

## **Merchant Services Agreement** **Bankcard Processing Terms of Use**

Hosted here: <https://live.punchey.com/merchanttermsofservice>

Punchey Inc.'s products help transform your payment processing technology into a social enabled, Internet ready and marketing proficient platform (collectively named the "Service"). This Punchey User Agreement ("Agreement") is a legal agreement between you ("you," "your") and Punchey, Inc. ("Punchey," "we," "our" or "us"). Please read this Agreement carefully. This Agreement is divided into four parts. Part one explains all of the terms that govern your use of the payment processing Service. Part two contains additional legal terms, including provisions that limit our liability to you and require individual arbitration for any potential legal dispute. Addendum 1 contains information relating to businesses participating in marketing and loyalty programs powered by Punchey. Addendum 2 contains important warranty and equipment information (when applicable). In order to use the Service, you must accept all of the terms of this Agreement.

### **Punchey Merchant Account Definition**

Registering for a Punchey Merchant Account allows a business or an individual to accept card credit and debit card forms of payments. As a business, you can only register for Punchey if you are the business principal or have legal authority to bind the business to a legal agreement. If you agree, "you" means you the "individual" and you the "business". Please note, if your merchant account application is approved, Punchey will authorize and settle your transactions via FIS (Fidelity Information Services) which is located at 601 Riverside Avenue Jacksonville, FL 32204.

### **Exclusivity**

As part of our underwriting process, we assess total exposure based on total processing volume, methods of processing and business type, in addition to any other loans or debt your company may carry. If you are processing with another processor we have no way to estimate this total exposure.

### **Your Punchey Account.**

You must be a US Citizen to create and maintain a Punchey Merchant Account. You also acknowledge you do not operate, and will not use your Punchey Merchant Account to process transactions in the following lines of business:

- Adult Content
- Airline
- Collection Agency – merchant may not accept a card as payment for a dishonored check of for an item deemed uncollectible by another merchant
- Cruise Line
- Credit Counseling
- Credit protection or ID protection services
- Debt Elimination or Reduction Services
- Distressed Property Sales and Marketing

- Gambling Establishments
- MOTO/Internet Tobacco sales
- MOTO/Internet Pharmaceuticals
- Multi-Level Marketing Programs
- Rebate or Upsell Programs
- Timeshare Resellers and Related Marketing
- Any merchant selling goods or services that represent a violation of any law
- Any merchant operating outside the United States
- Sub-Merchant submitting sales for payments resulting from another commercial entity providing goods or services to the cardholder
- A merchant may not accept a card at a scrip-dispensing terminal
- Buyer Clubs/Membership Clubs
- Outbound Telemarketing
- Inbound Telemarketing (Videotext Services)
- Direct Marketing: Continuity or Subscription Services

### **Restricted Use**

There shall be no re-selling of Punchey services or products without the express written consent, as executed in a separate Reseller agreement with the company. You may only use this service to the extent you obey the Card Brand rules, network regulations, banking regulations and federal, state and local laws within the U.S.

### **No Illegal Use**

We may decide not to authorize or settle any transaction that you submit to us if we believe that the transaction is in violation of any Punchey agreement, or exposes you, other Punchey users, our processors or Punchey to harm. Harm includes but is not limited to any losses to Punchey, fraud and other criminal acts. If we reasonably suspect that your Punchey Account has been used for an unauthorized, illegal, or criminal purpose, you give us express authorization to share information about you, your Punchey Account, and any of your transactions with law enforcement or any other entity deemed appropriate by Punchey.

### **Punchey Card Readers, API Connectivity and Virtual Terminals**

Punchey permits you to accept payment card transactions in a variety of ways. Virtually, over a web based terminal or via an API (Application Program Interface), or in the case of card present transactions, by swiping on a card reader purchased from or given by Punchey, Inc. This service and any devices provided must be used exclusively for payment processing or other services designed and provided by Punchey. You acknowledge that the use of a device or service for any other purpose besides for services provided by Punchey is expressly prohibited, constitutes a violation of the terms of this agreement, and is grounds for termination of your Punchey Account. By signing this agreement you also agree not to use Punchey service on any device that was not provided to you by Punchey.

