

MASTER SERVICES AGREEMENT

Last Updated: July 1, 2023

THIS MASTER SERVICES AGREEMENT ("Agreement" or "MSA") DATED AS OF THE CONTRACT START DATE OF THE APPLICABLE ORDER FORM(S) IS MADE BY AND BETWEEN INTERPAYMENTS INC. ("InterPayments") AND THE CUSTOMER IDENTIFIED IN THE APPLICABLE ORDER FORM ("Customer"). THE INDIVIDUAL WHO ACCEPTS OR AGREES TO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY BY EXECUTING AN ORDER FORM, REPRESENTS AND WARRANTS THAT HE, SHE OR THEY HAS THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THIS AGREEMENT. "Party" means InterPayments or Customer individually, and "Parties" means InterPayments and Customer collectively.

1. DEFINITIONS

- 1.1 "**Aggregated Use Data**" means data concerning the use, performance, and measurement data created by, or made available through the Services. These data may be related to or derived from Customer's use of the Services. Aggregate Data does not include any Personal Information relating to Customer, Authorized Users, or Customer's clients or customers. Aggregated Use Data does not identify or permit identification of an individual user or customer, nor does it include any Card Data.
- 1.2 "**Applicable Law**" means all federal, state, provincial or local laws, rules, regulations applicable to an activity carried out or proposed to be carried out by a Party under this Agreement.
- 1.3 "**Authorized Users**" means any individual (a) authorized by Customer to access the Services and (b) that has been supplied access credentials to the InterPayments Portal by Customer (or by InterPayments, at Customer's request).
- 1.4 "**Card Data**" means the 16-digit primary account number, card verification value, and/or date of expiration of any bank-issued payment card.
- 1.5 "**Card Network**" means Visa®, MasterCard®, American Express®, and/or Discover®.
- 1.6 "**Card Network Merchant Rules**" means the most recent publicly available merchant guidelines published by a Card Network.
- 1.7 "**Confidential Information**" means any information disclosed, directly or indirectly, by or on behalf of one Party ("Discloser") to the other Party ("Recipient") pursuant to this Agreement that: (a) is labelled as "confidential,"; or (b) otherwise should reasonably be expected to be treated in a confidential manner based on the circumstances of its disclosure and the nature of the information itself. The Services, including all access credentials thereto, except for the public-facing aspects of the Services, and all Documentation are InterPayments' Confidential Information. Confidential Information does not include any information which: (i) is or becomes generally known and available to the public through no act or omission of the Recipient; (ii) was already in the Recipient's possession without a duty of confidentiality owed to the Discloser at the time of disclosure; (iii) is lawfully obtained by the Recipient from a third-party who has the right to make such disclosure; or (iv) is independently developed by the Recipient without breach of an obligation owed to the Discloser and without any use of or reference to the Discloser's Confidential Information.
- 1.8 "**Customer Application**" means the Customer's methods of accepting card payments and Customer's information technology infrastructure, software, hardware, databases, electronic systems, and networks.
- 1.9 "**Documentation**" means any documentation related to the Services that InterPayments makes available to Customer with respect to the Services, whether in the InterPayments Portal or otherwise.
- 1.10 "**Fees**" means the fees and expenses due and payable under this Agreement as described in the applicable Order Form.

