



## AMCS PAY AGREEMENT - TERMS OF SERVICE

These AMCS Pay Terms of Service (“**ToS**”) govern Merchant’s use of and access to the Services. These ToS, together with each applicable Proposal (and all schedules and attachments thereto) accepted by Merchant that references these ToS, form the “**Agreement**” of the Parties. Merchant is deemed to have accepted these ToS, either by: (a) executing a Proposal that references these ToS; or, (b) Merchant’s use of or accessing any Services described in a Proposal. Unless otherwise specifically agreed in writing signed by the Parties, the Agreement constitutes the entire agreement between Merchant and AMCS with respect to the Services specified in the Proposal.

AMCS and Merchant may each be referred to as a “**Party**” and together as the “**Parties**” to the Agreement.

1. **Services.** Merchant hereby engages AMCS to perform the services and conduct the activities related thereto, as described in one or more Proposals which reference these ToS (the “**Services**”). Any services or activities not described in a Proposal are not in the scope of these ToS. Merchant acknowledges the necessity that it enter separate agreement(s) with one or more Key Suppliers and provide requisite authorizations before processing and settlement of payments with AMCS Pay.
2. **Term and Termination.**
  - 2.1 **Term.** The Initial Term of the Agreement shall begin on the Effective Date. After the expiration of the Initial Term, the Agreement shall renew automatically for successive Extended Term(s) unless the Agreement is duly terminated or if either Party sends a notice of non-renewal to the other Party not less than one hundred and twenty (120) days prior to the expiration of the Initial Term or current Extended Term (as applicable). No termination hereof shall relieve Merchant of its obligation to pay Fees incurred prior to termination or that would be payable had the Agreement not been terminated. Merchant’s obligation to pay Fees shall survive termination of the Agreement.
  - 2.2 **Termination.**
    - (a) Either Party may immediately terminate the Agreement at any time in the event that the other Party: (a) commits a material breach of the Agreement which is not capable of remedy; (b) commits a material breach of the Agreement which is capable of remedy and fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so, except that the period shall be ten (10) days where Merchant is in breach of its payment obligations hereunder; or (c) makes any assignment of assets or business for the benefit of creditors, or if a trustee or receiver is appointed to administer or conduct its business or affairs, or if it is adjudged in any legal proceeding to be either a voluntary or involuntary bankruptcy.
    - (b) Termination of the Agreement terminates all Services and access thereto.
    - (c) The following Sections will survive the expiration or any termination of the Agreement: 3 (Fees), 6 (Merchant Data), 7 (AMCS Intellectual Property), 8 (Confidentiality), 9 (Indemnification), 10 (Limitation of Liability), 11 (AMCS Warranties and Disclaimers), 12 (Merchant Representations and Warranties), 13 (Force Majeure), 14 (Data Processing Addendum), 15 (Compliance with Law), 16 (Governing Law and Dispute Resolution), as well, Sections 17 through 21, and 23 through 25, shall continue to be applicable after expiration or termination hereof. With respect to any Personal Data retained by a Party, the Data Processing Addendum shall continue to apply.
3. **Fees.** In consideration of the Services, Merchant shall pay the Fees, as stated in a Proposal. All Fees invoiced by AMCS are due and payable in 30 days from date of invoice unless stated otherwise in a Proposal.
4. **Key Suppliers.**
  - 4.1 **Key Supplier Relationship and Consulting.** Merchant hereby consents that AMCS may reasonably assist Merchant to liaise with Key Suppliers. Merchant will cooperate and participate in such communications when requested by AMCS, but Merchant retains the ultimate right and responsibility for the negotiations and the terms and conditions of the Key Supplier Agreements. AMCS will not provide legal, tax or financial advice to Merchant. AMCS will not have authority to bind Merchant, nor will it enter any Key Supplier Agreement on behalf of Merchant.
  - 4.2 **Key Supplier Charges and Consulting.** Merchant shall provide AMCS with copies of all notices related to charges of Key Suppliers for the Term and so long as AMCS is entitled to remuneration under the Agreement. AMCS does not guarantee that chargebacks will not occur or that they will be reversed or that there will be no security or PCI violations, but it does agree to reasonably assist Merchant upon Merchant request concerning such matters.
  - 4.3 **Reports.** Merchant will provide AMCS with copies of all expense and other reports relating to Key Supplies for the Term and so long as AMCS is entitled to remuneration under the Agreement. Accordingly, Merchant shall provide AMCS with copies of its monthly statements from Key Suppliers or provide online access to AMCS to obtain such information.



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5. **PAD Authorization.** Merchant must complete and execute the necessary ACH or similar electronic clearinghouse authorization forms provided by AMCS and hereby permits AMCS to draw on the Designated Account to receive Fees pursuant to the Agreement, for the purpose of paying all Fees and all other amounts owing by Merchant to AMCS pursuant to the terms of the Agreement and all other amounts owing in the event of a default under the Agreement and for paying all amounts owing under any other agreement with AMCS or any of its affiliates for any related services. In respect of payment of any amounts owing all regular recurring payments will be debited each month on the date prescribed by AMCS, in the amounts set out in the Proposal. For debits other than regular recurring debits and/or one-time payments owing in connection with the Agreement, Merchant understands that AMCS will obtain Merchant's authorization prior to initiating any such debit.

