

TMC SNAP TERMS & CONDITIONS

TERMS AND CONDITIONS

These Terms and Conditions constitute an agreement (“Agreement”) between you (“you”, “your”, “user”, “Customer”, or “Merchant”) and The Merchant Company, LLC (“TMC”, “us”, “we” or “our”) for recurring billing services and any related products or services (“Service” or “Services”). This Agreement governs both the Services and any assigned account (“Account”) used in connection with the Services.

Any of the following actions constitute your agreement, without limitation or qualification, to be bound by, and to comply with, the terms of this Agreement: (i) your initialization or registration of the Services, through the TMC website (TMCPayments.com) or through any of the TMC subdomains (the TMC website and subdomains are collectively referred to herein as, the “Site”); or (ii) through the use of your Account and password; or (iii) your use of the Site.

TERM

The term of this Agreement begins on the date we activate Services for your Account. This Agreement will continue from month to month until terminated by either party pursuant to the terms hereof.

ORDER ACCEPTANCE POLICY

Your submission of your order on the Site or receipt of an email confirmation signifies acceptance by TMC of your order and the provision of your Account. TMC may verify orders to prevent fraud. Should TMC suspect the placement of a fraudulent order (even after you have received an email confirmation of acceptance of your order and the provision of your Account), TMC may contact you by email or telephone regarding such suspected fraudulent order and, in TMC’s sole discretion, we may interrupt, restrict, or terminate your Account without notice to you.

USE OF SERVICES & ACCOUNT

You represent and warrant that you are at least 18 years of age or the applicable age of majority in your geographic area, and that you possess the legal right and ability to enter into this Agreement. You agree not to use the Materials, Content, Services, and your Account for any unlawful or abusive purpose or in any way which interferes with our ability to provide Services to our customers, or which damages our property.

Certain pages on the Site, or access to the Services and/or your Account, may be accessed only by use of a password and login. You are solely responsible for all uses of the Site and/or the Services and/or your Account with your password. You should change your password once each month. If your Services or Accounts are fraudulently used, you agree to immediately notify TMC of such unauthorized use. We have the right to interrupt, restrict, or terminate Services to your Account, without notice to

you, if we suspect fraudulent or abusive activity. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe.

EMAIL COMMUNICATIONS FROM TMC TO YOU

YOU AGREE THAT TMC MAY SEND EMAIL MESSAGES TO YOU FROM TIME TO TIME REGARDING PLANNED SERVICE DOWNTIME, NEW FEATURES, AND OTHER COMMUNICATIONS THAT WE BELIEVE OUR USERS WILL WANT TO KNOW ABOUT.

YOU MAY OPT OUT OF RECEIVING THESE EMAILS BY CANCELLING YOUR TMC SERVICE.

NO WARRANTIES

THE MATERIALS, CONTENT, SERVICES, AND ACCOUNTS ARE PROVIDED “AS IS”. WE MAKE NO WARRANTIES REGARDING THE MATERIALS, CONTENT, SERVICES, AND ACCOUNTS WHATSOEVER AND DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OR TRADE. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, the foregoing disclaimers may not apply to you insofar as they relate to implied warranties. If you rely on the representations or warranties of any third parties with respect to the Services (including, without limitation, by dealers or resellers of the Services) beyond those made by TMC, your sole remedy for such reliance is against the third party making such representation or warranty.

SERVICE AVAILABILITY

We will make every available effort to keep TMC Services operational 24 hours a day, 7 days a week. There will be periods of downtime for maintenance and upgrades, and sometimes, for reasons that we did not plan. We will attempt to provide at least 24 hours of notice for scheduled maintenance or downtime, but some downtime may be unscheduled and beyond our control.

WE MAKE NO GUARANTEE AS TO UPTIME OR AVAILABILITY OF THE SERVICE.

LIMITATION OF LIABILITY

IN NO EVENT SHALL TMC, ITS PARENTS, SUBSIDIARIES, AFFILIATES AND THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, STOCKHOLDERS, OR AGENTS BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO

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DIRECT, COMPENSATORY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF OR RELATING TO (I) YOUR INABILITY TO USE THE MATERIALS, CONTENT, SERVICES OR ACCOUNTS; (II) YOUR MISUSE OF THE MATERIALS, CONTENT, SERVICES OR ACCOUNTS; (III) NONPERFORMANCE OR A FAILURE OF THE SERVICES CAUSED BY ACTS OR OMISSIONS OF ANOTHER SERVICE PROVIDER, (IV) EQUIPMENT OR SOFTWARE FAILURE OR MODIFICATION; (V) TELECOMMUNICATIONS OR COMPUTER EQUIPMENT FAILURES, OR (VI) ACTS OF GOD, OR OTHER CAUSES BEYOND OUR REASONABLE CONTROL. THE FOREGOING SHALL APPLY EVEN IF TMC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TMC ALSO MAKES NO REPRESENTATIONS OR WARRANTIES THAT YOUR ACCESS TO AND USE OF THE SITE, MATERIALS, CONTENT, SERVICES AND ACCOUNTS (1) WILL BE UNINTERRUPTED OR ERROR FREE; (2) IS FREE OF VIRUSES, UNAUTHORIZED CODE, OR OTHER HARMFUL COMPONENTS; (3) IS SECURE; OR (4) WILL MEET YOUR SATISFACTION. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS YOU BELIEVE NECESSARY OR ADVISABLE TO PROTECT YOU AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF YOUR USE OF THE SITE, MATERIALS, CONTENT, SERVICES, AND ACCOUNT.