- 1.11 **“InterPayments API”** means any application programming interface that InterPayments makes available to Customer directly or through the InterPayments Portal.
- 1.12 **“InterPayments Portal”** means InterPayments’ proprietary online portal located at www.interpayments.com or any successor web domain.
- 1.13 **“InterPayments Surcharge Solution”** means InterPayments’ proprietary software solution that is used to apply a credit card surcharge for each end-user purchase completed on the Customer Application via integration with the InterPayments API.
- 1.14 **“Order Form”** means each Master Services Agreement Order Form entered into by the Parties pursuant to this Agreement. Order Forms specify the Fees to be paid by Customer and includes the configuration, term, and other details about the Services to be provided by InterPayments. Order Forms may include a description of and additional representations, warranties, and responsibilities amongst and between the Parties related to each Service (“Services Description”). Each Order Form is entered into by the Parties pursuant to the terms and conditions of this Agreement. In the event of a direct conflict between the terms and conditions of this Agreement and the terms and conditions of any Order Form, the terms and conditions of the Order Form shall control with respect to the subject matter thereof.
- 1.15 **“PayLink EBPP”** means the PayLink electronic bill presentment and payment software into which the InterPayments software is incorporated to which a Customer may subscribe subject to the terms of the InterPayments Privacy Policy which can be found [here](#). **“Payment Service Provider”** means a Customer’s third-party that (i) entered an affiliate partnership with InterPayments, (ii) directly introduced Customer to InterPayments, and (iii) enables or provides the following payment services directly to the Customer via a contractual relationship: a merchant account, payment processing, payment facilitation, and/or payment acceptance across at least one (1) Card Network.
- 1.16 **“Payments Services”** means InterPayments’ provision of payment data tokenization protocols and enablement of Automated Clearing House (“ACH”) payment transactions. Customer shall only have access to Payments Services selected by Customer in the applicable Order Form.
- 1.17 **“Personal Information”** means any information that identifies a natural person or that reasonably could be used to identify that person, or other data or information defined as personal information under Applicable Law.
- 1.18 **“Services”** means the products and services purchased by Customer described (a “Services Description” or “SD”) in the applicable Order Form, which may include InterPayments API, the InterPayments Portal, the InterPayments Surcharge Solution, PayLink EBPP and other services set forth in such Order Form, and all Documentation in connection with such Services. Customer shall only have access to the Services selected by Customer in the applicable Order Form.

2. ORDER FORM; LICENSE GRANT AND RESTRICTIONS

2.1 Order Form(s) and License(s).

Each Order Form will identify the applicable Service and the country in which Customer desires to receive the Service. Nothing in this Agreement requires InterPayments or Customer to enter into an Order Form under this Agreement or requires InterPayments to provide a Service in a particular country.

(a) **InterPayments’ Services Generally.** Subject to Customer’s compliance with this Agreement and each Order Form entered into hereunder, InterPayments grants to Customer a limited, non-exclusive, non-transferable (except as permitted in this Agreement) right, during the applicable Subscription Term, to access and use the InterPayments Services as described in an applicable Order for Customer’s internal business purposes. For clarity, InterPayments does not license Payments Services and Payment Services are excluded from this clause. Subject only to the foregoing license, InterPayments reserves all other rights. Customer shall not use any Services that are not set forth in the fully executed Order Form. If Customer has testing/sandbox access to the Services, Customer agrees to use it solely for testing non-production data and for internal business purposes only.

(b) PayLink EBPP. Notwithstanding the foregoing, if Customer subscribes to PayLink EBPP, during the applicable Subscription Term, Customer may allow its Authorized Users to access and use PayLink EBPP solely for the purpose of to electronically present certain data in connection with acceptance of payments.

2.2 Authorized Users. Customer is solely responsible for: (a) identifying and authenticating all Authorized Users; (b) approving access by such Authorized Users to the Services; (c) protecting against unauthorized use by Authorized Users; (d) maintaining the confidentiality of usernames, passwords and account information for Authorized Users; and (e) all activities that occur under its Authorized Users' usernames, passwords or accounts. InterPayments is not responsible for any harm arising from any acts or omissions of Authorized Users or any person accessing the Services via the usernames, passwords and account information for Authorized Users. Customer will notify InterPayments immediately of any actual or suspected breach of this Agreement or any Order Form by any Authorized User or unauthorized access to the usernames, passwords and account information for Authorized Users. Any breach of this Agreement or any Order Form by any Authorized User or any person accessing the Services via the usernames, passwords and account information for Authorized Users is deemed a breach by Customer. InterPayments may in its sole discretion limit the number of Authorized Users who may access the Services upon prior notice to Customer; provided, that Customer may have up to ten (10) Authorized Users or the number of Authorized Users as specified in an applicable Order Form.