Merchant further agrees that if any payment is dishonored by the Bank for any reason, then AMCS shall be entitled to issue another debit in substitution for the dishonored debit. Merchant acknowledges that the PAD Authorization is provided for the benefit of AMCS and the Bank and is provided in consideration of the Bank agreeing to process debits against Merchant's Designated Account in accordance with applicable Payment Association rules. Merchant shall be charged a default fee for each credit and debit that cannot be processed, and all subsequent Services may be suspended until Merchant either (i) notifies AMCS that credits and debits can be processed or (ii) a new PAD Authorization is signed by Merchant. Bank must be able to process or accept credits and debits electronically. Bank's treatment of each debit shall be the same as if Merchant had issued its cheque authorizing the Bank to pay as indicated and to debit the amount specified to Merchant's Designated Account. Merchant confirms that this means, in part, that the Bank is not required to verify that a pre-authorized debit has been issued in accordance with Merchant's instructions or that some pre-condition to payment has been met or satisfied. This PAD Authorization may be cancelled at any time by written notice by Merchant to AMCS which notice shall be effective five (5) business days after receipt. To obtain a sample cancellation form, or for more information on the right to cancel this PAD Authorization, Merchant understands that Merchant may contact Bank or Merchant's financial institution. This PAD Authorization applies only to the method of payment and Merchant agrees that revocation of this PAD Authorization does not terminate or otherwise have any bearing on the Agreement. This PAD Authorization may be discontinued at any time by AMCS without notice. Delivery of this PAD Authorization, to AMCS, constitutes delivery by Merchant to Bank. Merchant confirms that the debits authorized hereunder are for business purposes. Merchant hereby waives the right to receive any notice, written or otherwise, from AMCS of the amount to be debited and the date(s) on which such debits are to be processed, as well as notice of any and all future changes to the amounts or payment dates. Merchant hereby waives any pre-notification and/or confirmation requirements ("Pre-authorized Debits"). Merchant understands that Merchant has recourse rights if any debit does not comply with this PAD Authorization. For example, Merchant has the right to receive reimbursement for any debit that is not authorized or is not consistent with the PAD Authorization. To obtain more information on Merchant's recourse rights, Merchant may contact the Bank or financial institution. Merchant consents to the disclosure of any relevant information contained in the Agreement and the PAD Authorization to the financial institution for purposes of the Automatic Debit Program.

6. **Merchant Data.** As between the Parties, all right, title and interest, including all intellectual property rights, in and to all information and other materials provided or otherwise made available to AMCS by or on behalf of Merchant in connection herewith shall be owned by Merchant ("**Merchant Data**"). Merchant hereby grants AMCS a non-exclusive, royalty-free right to use all Merchant Data in connection herewith. AMCS may use anonymized Merchant Data in compliance with applicable law. AMCS may retain an archival copy of Merchant Data to the extent necessary to comply with applicable law, to evidence its performance of Services or for litigation or bona fide records retention purposes, in each case, to the extent permitted by law. Merchant shall own all reports and records provided to Merchant in its use of the Services in compliance with the Agreement ("**Deliverables**"). Deliverables does not include any intellectual property rights of AMCS or its Affiliates or subcontractors, if any, therein (e.g., trademarks and templates).

7. **AMCS Intellectual Property.** As between the Parties, all right, title and interest, including all intellectual property rights, in and to all elements of the Services (including all trade names, trade secrets, know-how, methods, software, information and other materials) provided or otherwise made available to Merchant or its personnel accessing the Services, by or on behalf of AMCS, except for any Merchant Data incorporated therein or any Deliverable, shall be owned by AMCS ("**AMCS IP**"). AMCS hereby grants Merchant a non-exclusive, royalty-free right to use AMCS IP to the extent necessary to enable Merchant to make reasonable use of the Services for its own internal business purposes; provided that Merchant shall not create derivative works based on, sell, license, transfer or otherwise grant rights to, reverse engineer or otherwise attempt to obtain source code in, or take any action that may interfere with any of AMCS's rights in or to, any AMCS IP. Merchant's right to use any AMCS IP in connection with the Services shall end upon the termination of the Agreement and Services except to the extent such AMCS IP may be embedded in a Deliverable.