### **Merchant Name and DBAs**

You agree to choose a reasonable name as your merchant descriptor within the Card Brand regulations. Such name should accurately describe your business and be considered the name

your customers know you do business as. You recognize that this name will show on your customers' credit card and bank statements and should allow them to easily recall their purchase at or from your business. Names that are confusing or do not accurately represent your service or goods may lead to unnecessary chargebacks (see below).

### **Verification and Inspection.**

If your merchant application is approved, you recognize and acknowledge that Punchey may request additional information, including but not limited to financial information, on-premise visits, invoices, cardholder information and website inspections. If you refuse any of these requests, your Punchey Merchant Account may be terminated. We reserve the right to suspend or terminate the Punchey Merchant Account of any user who provides inaccurate, untrue, or incomplete information, or fails to comply with the account registration requirements.

### **Software & Software Updates**

The Punchey software is part of the Service. Among other things, the software enables you to access and use the Service. When you install the software, you will be asked to create your user profile and to establish a Punchey Account on the Punchey website. You must complete this and other processes in order to access any funds that you accept through the Service. You must install any and all software updates to continue to use the Service.

### **Assignment**

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Punchey without restriction.

### **License**

Punchey grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sub-license, to electronically access and use the Service solely to accept and receive payments and to manage the funds you so receive. The Service includes our website, any software, programs, documentation, tools, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) thereto provided to you by Punchey. You will be entitled to download updates to the Service, subject to any additional terms made known to you at that time, when Punchey makes these updates available.

While we want you to enjoy the Service, you may not, nor may you permit any third party to do any of the following: (i) access or monitor any material or information on any Punchey system using any manual process or robot, spider, scraper, or other automated means unless you have separately executed a written agreement with Punchey referencing this Section 44(i) that expressly grants you an exception to this prohibition; (ii) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material or information from Punchey; (iii) permit any third party to use and benefit from the Service via a rental, lease, timesharing, service bureau or other arrangement; (iv) transfer any rights granted to you under this Agreement; (v) violate the restrictions in any robot exclusion headers on the Service, work around, bypass, or circumvent any of the technical limitations of the Service, use any tool to enable features or functionalities that are otherwise disabled in the

Service, or decompile, disassemble or otherwise reverse engineer the Service, except to the extent that such restriction is expressly prohibited by law; (vi) perform or attempt to perform any actions that would interfere with the proper working of the Service, prevent access to or use of the Service by our other users, or impose an unreasonable or disproportionately large load on our infrastructure; or (vii) otherwise use the Service except as expressly allowed under this section.

### **Ownership**

The Service is licensed and not sold. Punchey reserves all rights not expressly granted to you in this Agreement. Copyright, trade secret and other intellectual property laws protect the Service. Punchey owns the title, copyright and other worldwide Intellectual Property Rights (as defined below) in the Service and all copies of the Service. This Agreement does not grant you any rights to Punchey's trademarks or service marks.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

### **Punchey's Role.**

Our Service allows you to accept payments, including card-based payments initiated with cards bearing the trademarks of MasterCard International Inc. and Visa Inc. (collectively, the "Networks"). We are not a bank or a money services business ("MSB") and we do not offer banking or MSB services as defined by the United States Department of Treasury.

As a merchant payment processor, Punchey processes payments you receive from your customers. This means that we collect, analyze and relay information generated in connection with these payments.

In order to serve in this role, we must enter into agreements with Networks, other processors and banks. These third parties require that some of our users enter into an agreement with Punchey's payment processor of record. If you are such a user, we will provide you a "Commercial Merchant Addendum" that you must complete in order to use the Service. This may happen during the registration process or at some other time. If you fail to complete a "Commercial Entity Agreement," we may suspend or terminate your Punchey Account.