IN NO EVENT SHALL TMC, ITS PARENTS, SUBSIDIARIES, AFFILIATES AND THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, STOCKHOLDERS, AGENTS AND ANY UNDERLYING CARRIER BE LIABLE FOR INJURIES TO PERSONS OR PROPERTY ARISING FROM USE OF THE SERVICES, OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICES.

IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, TMC SHOULD HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY LOSS, HARM OR DAMAGE, YOU AND TMC AGREE THAT IN NO EVENT SHALL LIABILITY OF TMC TO YOU FOR ANY REASON EXCEED OUR SERVICE CHARGES DURING THE AFFECTED PERIOD GIVING RISE TO SUCH LIABILITY.

YOU AND TMC AGREE THAT THIS SECTION OF THE AGREEMENT, "LIMITATION OF LIABILITY", IS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND TMC. YOU ACKNOWLEDGE THAT, ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, TMC WOULD NOT PROVIDE THE SITE, MATERIALS, CONTENT, SERVICES, OR ACCOUNTS TO YOU.

MODIFICATION OF PRICES OR BILLING TERMS

TMC reserves the right, at any time, to change its prices and billing methods for the Service, effective immediately upon posting to the Site or by email delivery to you.

INTELLECTUAL PROPERTY OWNERSHIP

All Materials, Services, Accounts, and content, including, but not limited to, policy information, text, software, music, sound, photographs, video, graphics, the arrangement of text and images, commercially produced information, and other material contained on the Site or through the Services ("Content"), are provided by TMC unless indicated otherwise. All intellectual property rights in the Materials, Content, Services, and Accounts (including copyrights, trademarks, service marks, trade secrets and patents) are the property of TMC. TMC retains all copyrights in the individual pages, and their components, and collective works available at the Site.

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SINGLE COPY (INSTANCE) LICENSE

You may utilize one copy (one "instance") of the materials (the "Materials") and/or Content found on this Site for use with the Services and/or Accounts. This is a license, not a transfer of title, and is subject to the following restrictions: unless you receive prior written consent from TMC and unless you receive any required regulatory approvals, you may not: (a) modify the Materials, Content, Services or Accounts or use them for any commercial purpose or any public display, performance, sale or rental; (b) decompile, reverse engineer, or disassemble software, Materials, Content, Services or Accounts; (c) remove any copyright or other proprietary notices from the Materials, Content, Services or Accounts; (d) unless otherwise provided herein, transfer or resell the Materials, Content, Services or your Account to another person. You agree to prevent any unauthorized copying of the Materials, Content, Services and Accounts.

TMC RELIANCE ON THIRD-PARTY SYSTEMS

TMC will be sending transaction requests to your desired payment gateway. We make no guarantees as to the availability of your payment gateway and we are in no way responsible should your payment gateway provider have an outage, downtime, or erroneous operation of their systems.

TMC is not a payment processor, merchant account provider, or payment gateway service. We are not responsible for any monies due to you related to transactions that have been processed through your payment gateway, merchant account provider, or

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any payment processors that you utilize in connection with the TMC Services.

TMC does not store any credit card information from your customers. Instead, we pass credit card information to your payment gateway, such as Authorize.Net, and they store it in their system. We are not responsible or liable for any problems that arise as a result of credit card information being misused after we have passed it to your payment gateway for storage by them.

TERMINATION / CANCELLATION

You may terminate this Agreement at any time by ceasing all use of the Services or by notifying TMC of your desire to cancel your Service. We may terminate this Agreement, at any time, without notice to you, if we believe, in our sole judgment, that you have breached or may breach any term or condition of this Agreement. You agree that termination of this Agreement will not relieve you of any obligation to pay any accrued charges.

All sections which by their nature should survive the expiration or termination of the Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

You shall be charged the full amount of the fee for the month in which the Services were terminated. There is no pro-rated refund or discount provided when an account is terminated.

PRIVACY

Please see our Privacy Policy as set forth on the Site (TMCPayments.com).

COOPERATION WITH GOVERNMENT AUTHORITIES

If necessary and in accordance with applicable law, TMC will cooperate with local, state, federal, international, and/or worldwide government authorities to protect this Site, Materials, Content, Services, Accounts, visitors, customers, TMC, its parents, subsidiaries, affiliates and their respective members, managers, directors, officers, employees, stockholders and agents and operational providers, from the unauthorized use of this Site, Materials, Content, Services and Accounts.