8. **Confidentiality.** Each Party (as “**Receiving Party**”) acknowledges that in the course of the Agreement and its negotiation, performing and receiving the Services, and/or in the course of its performance under the Agreement, it may obtain Confidential Information from the other Party (as “**Disclosing Party**”). During the Term and thereafter, the Receiving Party will treat all Confidential Information as secret, confidential, and proprietary, and will not disclose or use the same without the prior written consent of the Disclosing Party, other than to the Receiving Party’s employees and contractors on a need to know basis for the purpose of performing its obligations hereunder, or as required by law. The Receiving Party will implement such procedures as it considers reasonably necessary to prevent any disclosure, whether intentional, negligent or otherwise in violation of this Section, to any third party of any Confidential Information. Notwithstanding the foregoing, nothing herein will prevent the disclosure by the Receiving Party or its employees of information that: (a) prior to its disclosure to the Receiving Party, was of general public knowledge; (b) becomes, subsequent to its disclosure to the Receiving Party, a matter of general public knowledge other than as a consequence of a breach by the Receiving Party of any obligation under the Agreement; (c) is made public by the Disclosing Party; or, (d) is received in good faith from a third party having the right to disclose it, who, to the Receiving Party’s knowledge, did not obtain such information from the Disclosing Party and who imposes no obligation of secrecy on the Receiving Party with respect to such information. Subject to any other obligations herein with respect to the return or retention of information, following termination of the Agreement, on the Disclosing Party’s written request, the Receiving Party shall, and shall require its representatives and agents to destroy all Confidential Information in the possession or under their control; provided, however, that the Receiving Party and its representatives and agents shall be entitled to retain copies of Confidential Information to the extent necessary to comply with applicable law, for litigation, or bona fide records retention purposes, in each case, to the extent permitted by law and subject to the terms of confidentiality required by this Section and, in the case of Personal Data, pursuant to requirements of the Data Processing Addendum. In addition to any other remedy to which it may be entitled, the Disclosing Party shall be entitled to seek an injunction or other equitable remedy to prevent or enjoin breaches of this Section by the Receiving Party or any of its Representatives.
9. **Indemnification.** Each Party (as “**Indemnitor**”) agrees to indemnify, defend, and hold harmless the other Party, its employees, members, directors, managers, officers or agents (each, as “**Indemnitee**”) from and against any loss, liability, damage, penalty or expense that is suffered or claimed by a third party (each, a “**Claim**”) including the reasonably incurred attorneys' fees, expert witness fees and cost of defense, to the extent such third-party Claim is caused by: (i) any failure by the Indemnitor or any employee, agent or Affiliate of the Indemnitor to comply with the terms of the Agreement; (ii) any warranty or representation made by the Indemnitor being false or misleading; (iii) any representation or warranty made by the Indemnitor or any employee or agent of the Indemnitor to any third person other than as specifically authorized by the Agreement; (v) negligence of the Indemnitor or its subcontractors, agents or employees; or, (vi) any alleged or actual violations by the Indemnitor or its subcontractors, employees or agents of any governmental laws, regulations or rules and/or Payment Association Rules. This indemnification provision survive termination of the Agreement. The Indemnitees other than the Parties are not intended third party beneficiaries of the Agreement. Rather, all claims arising from or related to the Agreement shall be made by a Party and each Party shall be indemnified by the other Party against any Claim incurred in connection with any such claim made directly by any of such other Party’s related Indemnitees. Each Indemnitee shall use reasonable efforts to mitigate the Claim(s) incurred in connection with the Agreement and the Parties shall reasonably cooperate to mitigate the effects of any of the events giving rise to each such Claim.
10. **Limitation of Liability.** In no event shall AMCS’ liability to Merchant for damages, losses, indemnities, and causes of action (whether in contract, tort, including negligence, or otherwise) in the aggregate exceed the amount that AMCS has received in Fees from Merchant during the three (3) months prior to the event giving rise to liability. Neither Party shall be liable to the other or to any third party for any loss, liability, damage, penalty or expense, that is liquidated, indirect, consequential, special, speculative, relating to lost profits, reputational damages, exemplary or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of or relating to the Agreement or the Services even if the Party at fault has been advised of the possibility of such damages. The foregoing does not apply to Fees due and payable under this Agreement. AMCS shall have no obligation to refund Fees nor it shall bear any other liability or loss whatsoever as a result of any payment chargeback.
11. **AMCS WARRANTIES AND WARRANTY DISCLAIMERS.**

**THE AGREEMENT SETS OUT THE FULL EXTENT OF THE AMCS’S OBLIGATIONS AND LIABILITIES IN RESPECT OF THE SUPPLY OF THE SERVICES. MERCHANT AGREES THAT THE USE OF THE SERVICES IS AT ITS OWN RISK. AMCS REPRESENTS AND WARRANTS TO MERCHANT THAT (A) IT SHALL PROVIDE THE SERVICES IN A PROFESSIONAL AND WORKMANLIKE MANNER,**