2.3 Monitoring; Suspension; Reporting. InterPayments may, but is under no obligation to, monitor Customer's use of the Services. InterPayments may, in its reasonable discretion, suspend access to the Services if InterPayments believes that: (a) Customer is in breach of this Agreement or any Order Form; (b) use of Services as permitted in this Agreement poses a security risk to InterPayments or Customer; (c) Customer's use of any Services violates, misappropriates, or infringes the rights of InterPayments or any third-party or violates any Applicable Law; (d) there is a bug or performance issue with any Services; or (e) any Applicable Law prohibits InterPayments from performing any of its obligations under this Agreement or providing any aspect of the Services including any related data.

2.4 Restrictions. Customer will not or attempt to, and will not allow others to: (a) reverse engineer, decompile, disassemble or translate the Services, or otherwise attempt to derive source code, trade secrets or know-how in the Services; (b) interfere with, modify, disrupt or disable features or functionality of the Services; (c) copy, sell, rent, lease, sublicense, distribute, create derivative works of, assign or otherwise transfer or provide access to, in whole or in part, the Services to any third-party except to Authorized Users; (d) use the Services to violate Applicable Law or infringe, misappropriate or violate of any third-party rights; (e) interfere with or disrupt the integrity or performance or attempt to gain unauthorized access to the Services (f) develop, distribute or make products or services that compete with any Services; or (g) remove or alter any proprietary notices or marks on any Services.

2.5 Data. InterPayments may collect, publish, or distribute Aggregated Use Data related to Customer's use of the Services collected in accordance with the Agreement to continue to develop, improve functionality of, and provide support for the Services. InterPayments is the sole owner of Aggregated Use Data. Upon written request of a Customer's Payment Service Provider, InterPayments may provide certain raw, Customer-derived data in an attributable form to Customer's Payment Service Provider. InterPayments will not publish or distribute data related to Customer's use of the Services other than in accordance with this Section 2.5.

2.6 Feedback. Customer may voluntarily provide to InterPayments ideas, suggestions, or feedback about the Services on a non-confidential basis ("Feedback"). Customer hereby grants to InterPayments a non-exclusive, perpetual, irrevocable, transferable, sublicensable, royalty-free, and worldwide license to implement, use, modify and otherwise exploit, in any way without restriction, the Feedback, without any fees, attribution or other obligations to Customer. Notwithstanding the foregoing, nothing in this Section 2.6 (Feedback) grants InterPayments a license to use any Inventions covered by a registered patent owned by Customer.

2.7 Ownership; Reservation of Rights. Subject to the license that InterPayments grants to Customer in Section 2.1, as between Customer and InterPayments, InterPayments solely owns and retains all rights, title, and interest in and to the Services, including all works of authorship (including software and documentation), trade secrets, inventions and other technology in any form pertaining thereto and all goodwill arising therefrom, and Customer agrees not to take any

action that would be inconsistent with such ownership. All rights that InterPayments does not expressly grant to Customer in this Agreement are hereby reserved and InterPayments does not grant to Customer any implied rights or licenses under any theory.

3. CUSTOMER APPLICATION; COSTS; COOPERATION.

3.1 Notwithstanding anything to the contrary in this Agreement: (i) Customer has and will retain sole control over the security of, operation, maintenance, management of, and all access to and use of, the Customer Application, and Customer is solely responsible for obtaining all internet connectivity necessary to access and use the Services; (ii) InterPayments is not responsible or liable for any delay or failure of performance arising in whole or part from the Customer Application; (iii) Customer is solely responsible for paying all costs to maintain interoperability between the Services and the Customer Application; and (iv) Customer will provide all cooperation and assistance as InterPayments may reasonably request to enable InterPayments to exercise its rights and perform its obligations in connection with this Agreement.