LINKS TO OTHER MATERIALS

The linked sites are not necessarily under the control of TMC and TMC is not responsible for the content of any linked site or any link contained in a non-affiliated linked site. TMC reserves the right to terminate any link or linking program at any time. TMC has selected the links for your convenience. The selection or omission of links is not intended to endorse any particular companies or products. If you decide to access any of the third-party

sites linked to this Site, you do so entirely at your own risk. Any links to any portion of the Site shall be the responsibility of the linking party, and TMC shall not be responsible for notification of any change in name or location of any information on the Site.

MODIFICATION

We may change or modify this Agreement from time to time, but any such change (a) will be made in good faith, and (b) if significant (as determined in the sole discretion of TMC), will only be made after first providing you with notice of the change. You can review the most current version of this Agreement at any time at our Site (TMCPayments.com). If you do not agree to a significant change, you may terminate this Agreement by terminating use of the Services and/or by requesting that we terminate your Services.

ASSIGNMENT

We may assign all or part of our rights or duties under this Agreement in connection with a sale of all or substantially all the assets of TMC to a third party without notice to you; provided any such third party shall be obliged to honor the terms of this Agreement. You may not assign this Agreement without our prior written consent.

INDEMNITY

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS TMC, ITS PARENTS, SUBSIDIARIES, AFFILIATES, AND THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, STOCKHOLDERS, AGENTS AND ANY UNDERLYING CARRIER, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, EXPENSES OR DAMAGES (INCLUDING ATTORNEYS' FEES), WHETHER KNOWN OR UNKNOWN, ARISING FROM, INCURRED AS A RESULT OF, OR IN ANY MANNER RELATED TO (A) YOUR USE OF THE SERVICES, (B) ANY OTHER PERSON'S USE OF ANY ACCOUNT YOU MAINTAIN, REGARDLESS OF WHETHER SUCH USE IS AUTHORIZED BY YOU, OR (C) YOUR PROMISES OR STATEMENTS MADE IN THIS AGREEMENT. YOU HEREBY AGREE TO WAIVE ALL LAWS THAT MAY LIMIT THE EFFECTIVENESS OF THE FOREGOING RELEASES. NOTWITHSTANDING THE FOREGOING, YOU SHALL NOT BE LIABLE FOR CLAIMS, EXPENSES OR DAMAGES ARISING FROM THE GROSSLY NEGLIGENT ACTS OF TMC OR ITS EMPLOYEES, AGENTS, CONTRACTORS, OR REPRESENTATIVES. THIS INDEMNIFICATION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

PCI COMPLIANCE TMC will maintain PCI DSS compliance against the current version of PCI DSS published on the PCI Security Standards Council website. As evidence of compliance, TMC will provide online at TMCPayments.com a current Certificate of Compliance issued by a PCI QSA (Qualified Security Assessor). Within the limitations set forth elsewhere in this Agreement, TMC shall be responsible for the security of cardholder data that we possess, including functions relating to storage, processing, and transmission of the cardholder data.

TMC does not store any credit card information from your customers. Instead, we pass credit card information to your payment gateway, such as Authorize.Net, and they store it in their system. We are not responsible or liable for any problems that arise as a result of credit card information being misused after we have passed it to your payment gateway for storage by them.

TMC will immediately notify you if we learn that we are no longer PCI DSS compliant and will notify you of steps being taken to remedy the non-compliance status. In no event shall TMC's notification be later than seven (7) calendar days after TMC learns it is no longer PCI DSS compliant.

NOTICES

Except as otherwise provided in this Agreement, notices and other communications under this Agreement shall be in writing and shall be delivered, mailed by first-class mail, postage prepaid, or sent by facsimile or electronic mail, addressed, (a) if to you, at the address as kept in our files or at such other address as you shall have furnished to us in writing, or (b) if to us, at:

TMC, LLC
Attn: Customer Support Department
3500 Blue Lake Dr. Ste. 195
Birmingham, Alabama 35243
USA

Your notice must specify your name and Account. Each such notice, request, or other communication shall be effective (i) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, (ii) if sent by facsimile or email, when sent and receipt is electronically confirmed or (iii) if given by any other means (including, without limitation, by air courier), when delivered at the address specified above. Oral notices shall be deemed effective on the date reflected in our records.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Alabama, excluding that body of law applicable to conflicts of law.

JURISDICTION & VENUE

You and TMC agree that any suit, action, or proceeding arising out of or relating to this Agreement shall be instituted only in a Alabama state or federal court sitting in Birmingham, Alabama, United States of America. You and TMC each waive any objection you or TMC may have now or hereafter to the laying of the venue of any such suit, action or proceeding, and irrevocably submit to the jurisdiction of any such court in any such suit, action or proceeding.

GENERAL INFORMATION, PUBLICITY, ENTIRE AGREEMENT

If any part of this Agreement is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect.

You hereby consent to TMC publicizing the existence (but not the terms) of the relationship contemplated hereunder as a part of promotional and marketing activities from time to time by TMC.

This Agreement constitutes the entire agreement between TMC and you with respect to your use of the TMC Site, Materials, Content, Services, and your Account, and it supersedes all prior or contemporaneous communications and proposals, whether oral or written, between TMC and you with respect thereto. The failure of TMC to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. ■