(B) THE SERVICES SHALL CONFORM IN ALL MATERIAL RESPECTS WITH ANY PROVIDED SPECIFICATIONS, AND (C) AMCS PERSONNEL SHALL HAVE THE SKILL AND QUALIFICATIONS REASONABLY NECESSARY TO PERFORM THEIR RESPECTIVE DUTIES WITH RESPECT TO THE SERVICES. OTHERWISE, THE SERVICES ARE PROVIDED “AS IS” AND AMCS SPECIFICALLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. AMCS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS MAY BE EXPRESSLY STATED HEREIN, AMCS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET MERCHANT’S OR ANY OTHER PERSON’S OR ENTITY’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF MERCHANT’S OR ANY THIRD PARTY’S SOFTWARE, SYSTEM, OR OTHER SERVICE, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. AMCS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A VIRUS OR OTHER DISRUPTIVE OR HARMFUL MATERIAL THAT MAY INFECT MERCHANT’S COMPUTER, SYSTEMS OR OTHER MATERIALS, OR BY ANY OTHER CAUSE, INCLUDING INTERNET OUTAGE, GOVERNMENT REGULATIONS, OR ACTS OF THIRD PARTIES THAT ARE OUTSIDE OF AMCS’S CONTROL. MERCHANT ACKNOWLEDGES THAT THE SERVICES HAVE NOT BEEN DEVELOPED TO MEET ITS INDIVIDUAL REQUIREMENTS. AMCS SHALL NOT BE RESPONSIBLE OR HAVE ANY LIABILITY IN THE EVENT THAT THE SERVICES ARE NOT SUITABLE FOR THE MERCHANT’S PURPOSES OR DO NOT MEET ITS INDIVIDUAL REQUIREMENTS. FURTHER, THE SERVICES ARE SUPPLIED FOR INTERNAL USE BY THE MERCHANT’S BUSINESS, AND NOT FOR RE-SALE OR OTHER PURPOSES.

12. **Merchant Representations, Warranties and Acknowledgments.** Performance by Merchant of its obligations hereunder shall not place it in breach of its agreements with Key Suppliers or other third parties. Merchant represents and warrants that is a duly formed corporate entity in good standing in the jurisdictions in which it operates and that the individual who has executed the Agreement on behalf of the Merchant has the authority to bind the Merchant to its terms and conditions. Merchant warrants that any data input into the AMCS Pay solution: (a) are owned by Merchant or are provided with the express consent from the third party holding any proprietary and/or Intellectual Property Rights in or over such material, or, alternatively, are in the public domain, and are not owned by any third party or otherwise covered by Intellectual Property Rights; (b) are duly consented to by the affected individual when in the form of Personal Data, and does not and will not breach the rights of any person or entity, including rights of publicity, privacy, confidentiality or under applicable DPL; and (c) are not defamatory. Merchant acknowledges it is solely responsible for determining the suitability of the Services and assumes sole responsibility for results obtained from the use of the Services and Documentation, and for conclusions drawn from such use. Merchant represents and warrants that Merchant and its Affiliates and employees will rely solely on their own legal, financial and tax advisors in all matters in relation to the Agreement.
13. **Force Majeure.** Neither Party will have any liability to the other Party under the Agreement if it is prevented from, or delayed in, performing its obligations (other than any payment due or account funding required) under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (excluding any industrial disputes involving its own workforce), act of God, war, riot, pandemic, terrorism civil commotion, compliance with any law or regulation, fire, flood or storm (each a “**Force Majeure Event**”), provided that: (a) a Party affected by the Force Majeure Event (“**Affected Party**”) is notified by the Party experiencing the Force Majeure Event (“**Delayed Party**”), including its expected duration; and, (b) the Delayed Party uses all reasonable endeavors to mitigate, overcome or minimize the effects of the Force Majeure Event; and that if the period of delay or non-performance continues for thirty (30) days or more, the Affected Party may terminate the Agreement by giving ten (10) Business Days’ written notice to the Delayed Party. Notwithstanding anything to the contrary herein, AMCS shall not be liable for, nor be deemed to be in breach hereof as a result of, any failure to comply with its obligations hereunder or any other act or omission attributable to (a) any failure or delay by Merchant to comply with its obligations or perform its assigned tasks hereunder, (b) AMCS’s reliance upon any Merchant direction or any information provided or otherwise made available to AMCS by or on behalf of Merchant or any of its users of the Services, or (c) any act or omission of any Merchant third-party vendor, Key Supplier, or other agent or representative. AMCS will have no liability for any delay or damage caused by failure of Merchant systems or the public Internet, errors or omissions in any Merchant data, or other information, instructions or scripts provided to AMCS by Merchant in connection with the Services, or for any actions taken by AMCS at Merchant’s direction.
14. **Data Processing Addendum.**  
Both parties will comply with all applicable requirements of the Data Processing Addendum attached as Schedule 1 (“**DPA**”).