4. FEES AND PAYMENT TERMS

4.1 **Fees and Expenses.** In consideration for providing the Services Customer will pay InterPayments the Fees as specified in the applicable Order Form.

4.2 **Payment Terms.** Customer will pay InterPayments the Fees subject to the payment terms specified in the applicable Order Form. All payments will be made in the currency specified in the Order Form via electric funds transfer or other means specified in the Order Form, as per the instructions of InterPayments. InterPayments shall not be responsible for any processing fees Customer's financial institution may impose upon Customer in the payment of its invoices (including without limitation bank transfer fees).

4.3 **Late Payments.** InterPayments may charge interest on all past due invoices at a rate of 1.5% per month, or the highest rate allowed by Applicable Law, whichever is lower. If Customer is more than 30 days past due in payment, then InterPayments may, upon written notice to Customer, modify the payment terms to require full pre-payment of any or all current or pending Fees or require other assurances to secure Customer's payment obligations hereunder and may limit or suspend Services until Customer comes into compliance with the applicable payment terms. Additional terms and conditions regarding payment may be specified in the applicable Order Form.

4.4 **Taxes.** Fees are exclusive of all taxes, duties, levies, tariffs and other governmental or regulatory charges (including without limitation VAT if applicable). Customer will be solely responsible for payment of all such amounts and any penalties and interest arising from the failure to pay such amounts (other than taxes based on InterPayments' net income).

4.5 **Annual Increases.** Unless otherwise agreed in writing, InterPayments may increase Fees for each Renewal Subscription Term. In order for price increases to be effective, InterPayments must notify Customer at least forty-five (45) days prior to the beginning of the Renewal Subscription Term. Such notice may be in the form of an invoice, other written notice or delivered via the InterPayments Portal. If Customer objects to the increase, Customer may elect to not renew subscription to the Services. Customer acknowledges that the following do not constitute Fee increases: (i) additional fees for any upgrade or any additional Service that Customer orders; (ii) overage fees for usage in excess of Customer's usage tier, if defined and applicable in an Order Form; and (iii) expiration of any discount or incentive programs to which Customer was previously entitled.

4.6 **Audit.** Customer will maintain complete and accurate records documenting all completed, credited, and refunded payment transactions through its Payment Service Provider(s) ("Records"). Customer will allow InterPayments, or certified public accountants that are selected by InterPayments, to inspect and audit any and all Records upon reasonable notice to Customer and during normal business hours. InterPayments may audit Customer no more than once every 12 months unless it has reasonable cause to believe that Customer failed to comply with this Agreement or an Order Form. Customer will reasonably cooperate with such audit and provide access to all Records as necessary to complete the audit. Customer will pay to InterPayments within 30 days after the completion of the audit the amount of

any underpayment revealed by any such audit. If any such audit reveals an underpayment by Customer of five percent (5%) or more, then Customer also will reimburse InterPayments for the reasonable costs and expenses of such audit. The requirements of this Section 4.6 will survive for two (2) years following the termination or expiration of the Term.

5. TERM AND TERMINATION

5.1 **Term.** This Agreement will commence on the Contract Start Date specified in the initial Order Form entered into by the Parties and shall remain in effect until the expiration or termination of all Order Forms entered into by the Parties (the "Term").

5.2 **Subscription Terms.** Customer may purchase subscriptions to one or more Services during the Term. The effective period of each subscription (the "Subscription Term") with respect thereto specified in the applicable Order Form. A single Order Form may provide for the purchase of multiple Service subscriptions, each of which may have different Subscription Terms.

(a) **Initial Subscription Term.** Customer's initial Subscription Term for a Service (the "Initial Subscription Term") as defined in the Order Form(s) which will begin on the "Effective Date" specified on the signature page of the Order Form with for that Service.

