerchant, LLC from Merchant in respect of the Service (whether directly from Merchant or through a service provider) during the 3 months preceding the date GoMerchant, LLC receives notice of the claim.

8. INDEMNIFICATION

a) Indemnification by GoMerchant, LLC. GoMerchant, LLC shall indemnify, defend, and hold harmless Merchant against all loss, damage or expense of any kind, including attorneys' fees and costs of litigation, arising from claims of a third party (including claims, assertions and investigations of a governmental agency), which claims arise in whole or part from:

- i) infringement of a patent, copyright, trademark, or other intellectual property right by the Service;
- ii) negligence or willful misconduct of GoMerchant, LLC or its employees or agents; or
- iii) breach of an obligation of GoMerchant, LLC to Merchant under this Agreement.

b) Indemnification by Merchant. Merchant shall indemnify, defend, and hold harmless GoMerchant, LLC against all loss, damage or expense of any kind, including attorneys' fees and costs of litigation, arising from claims of a third party (including claims, assertions and investigations of a governmental agency), which claims arise in whole or part from:

- i) negligence or willful misconduct of Merchant or its employees or agents;
- ii) distribution, display, or offering for sale of information or content that infringes a patent, copyright, trademark, or other intellectual property right or contains libelous, slanderous, or obscene material; or
- iii) breach of an obligation of Merchant to GoMerchant, LLC under this Agreement.

c) Procedure. In the event a party becomes aware of a claim described in Sections 8(a) or 8(b) for which it may seek indemnification (the "Indemnified Party"), the Indemnified Party shall promptly give the other party (the "Indemnifying Party") written notice of the claim and permit the Indemnifying Party to assume the defense of the claim. The Indemnified Party shall cooperate fully in defense of the claim, and the Indemnifying Party shall pay the Indemnified Party's costs and expenses as incurred. The Indemnifying Party shall have no liability under this Section 8 unless the Indemnified Party has complied with its obligations under this paragraph.

d) Prevention of Infringement. If the Service or any component of the Service becomes, or in GoMerchant, LLC's opinion is likely to become, the subject of a claim of infringement, then Merchant shall permit GoMerchant, LLC, at its option and expense, either (i) to procure for Merchant the right to continue using the Service as permitted in this Agreement, or (ii) to replace or modify Service or the infringing component of the

Service so that it becomes noninfringing. If, after using commercially reasonable efforts, GoMerchant, LLC is unable to cure the infringement, either party may terminate this Agreement upon notice to the other.

e) Exceptions. If Merchant is a State Agency that is precluded by the law of its state from entering into indemnification obligations, then the obligations under Section 8(b) and 8(c) shall apply only to the extent permitted by such state law.

9. USE OF MARKS. GoMerchant, LLC Trademarks. GoMerchant, LLC hereby grants Merchant a non-exclusive, royalty-free limited license to use, display and reproduce the trademarks, service marks, and logos of GoMerchant, LLC (the “ Marks”) solely in connection with Merchant’s offering and marketing of the Service to the public, provided that nothing herein constitutes a license to use any Mark as part of an Internet domain name. Merchant shall use the Marks in accordance with reasonable policies published by GoMerchant, LLC from time to time.

10. TERMINATION

a) Termination and Suspension.

i) GoMerchant, LLC may, in its discretion, suspend the Service on 5 days notice and terminate this Agreement on 15 days notice for non-payment of any sum due GoMerchant, LLC from Merchant)or Merchant’s service provider) under this Agreement unless Merchant cures the non-payment within that period.

ii) GoMerchant, LLC may suspend and/or terminate this Agreement without notice and without liability:

(A) upon receipt of notice from Merchant’s processor or acquiring bank that Merchant is no longer entitled to send Payment Messages to Merchant’s processor; or

(B) upon receipt of notice from Merchant’s service provider that it has terminated or suspended its relationship with Merchant.