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15. **Compliance with Law.** Each Party shall comply in all material respects with the laws applicable to its business and operations. Merchant is responsible for ensuring that its own use of any data in connection with the Services complies with all applicable laws. Merchant will only provide AMCS with data that, if processed for payment, would result in a payment permitted under applicable law (including OFAC).
16. **Governing Law and Dispute Resolution.** The Agreement shall be governed pursuant to: (i) if Merchant is situate in the USA; to the laws of Delaware whose courts in Wilmington shall have exclusive jurisdiction and shall be the exclusive venue for the litigation of any dispute arising hereunder; or (ii) if Merchant is situate in Canada; to the laws of the Province of Ontario whose courts in Toronto shall have exclusive jurisdiction and shall be the exclusive venue for the litigation of any dispute arising hereunder. The Parties hereto agree that the Agreement is drafted and executed in the English language and that all disputes and further written matter relating to the Agreement and its enforcement shall be in English. Les parties aux présentes s'entendent pour que la présente convention soit rédigée en langue anglaise. **Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any proceeding (whether in tort, contract or otherwise) arising out of or in connection with the Agreement or its subject matter or formation. All claims for damages, losses, indemnities, and causes of action (whether in contract, tort, including negligence, or otherwise, arising from or relating to the Agreement and/or Services, must be raised within two (2) years of the expiration or termination of the Agreement. All such claims, other than relating to a Party's fraud or wilful misconduct, that are not timely raised in the appropriate court under this Section 16, are thereafter waived and barred.**
17. **Assignment.** AMCS may assign, novate or otherwise dispose of any or all of its rights and obligations under the Agreement and any associated third-party licenses to any of AMCS's affiliates or a successor by merger or an acquirer of assets and to any other person without the prior written consent of Merchant. Merchant may not at any time assign, novate or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of AMCS, such consent not to be unreasonably delayed or withheld. AMCS shall have no obligation to recognize any purported successor (whether by assignment or change of control) of Merchant without having first provided its written consent and may condition its consent upon receipt of conclusive written evidence of the nature and terms of such assignment, novation, change of control or other arrangement regarding its rights or obligations under the Agreement.
18. **Amendment and Waiver.** The Agreement may not be amended or otherwise modified unless such amendment or modification is set forth in writing, identified as an amendment or modification thereof and duly executed by an authorized representative of each of the applicable Parties. No provision of the Agreement may be waived unless such waiver is set forth in writing, identified as a waiver thereof and signed by an authorized representative of the waiving Party. An amendment or waiver of the Agreement shall have no effect on any other agreement in effect at the time of such amendment or waiver unless otherwise agreed by each of the applicable Parties. Except as otherwise provided in the Agreement, no failure or delay by a Party in exercising any right under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.
19. **Independence of Parties.** The relationship between the Parties is that of independent contractors and the Agreement will not establish any agency, partnership, joint venture, fiduciary, franchise or employment relationship between the Parties (or between one Party and the representatives of the other Party). Neither Party by virtue of the Agreement shall have any right, power or authority, express or implied, to bind the other Party.
20. **Communications.** Other than for provision of formal notices under Section 21 below, AMCS can contact Merchant via email, provide invoices and statements via email, and may use Merchant's name and logo for AMCS's marketing material.
21. **Notice.** All notices for non-renewal, the exercise of termination rights, or that allege breach or violation of the Agreement, shall be in writing and shall be deemed to have been given on the next business day after it is sent if sent by overnight courier service (provided delivery is confirmed), or when actually received if sent by other means. In each case, notice is to be sent to the address of the applicable Party first written above (in the case of notices to AMCS, with a copy to the attention of the Legal Dept.) or at such other address as shall be specified in the Agreement or by notice delivered in accordance herewith.
22. **Counterparts.** Each Proposal referencing these ToS (and these ToS, if agreed by the Parties to be separately signed) may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original, but such counterparts shall constitute one and the same instrument. The Agreement may be executed and delivered electronically.





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23. **Third Party Beneficiaries.** The Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.
24. **Whole Agreement.** The Agreement (comprised of each accepted Proposal that references or hyperlinks to these ToS, and these ToS) constitutes the entire agreement between the Parties and supersedes any prior written or oral agreement, communication or understanding with respect to the subject matter hereof. If these ToS are referenced in a Proposal by a hyperlinked reference, AMCS reserves the right to reasonably amend the terms of the Agreement by notifying the Merchant via email or mail. In the event of an amendment to the Agreement, the amended form will be posted at the Website. If Merchant does not reject the changes to the Agreement within thirty (30) days of the notice or their being posted on the Website, Merchant is deemed to have accepted them. If Merchant objects to the changes within such thirty (30) days, then they will not apply until a renewal of the Agreement at the end of the then-current Term at which time they will apply if Merchant has not elected to terminate the Agreement at the end of such Term.
25. **Definitions, Terminology and Interpretation.**
- 25.1 The definitions and rules of interpretation in this Section apply to these ToS:
- “Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **“Control”** for purposes of this definition, means direct or indirect ownership or control of more than fifty (50%) of the voting interests of the subject entity.
- “Agreement”** means these ToS together with any associated Proposal(s), including any document(s) referenced therein or appended thereto (schedules, tables, exhibits, etc.).
- “AMCS”** shall have the meaning specified in the Proposal.
- “AMCS Pay”** means the payment services offered by AMCS, as more fully stated in a Proposal.
- “Bank”** is the Merchant’s bank account, as specified in the Designated Account information.
- “Business Day”** means a day other than a Saturday, Sunday or a public holiday in the Country when its banks are open for business.
- “Confidential Information”** is all documentation, technical information, software, business information, feedback, pricing of the Services, reports issued from the Services, trade secrets or know how or other materials of a confidential nature disclosed by one Party to the other Party and in connection with the Agreement.
- “Country”** means the country where Merchant is situated, as indicated by the Merchant’s address set out in the Proposal.
- “Currency”** shall have the meaning specified in the Proposal.
- “Default Fee”** is the Fee stated in the Proposal which shall be due and payable to AMCS for each credit and debit that cannot be processed.
- “Designated Account”** means Merchant’s bank account from which Merchant shall pay all Fees and all other amounts owing by Merchant to AMCS pursuant to the terms of this Agreement.
- “Documentation”** means any document(s) made available to Merchant by AMCS online via AMCS’ website or such other web address notified by AMCS to Merchant from time to time and all materials provided by AMCS, directly or indirectly, to Merchant containing a description of, and the user instructions for, the Services as well as information about AMCS’ Intellectual Property Rights and/or the Services, including but not limited to usage instructions, videos, online materials, writings, drawings, graphs, charts, photographs and other data compilations in any media whatsoever.
- “Data Protection Legislation”** or **“DPL”** is defined in Schedule 1 (Data Processing Addendum).
- “Effective Date”** means that date specified in the Proposal (if no date is specified, the Effective Date shall be the date the Proposal is last signed or accepted by any ‘click to accept’ process by Merchant).
- “Extended Term”** means each successive period of one (1) year.