(b) **Automatic Renewal.** At the end of the then-current Subscription Term, each subscription to a Service will automatically renew for (i) successive twelve (12) month periods (a "Renewal Subscription Term"), if a renewal term is not specified in the Order Form, or (ii) for a period specified in the Order Form, unless either Party provides written notice of non-renewal to the other Party at least thirty (30) days before the expiration date of the then-current Subscription Term.

5.3 **Termination.** Either Party may terminate this Agreement by written notice if the other Party is in material breach of this Agreement and such material breach is not cured within 30 days after written notice of such breach from the non-breaching Party. Upon termination of this Agreement, each Order Form entered into by the Parties shall be deemed to be simultaneously terminated.

5.4 **Effects of Termination.** Upon the expiration or termination of this Agreement: (a) all access to the Services shall automatically terminate; (b) all Fees will become due and payable immediately; and (c) each Party will destroy or securely delete the other Party's Confidential Information and, upon request, provide written certification of such destruction or deletion.

5.5 **Survival.** The following Sections, and any defined terms and provisions required to interpret or enforce those Sections (but only to the extent required for such interpretation or enforcement), will survive the termination or expiration of this Agreement: 1 (Definitions), 2.2 (Authorized Users), 2.4 (Restrictions), 2.5 (Data), 2.6 (Feedback), 2.7 (Ownership), 3 (Customer Application; Costs; Cooperation), 4 (Fees and Payment Terms), 5.4 (Effects of Termination), 6 (Confidentiality), 7 (Representations and Warranties), 8 (Limitation of Liability), 9 (Indemnification) and 10 (Miscellaneous).

6. **CONFIDENTIALITY.** The Receiving Party will use the same efforts to protect the Disclosing Party's Confidential Information that it uses to protect its own confidential information of similar sensitivity, but in no event will such efforts be less than commercially reasonable efforts. The Receiving Party may only use the Disclosing Party's Confidential Information to perform its obligations and exercise its rights under this Agreement. The Receiving Party will not disclose or provide access to the Disclosing Party's Confidential Information to any third-party, including but not limited to non-proprietary, third-party artificial intelligence platforms, except: (a) for disclosures to the Receiving Party's: (i) human employees or human consultants with a need to know such information; or (ii) professional advisors or potential investors or acquirers (each in (i) and (ii), a "Permitted Recipient"); and (b) the Receiving Party may disclose the Disclosing Party's Confidential Information if it is compelled by Applicable Law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. The Receiving Party will promptly inform the Disclosing Party in writing of any actual or suspected loss or alteration of, or unauthorized access

to, use or disclosure of, Confidential Information. The Receiving Party's Permitted Recipients must be bound by confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as those set contained this Section 6 and the Receiving Party will be liable for any breach of this Agreement by its Permitted Recipients.

7. REPRESENTATIONS AND WARRANTIES

7.1 **Mutual Representations and Warranties.** Each Party represents and warrants that it has all required corporate authority to enter into this Agreement and to perform its obligations under this Agreement, and that the performance of such obligations does not conflict with or result in a breach of any other agreement of such Party or any judgment, order, or decree by which such Party is bound.

7.2 **InterPayments.** InterPayments represents and warrants that (a) InterPayments shall make commercially reasonable efforts to provide the Services in compliance with Applicable Laws and Card Network Merchant Rules, and (b) to its knowledge, the Services do not infringe any intellectual property rights of any third party.

7.3 **Customer.** Customer represents and warrants that it will use the Services it receives under this Agreement in compliance with Applicable Law and Card Network Merchant Rules. Customer agrees to notify InterPayments promptly if it is in violation of or becomes aware of its violation of Applicable Law or Card Network Merchant Rules applicable to or affecting the Services.