b) Termination for Breach. In addition to any other termination rights granted by this Agreement, either party may terminate this Agreement on 30 days written notice for material breach by the other of any of its obligations hereunder unless such breach is cured within such 30-day period.

c) Termination for Convenience.

i) Merchant may terminate this Agreement for any reason without liability by providing GoMerchant, LLC at least 30 days notice of such termination. GoMerchant, LLC may revise the termination procedures from time to time.

ii) GoMerchant, LLC may terminate this Agreement for any reason without liability on 30 days notice to Merchant.

d) GoMerchant, LLC reserves the right to discontinue service to any merchant due to what GoMerchant, LLC deems to be, in its sole discretion, racist or pornographic content published by the merchant.

e) Termination in Case of Violation of Law. Either party may terminate this Agreement immediately without liability if (i) the terminating party is notified or otherwise determines in good faith that the other party is using or providing the Service in furtherance of any activity which violates any law, rule, or regulation or (ii) the terminating party, or its directors, officers, stockholders, employees or agents are made the subject of a criminal or civil action or investigation or are threatened by such action as a consequence of the other party's use or provision of the Service.

11. GENERAL PROVISIONS

a) Entire Agreement. This Agreement constitutes the entire agreement between Merchant and GoMerchant, LLC pertaining to the subject matter hereof and supersedes in their entirety all written or oral agreements between the parties pertaining to the Service.

b) Relationship Between Parties. The parties to this Agreement are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents or other representatives of the other party hereto. Neither party shall make any representation that suggests otherwise.

c) Severability. If any provision of this Agreement is determined to be unenforceable for any reason, then the remaining provisions hereof shall remain unaffected and in full force and effect.

d) Modifications. Any modification, amendment, supplement, or other change to this Agreement must be in writing and signed by a duly authorized officer of GoMerchant, LLC and a duly authorized officer of Merchant. Neither party's failure to object to any term or condition in any written or oral communication from the other party, whether delivered before or after the date hereof, shall constitute an acceptance thereof or a waiver of any term or condition hereof.

e) Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that either party, without the other party's consent, may assign this Agreement in connection with any merger, acquisition or similar combination or to an entity that controls or is controlled by that party. This Agreement shall apply to and bind any successor or permitted assigns of the parties hereto.

f) Dispute Resolution. Except with respect to disputes arising out of claims involving intellectual property, disputes arising out of this Agreement will be resolved by binding arbitration before a single arbitrator in accordance with the rules of the American Arbitration Association or any mutually agreed arbitral tribunal. The arbitrator shall have no authority to award punitive or exemplary damages. Each party shall bear its own costs and expenses associated with the resolution of any such dispute and shall share equally the costs of the arbitrator and administering body.

Arbitration proceedings will be held in Camden County, New Jersey, provided that if Merchant is a State Agency, arbitration proceedings will be held in the state in which Merchant is located.

g) Rights And Remedies. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. Except as provided in Section f) above, if any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive. No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement may be brought by either party more than one year after the cause of action has accrued.

h) Survival Of Provisions. Notwithstanding any other provision to the contrary herein, terms which by their nature survive termination or expiration of this Agreement shall bind the parties following any expiration or termination of this Agreement.

i) Liability Upon Expiration. Neither party shall be obligated to extend or renew this Agreement.

j) Notices. Except where this Agreement specifies "written notice" or as may otherwise be required by law, all notices by one party to the other under this Agreement shall be given by Internet electronic mail to the address specified below. Where this Agreement specifies "written notice," in addition to notice by electronic mail, the notifying party shall send a contemporaneous confirming written copy by any established receipted delivery service to:

GoEmerchant, LLC
1 Mall Drive
Suite 515
Cherry Hill, NJ 08002
Phone: 1-888-638-7867
Fax: 1-866-926-4499

12.) ACCEPTANCE OF USE. GoEmerchant, LLC reserves the right to accept or reject merchants at its own discretion and this discretion is not limited in any manner whatsoever.