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<b>“Fees”</b>	means those fees specified in a Proposal for which Merchant shall pay to receive the Services.
<b>“Initial Term”</b>	is five (5) years from the Effective Date, unless expressly varied in a Proposal in which event such varied Initial Term shall apply only to such Proposal.
<b>“Key Supplier(s)”</b>	means Merchant’s payment processors or banks and related payment and ancillary service provider(s).
<b>“Key Supplier Agreement(s)”</b>	means Merchant’s agreements with its Key Supplier(s).
<b>“Key Supplies”</b>	means the services provided by the Key Supplier(s).
<b>“Merchant”</b>	is the party (company or legal entity) entering into this Agreement.
<b>“Pad Authorization”</b>	means the authority of Merchant to permit AMCS to draw on the Designated Account and the Bank to receive Fees pursuant to the Agreement, for the purpose of paying all Fees and all other amounts owed by Merchant to AMCS under the Agreement including amounts owing in the event of a default under the Agreement, and for paying all amounts owed under any other agreement with AMCS or its Affiliates for any related services.
<b>“Payments Association”</b>	means trade associations that provide electronic payments-related education and operational support to payments professionals.
<b>“Proposal”</b>	means any written document (which may be computer generated and could be referred to as, without limitation, an offer, an order form, a quotation, a proposal or some other designation) issued by AMCS to, and accepted by, Merchant setting out the commercial and any other terms on which the AMCS’ Services specified therein are offered to Merchant.
<b>“Schedule”</b>	means any schedule referenced in the Proposal and/or these ToS. All Schedules are incorporated into and become part of the Agreement by such reference.
<b>“Services”</b>	means those AMCS Pay services and such other services as are agreed between the Parties in a Proposal.
<b>“Term”</b>	is the total duration of the Initial Term and any applicable Extended Term(s).
<b>“Website”</b>	the AMCS Internet World Wide Web site through which the Services are accessed.

25.2 Unless the context otherwise requires, words in the singular will include the plural and in the plural will include the singular. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. Any phrase introduced by the words including, includes, in particular, or for example, or any similar phrase, will be construed as illustrative and will not limit the generality of the related general words. References to Sections and Schedules are to the Sections and Schedules of these ToS. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

25.3 If there is an inconsistency between any of the provisions in these ToS and the Proposal, the provisions of the Proposal will prevail.



**SCHEDULE 1  
DATA PROCESSING AGREEMENT**

**1 Definitions**

- "Data Protection Legislation"** means: has the meaning set out in the ToS and includes, as applicable, the California Consumer Privacy Act of 2018 and the California Privacy Rights Act of 2020 (collectively, as applicable, "CCPA/CPRA"), the United States' Gramm-Leach-Bliley Act ("GLBA"), the Personal Information Protection and Electronics Document Act, of Canada ("PIPEDA"), the European Union General Data Protection Regulation ("GDPR") and such other national, state and provincial laws as and when applicable, as they are amended and replaced;  
and  
(a) the terms **"Data Controller"**, **"Data Processor"**, **"Data Subject"**, **"Personal Data"** and **"processing"** when used in the Agreement will have the meanings set out in GDPR Legislation.
- "Purposes"** means those listed in Annex 1.
- "Third Party Processors"** means those third parties listed in Annex 1 and any such third party that Merchant may subsequently consent to, in writing.

**2 Effect of Addendum**

- 2.1 To the extent that the Agreement contains any terms or conditions concerning Data Protection Legislation, this Addendum replaces any such terms or conditions.
- 2.2 This Addendum constitutes an amendment to the Agreement in accordance with its terms and forms a part of it. All other provisions of the Agreement shall remain in full force and effect.