7.4 **Disclaimer.** While InterPayments strives to ensure that the Services will meet its Customer's compliance needs, it is acknowledged that InterPayments' technologies operate in a climate characterized by rapid technological change, including frequent introductions of new products and services, evolving industry standards and changing laws, rules, regulations, and Card Network Merchant Rules, as well as changing customer needs, requirements, preferences and use cases. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, AND EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, THE SERVICES (INCLUDING ALL DATA TRANSMITTED BY THE SERVICES) ARE PROVIDED "AS IS", "AS AVAILABLE" AND WITH ALL FAULTS, AND INTERPAYMENTS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES IN CONNECTION WITH THIS AGREEMENT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR FOR LOST REVENUE, LOST PROFITS, COST OF REPLACEMENT OF GOODS OR SERVICES, LOSS OF TECHNOLOGY, GOODWILL, RIGHTS OR SERVICES, LOSS OF DATA OR INTERRUPTION OR LOSS OF USE OF SERVICE IN CONNECTION WITH THIS AGREEMENT.

8.2 EXCEPT WITH RESPECT TO FRAUD, GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, INTERPAYMENTS' TOTAL LIABILITY TO CUSTOMER FOR ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO INTERPAYMENTS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE APPLICABLE CLAIM(S); PROVIDED, THAT WITH RESPECT TO THE FIRST 12-MONTHS OF THE TERM, A PARTY'S MAXIMUM LIABILITY SHALL BE NO GREATER THAN TWICE THE MINIMUM ANNUAL FEE FOR THAT PERIOD.

8.3 SECTION 8.1 AND SECTION 8.2 WILL NOT APPLY TO: (A) BREACHES OF SECTION 6; (B) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING ANY BREACH OF SECTION 2.4; (C) INDEMNIFICATION OBLIGATIONS ARISING UNDER SECTION 9; OR (D) INTERPAYMENTS' DATA USAGE IN ACCORDANCE WITH TO SECTION 2.5 (DATA).

8.4 THE FOREGOING LIMITATIONS IN SECTIONS 8.1 AND 8.2 WILL APPLY REGARDLESS OF WHETHER THE APPLICABLE LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE AGGRIEVED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY IN THIS AGREEMENT, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO

MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH IN SECTION 8.1 AND 8.2 ARE AGREED ALLOCATIONS OF RISK AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. INDEMNIFICATION

9.1 **By InterPayments.** InterPayments will: (a) defend, or, at its option, settle, any claim brought against Customer by a third-party alleging that Customer's use of the Services as expressly authorized in this Agreement constitutes a direct infringement of any intellectual property rights of any third-party (a "IP Claim"); and (b) indemnify and hold harmless Customer and its parents, subsidiaries, affiliates and their respective officers, directors, members, employees, representatives, shareholders, agents, attorneys and permitted assigns from any damages awarded in a final judgment (or amounts agreed in a monetary settlement) in a IP Claim defended by InterPayments; provided that Customer provides InterPayments: (i) prompt written notice of; (ii) sole control over the defense and settlement of; and (iii) all information and assistance reasonably requested by InterPayments in connection with the defense or settlement of, any such IP Claim. If any such IP Claim is brought or threatened, then InterPayments may, at its sole option and expense: (1) procure for Customer the right to continue to use the infringing items; (2) modify the infringing items to make them non-infringing; (3) replace the infringing items with non-infringing technology having substantially similar capabilities; or (4) if none of the foregoing is commercially practicable, then terminate this Agreement. Notwithstanding the foregoing in this Section 9.1, InterPayments will have no obligation under this Section 9.1: (x) for any use of the InterPayments Technology in combination with software, products, services or technologies not provided by InterPayments, to the extent that the Services would not be infringing but for such combination; (y) arising from or in connection with Customer's failure to use the Services in accordance with this Agreement; or (z) for any claims or actions that fall within the scope of Section 9.2. THIS SECTION 9.1 STATES THE ENTIRE LIABILITY OF INTERPAYMENTS, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY CLAIMS FALLING WITHIN THE SCOPE OF SECTION 9.1.

9.2 **By Customer.** Customer covenants and agrees to indemnify, defend and hold harmless InterPayments and its parents, subsidiaries, affiliates and their respective officers, directors, members, employees, representatives, shareholders, agents, attorneys and permitted assigns (collectively, the "InterPayments Indemnitee Parties"), from and against any damages, awards, judgments, settlement amounts, fines, penalties, losses, costs and expenses (including reasonable legal fees and expenses and costs of investigation) and other liabilities arising out of any lawsuit, claim, demand, administrative action, arbitration or other legal or regulatory action or proceeding brought or asserted against any InterPayments Indemnitee Parties by any third party to this Agreement as a result of or in connection with (i) any untrue or inaccurate representation or warranty made by Customer, or any failure on the part of Customer to provide timely and accurate data to InterPayments and adequate disclosure to end-users as needed with respect to the Services; (ii) any violation of Applicable Law or infringement, misappropriation or violation of third-party rights by any aspect of the Customer Application or any products or services advertised or commercialized on or through the Customer Application; or (iii) violation of applicable Card Network Merchant Rules when they require Customer to surcharge non-credit card payment products, including, without limitation, debit, stored value, prepaid or smart cards, account access devices or other payment cards, services or products, excluding electronic funds transfer, cash or check (collectively, "Other Payment Products"); provided that InterPayments provides Customer with: (a) prompt written notice of; (b) sole control over the defense and settlement of; and (c) all information and assistance reasonably requested by Customer in connection with, the defense or settlement of any such claim. Customer will pay all damages finally awarded against InterPayments (or the amount of any settlement Customer enters into) with respect to any such claim defended by Customer. InterPayments may appear in connection with such claims, at Customer's expense, through counsel reasonably acceptable to Customer. Customer additionally covenants and agrees to indemnify, defend and hold harmless the InterPayments Indemnitee Parties from and against any Losses arising out of participation by such InterPayments indemnitee Parties, at the request of Customer or as required by legal or regulatory process, in any lawsuit, claim, demand, administrative action, arbitration or other legal or regulatory action or proceeding brought or asserted against Customer by any third party to this Agreement as a result of or in connection violation of applicable Card Network Merchant Rules when a Card Network's Merchant Rules require surcharging Other Payment Products but Customer fails to surcharge Other Payment Products.

10. MISCELLANEOUS PROVISIONS

10.1 **Successors and Assigns.** Neither Party may assign this Agreement or any of its rights under this Agreement or any Order Form entered into hereunder without the prior written consent of the other Party and any such assignment shall be null and void. Notwithstanding the foregoing, InterPayments may assign this Agreement without the consent of Customer to any InterPayments affiliate, or upon a change of control, consolidation, merger, sale of all or substantially all of its business or assets related to this Agreement, or a similar transaction or series of transactions. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.2 **Force Majeure.** Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including an act of war, terrorism, act of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure or degradation of the Internet, but in all cases excluding the payment of Fees (each, a "Force Majeure"). The delayed Party must give the other Party notice of such Force Majeure and use commercially reasonable efforts to correct such failure or delay in performance.

10.3 **Governing Law.** This Agreement, each Order Form, and all claims and controversies arising hereunder and thereunder will be governed by and construed in accordance with the internal laws of the State of Delaware in the United States, without regard to any laws, treaties, or conflicts of laws principles that would apply the law of any other jurisdiction and without regard to the United Nations Convention on the International Sale of Goods.