**3 Data Protection**

- 3.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.
- 3.2 The Parties acknowledge that for the purposes of the Data Protection Legislation: (i) where the Product(s) are provided and operate in the cloud, Merchant is the Data Controller and AMCS is the Data Processor and (ii) where the Product(s) are provided and operate on-premise, Merchant is both Data Controller and Data Processor, whilst AMCS is the Data Processor to the extent Merchant seeks the Services.
- 3.3 Merchant authorizes AMCS to process Personal Data to provide the Services in accordance with the Agreement and Annex 1 hereto and AMCS shall process Personal Data for such purposes in compliance with Data Protection Legislation.
- 3.4 Without prejudice to the generality of clause 3.1, AMCS will, in relation to any Personal Data processed in connection with the performance by AMCS of its Services obligations under the Agreement:
- 3.4.1 process that Personal Data for the Purposes, only in accordance with the terms of the Agreement and any written instructions of the Data Controller;
- 3.4.2 if AMCS is required any applicable laws ("**Applicable Laws**") to process such Personal Data for other purposes, promptly notify Merchant of such other purposes before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Processor from so notifying Merchant;
- 3.4.3 subject to clause 3.4.2 and the Agreement, not disclose any Personal Data to any third party without the prior written consent of Merchant;
- 3.4.4 ensure that it has in place appropriate technical and organizational measures, to protect against unauthorized or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymizing and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it);
- 3.4.5 ensure that all AMCS' personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 3.4.6 not transfer any Personal Data outside of the Country unless with the prior written consent of Merchant and the





following conditions are fulfilled:

- (i) Merchant or AMCS has provided appropriate safeguards in relation to the transfer;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) AMCS complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) AMCS complies with reasonable instructions notified to it in advance by Merchant with respect to the processing of the Personal Data;

- 3.4.7 assist Merchant, at Merchant's cost, in responding to any request from a Data Subject and in ensuring Merchant's compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 3.4.8 notify Merchant without undue delay on becoming aware of a Personal Data breach;
- 3.4.9 at the written direction of Merchant delete or return (in that format specified in the Agreement or as is produced by using the Product's standard data export facilities) Personal Data and copies thereof to Merchant on termination of the Agreement unless required by Applicable Laws to store the Personal Data;
- 3.4.10 maintain complete and accurate records and information to demonstrate compliance with this clause 3 (including but not limited to contractual arrangements for the transfer of Personal Data outside the EEA) and allow for audits by Merchant or Merchant's designated auditor in accordance with the audit provision of the Agreement; and,
- 3.4.11 comply with all reasonable requests of Merchant resulting from any such audit described in clause 3.4.10.

4 **CCPA/CPRA. This Section shall apply to any Personal Data that is governed by CCPA/CPRA.**

Merchant represents and warrants to Provider that any Personal Data disclosed by or on behalf of Merchant hereunder is provided solely for the Purpose, which is a "Business Purpose" (as defined under CCPA/CPRA). Provider shall only retain, use and disclose Personal Data for the Purpose and not for any other commercial purpose or otherwise outside the relationship between Provider and Merchant. Provider shall not sell or share Personal Data in violation of CCPA/CPRA. Provider shall comply with its obligations under CCPA/CPRA. Provider shall promptly notify Merchant if it can no longer comply with its obligations under CCPA/CPRA. Provider acknowledges and agrees that Merchant shall have the right to take reasonable and appropriate steps to (a) ensure that Provider uses the Personal Data in a manner consistent with Merchant's obligations under CCPA/CPRA and (b) stop and remediate unauthorized use of Personal Data. Merchant shall promptly inform Provider of any consumer request made pursuant to CCPA/CPRA that Provider must comply with, and provide the information necessary for Provider to comply with such request.

5 **Transfers.** Neither Party will transfer Personal Data across borders unless such transfer complies with Data Protection Legislation. The Parties will reasonably cooperate as necessary to determine whether any cross-border transfer of Personal Data between Merchant and Provider in connection with the Purposes complies with Data Protection Legislation. If any transfer of Personal Data between Merchant and Provider requires execution of the European Commission's Standard Contract Clauses ("SCCs") in order to comply with Data Protection Legislation, Merchant, as controller and data exporter, and Provider, as processor and data importer, hereby enter into (and incorporate herein by reference) the SCCs effective as of the commencement of such transfer. The Parties shall use Module II (Controller to Processor) of the SCCs in such case.

6 **Appropriate Safeguards.** AMCS will not appoint any third-party processor of Personal Data under the Agreement, without Merchant's prior written consent. Merchant hereby consents to the Third-Party Processors processing Personal Data for the Purposes listed in Annex 1 which may include the transfer of Personal Data to such Third-Party Processors. Where Merchant provides consent pursuant to clause 4.1 AMCS has entered, or will enter, into an agreement with such any Third-Party Processor incorporating terms which are substantially similar to those set out in clause 3.4. As between Merchant and AMCS, AMCS shall remain fully liable for all acts or omissions of any Third-Party Processor appointed pursuant to this DPA. In the event of any loss or damage to Merchant Data, Merchant's sole and exclusive remedy will be for AMCS to use reasonable commercial endeavors to restore the lost or damaged Merchant Data from the latest back-up of such Merchant Data maintained by AMCS in accordance with the archiving procedure described in its back-up policy.

7 **Application of DPA.** The terms of this DPA shall apply equally to any Personal Data processed by or on behalf of AMCS for any Merchant Affiliate. Merchant represents and warrants that it is and will at all relevant times remain duly and effectively authorized to enter into this DPA and perform all of its obligations hereunder on behalf of each such Merchant Affiliate. Merchant shall at all times be liable for Merchant's Affiliates' compliance with this DPA and all acts and omissions by Merchant's Affiliates receiving Services under the Agreement are deemed acts and omissions of Merchant.

8 **Merchant Obligations.** If Merchant directs AMCS to provide Personal Data to any Merchant vendor or other representative



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(other than AMCS), Merchant shall be responsible for the acts and omissions of such vendor or other representative with respect thereto. Merchant shall be responsible for maintaining all rights (including the lawful legal basis), obtaining any licenses, authorizations, approvals and consents (including from data subjects) and providing all notices, in each case, required for AMCS to process Personal Data for the Purpose. Merchant remains responsible for ensuring that its retention, use, disclosure or other processing of Personal Data complies with its policies and practices and the laws applicable thereto.

- 9 **DPA Term.** The term of this DPA shall begin on the effective date of the Agreement and shall continue for so long as the Agreement remains in effect or for so long as a Party (or any of its subprocessors) retains any Personal Data of the other Party.
- 10 **Incorporation into Agreement.** This DPA shall be deemed incorporated into and a part of the Agreement. This DPA, together with the Agreement, constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof and thereof, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. All claims and liabilities arising from or related to this DPA shall be brought under and subject to the terms of the Agreement, including any provisions therein regarding indemnification, limitation of liability, dispute resolution, choice of law or choice of forum.



**Annex 1**  
**Processing, Personal Data and Data Subjects**

**1 Processing by the Provider**

- 1.1 **Scope:** AMCS may act as a Data Processor in fulfilling the following:
  - 1.1.1 standard day to day processing of Merchant data for AMCS Pay Services
  - 1.1.2 delivering AMCS Pay Services to Merchant
  - 1.1.3 software maintenance and resolution of issues
- 1.2 **Purpose of processing:** AMCS will process data for the following reasons:
  - 1.2.1 **Provision of SaaS Services:** Where AMCS Pay Services operate in the cloud, these products host and process data on behalf of Merchant using AMCS developed applications.
  - 1.2.2 **Services Delivery:** During delivery of AMCS Pay Services to Merchant, it may be necessary to process data on behalf of Merchant, which could include:
    - 1.2.2.1 migration of data to AMCS solution database. This could be from one Merchant database to another. Such database may be located either in the Cloud or on the Merchant’s premises.
    - 1.2.2.2 testing of the Product prior to go live.
    - 1.2.2.3 assisting Merchant with first runs of key business processes, if required.
    - 1.2.2.4 debugging of solution prior to Merchant sign off.
  - 1.2.3 **Software Maintenance:** In order for AMCS to deliver software maintenance services, there will be occasions when AMCS will require access to, and may process, Personal Data in order to satisfactorily resolve issues that arise. Maintenance services may include:
    - 1.2.3.1 **case resolution-** resolving Merchant issues that may occur during the use of the Product.
    - 1.2.3.2 **upgrading Product** – It is important that product version be kept up to date and software support teams may need access to data in the product upgrade process.
    - 1.2.3.3 **data archiving-** In order to maintain a performing product, it will be necessary to archive data that is no longer required for immediate day to day processing, but may be required to retain for business reasons. In providing this service AMCS software support teams may need access to data in the Product.
    - 1.2.3.4 **performing complex configuration or changes** – Some changes to Merchant’s services or pricing will require assistance of AMCS software support teams. In delivering this service the AMCS software support teams may need access to data in the Product.
    - 1.2.3.5 Developing solutions, features or reports.
- 1.3 **Duration of the processing:**
  - 1.3.1 The duration of processing will vary depending on the task or service being delivered but data will only be retained for as long as is necessary to perform and deliver services.
  - 1.3.2 The data that is processed in SaaS products where data is stored in the cloud is retained on behalf of the Data Controller. The Data Controller will determine how long that this data is retained for.
  - 1.3.3 If it is necessary to copy data in order to perform maintenance support, the data will be deleted as soon as the support task has been completed and verified by the Merchant in accordance with AMCS’ policies and procedures.

**2 Types of Personal Data**

The Product requires certain Personal Data for effective operation of Merchant’s business. Such data allows Merchant to manage their Merchants, and to deliver the products and services their Merchants purchase. The types of personal data that may be processed by AMCS include:

- 2.1 Name
- 2.2 Address
- 2.3 Phone Numbers
- 2.4 Email Addresses
- 2.5 Bank Details
- 2.6 GPS coordinates

**3 Categories of Data Subject**

The data subjects that AMCS may access or collect data on are as follows:

- 3.1 **Merchant:** During the course of day to day operations AMCS will have access to Personal Data for the Merchant personnel with whom they engage. Correspondence with such personnel would typically be retained to document delivery of Services.
- 3.2 **Merchant’s Merchants:** The companies and individuals who subscribe to the Merchant’s products and services,



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which Merchant data is entered into the Product in the course of providing such products and services.

- 4 **Approved Third Party Processors:**
  - 4.1 **AMCS group companies**
  - 4.2 **Microsoft Azure** - global cloud service provider