10.4 **Dispute Resolution.** If there is any dispute between the Parties arising out of this Agreement or the subject matter hereof (a "Dispute"), then authorized representatives of each Party will negotiate in good faith to resolve the Dispute. If such representatives cannot resolve the Dispute after 30 days of good faith negotiations or if a Party fails to participate in good faith efforts to resolve the Dispute, then the Dispute shall be determined by binding individual arbitration in New York County, New York, United States. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of the Dispute, subject to any modifications contained in this Agreement. The Dispute shall be determined by binding individual arbitration before one arbitrator. The award shall be in writing and include the findings of fact and conclusions of law upon which it is based. Unless the Parties agree otherwise, discovery will be limited to an exchange of directly relevant documents. Depositions will not be taken except as needed in lieu of a live appearance or upon mutual agreement of the parties. The arbitrator shall resolve any discovery disputes. The arbitrator and counsel of record will have the power of subpoena process as provided by law. The Parties knowingly and voluntarily waive their rights to have any Dispute tried and adjudicated by a judge or a jury. The arbitration shall be governed by the substantive laws of the State of New York, without regard to conflicts-of-law rules, and by the arbitration law of the Federal Arbitration Act (Title 9, U.S. Code). Judgment upon the award rendered may be entered in any court having jurisdiction. Notwithstanding the foregoing, upon the application by either Party to a court for an order confirming, modifying or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator(s), the award should be confirmed, modified or vacated in order to correct any errors of law made by the arbitrator(s). In order to effectuate such judicial review limited to issues of law, the Parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrator(s) shall be final and binding on the Parties and shall serve as the facts to be submitted to and relied upon by the court in determining the extent to which the award should be confirmed, modified or vacated. Except as otherwise required by law, the Parties and the arbitrator(s) agree to keep confidential and not disclose to third parties any information or documents obtained in connection with the arbitration process, including the resolution of the Dispute. The prevailing party shall be entitled to be awarded costs, including reasonable attorney's fees, paid or incurred in successfully compelling and/or participating in such arbitration and/or successfully defending or enforcing the award. Customer may bring claims only on its own behalf and agrees that it shall not participate in any class action, mass action or class-wide arbitration or any consolidated claims arising from or related to this Agreement or which name InterPayments as a party to the proceeding. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with this Agreement.

The Parties agree that the dispute resolution procedures and monetary damages may be inadequate to address the breach or threatened breach of Section 2.4 and Section 6 and the aggrieved party shall, be entitled to seek equitable relief, including without limitation, injunctive relief and specific performance, in addition to any other remedies provided hereunder or available at law and without the requirement to post bond.

10.5 Publicity. Neither Party shall issue any public statement regarding this Agreement or the subject matter hereof without the other Party's prior written consent. Unless a Party has specifically notified the other Party to the contrary in writing, either Party may, during the Term, use the name or logo of the other Party or its Affiliates to identify such other party as a customer or vendor (as the case may be) in accordance with that Party's provided marketing guidelines.

10.6 Other Technology or Services. Customer acknowledges and agrees that Customer has not relied on any future availability of any service offerings, technology, or additional, enhanced or updated features or functionality, and that the Services do not include any audit support (unless otherwise specified in an Order Form).

10.7 Entire Agreement. This Agreement and any applicable Order Form(s) comprise the entire agreement of the Parties concerning the subject matter hereof and supersede all prior or contemporaneous agreements and understandings with respect to said subject matter. No terms of any request for proposal, purchase order, acknowledgement, or other similar document provided by Customer will modify this Agreement, regardless of any failure of InterPayments to object to such terms.

10.8 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

10.9 Waivers; Amendments. All waivers of rights arising under this Agreement must be made in writing by the Party waiving rights. InterPayments reserves the right to update this Agreement at any time. InterPayments will update the Last Updated Date at the top of this page if InterPayments update this Agreement. If a change to this Agreement materially modifies Customer's rights or obligations, then InterPayments may require that Customer accept the modified Agreement in order to continue to use the Services.

10.10 Notices. Any notice provided under this Agreement will be effective if it is: sent via electronic mail to the applicable email address specified in the Order Form. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given on the same day an electronic mail is sent to the recipient.

10.11 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever. Customer is responsible for its own payments and tax policies and reporting positions taken. Customer is responsible for conducting its own due diligence and seeking the assistance of a qualified legal, tax, or accounting professional.

10.12 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, then: (a) it will be severed from this Agreement; (b) the court of competent jurisdiction will replace the severed provision with another provision that most closely reflects the Parties' original intent to the fullest extent permitted by Applicable Law; and (c) this Agreement will remain in full force and effect.