### **Electronic Disclosures (Are Okay)**

You agree that Punchey can provide Disclosures and Notices required by law and other information about your Punchey Account to you electronically by posting it on our website, or emailing it to the email address listed in your Punchey Account. You also agree that electronic Disclosures and Notices have the same meaning and effect as if we had provided you with a paper copy. Such Disclosures and Notices are considered received by you within 24 hours of the time it was posted to our website, or emailed to you unless we receive notice that the email was not delivered.

### **Your Authorization**

By accepting the terms of this Agreement, you authorize us to hold, receive, and disburse funds on your behalf. Your authorization permits us to generate a paper draft or an electronic funds transfer to process each payment transaction that you authorize. Your authorizations will remain in full force and effect until your Punchey Account is closed or terminated.

### **What Cards Are Accepted (Most Of Them)**

Punchey works with any US-issued and most non-US issued credit, debit, prepaid, or gift cards with a Visa, MasterCard, American Express, or Discover logo. We may remove or add Cards that we accept at anytime without prior notice. We will only process Cards that receive an authorization from the applicable Network or card issuer. The person who presents the card to you (“the Payer”) may not be authorized to use the card or otherwise contest the transaction through the Chargeback process (described below).

### **Applicable Network Rules You Must Adhere To (Like No Surcharges)**

The Networks require that you and Punchey comply with all applicable bylaws, rules, and regulations (“Network Rules”). The Networks have historically reserved the right to amend their rules and regulations. Punchey may be required to change this agreement in connection with amendments to the Network Rules. Significant portions of the Network Rules are available to the public at [usa.visa.com](http://usa.visa.com) and [www.mastercard.com](http://www.mastercard.com).

By accepting this agreement, you expressly agree to adhere to all Network Rules and Regulations available at [usa.visa.com](http://usa.visa.com) and [www.mastercard.com](http://www.mastercard.com).

## **RESERVES & UNDERWRITING**

### **Underwriting You Or Your Business**

Punchey will review some or all of the information that you submit in connection with your request to sign up for the Service. Punchey may forward such information on to its processor. In order to be eligible to use the Service, you must agree that Punchey may share information about you and your Punchey Account to its processor. After you submit your application, Punchey or its processor may conclude that you will not be permitted to accept the Punchey Service. Punchey reserves the right to request additional information it deems necessary to complete its reserve and/or underwriting processes.

By accepting the terms of this Agreement, you specifically authorize Punchey to request identity verifying information about you, including a consumer report that contains your name and address. Punchey may periodically obtain additional reports to determine whether you continue to meet the requirements for a Punchey Account.

You agree that Punchey is permitted to contact and share information about you and your application (including whether you are approved or declined), and your Punchey Account with your bank or other financial institution. This includes sharing information (a) about your transactions for regulatory or compliance purposes, (b) for use in connection with the management and maintenance of the service, (c) to create and update their customer records about you and to assist them in better serving you, and (d) to conduct Punchey’s risk management process.

## **Our fees**

You agree to pay the applicable fees listed on our Fee Schedule, as well as a \$34.00 ACH reject fee, a \$10.00 Retrieval Request fee and a \$44.95 chargeback fee, (“Fees”) whenever you use our Service. In addition, Punchey reserves the right to assess a monthly minimum fee of \$25 fee for any month that your merchant account processes less than \$2,000. If your account is deemed fraudulent or does not pass our minimum security requirement to begin processing you hereby agree to pay an \$150.00 Denied Application fee. All Balances and all Fees, charges, and payments collected or paid through the Service are denominated in US dollars. Subject to the terms of this Agreement, we reserve the right to change our Fees. If we change our Fees, we will give you thirty (30) days notice of any change. You will not be permitted to continue to use the Service unless you consent to the change in Fees. To withdraw your consent, you will need to close your Punchey Account.

## **The Account Funding Process**

Subject to the payout schedule identified below, we will deposit to your Punchey Account the amounts actually received by us for transactions submitted through the Service (less any applicable Fees). Once your bank account information is verified, Punchey will automatically deposit your money in your designated bank account when your Punchey Account balance exceeds \$50.

In the event that you do not have an ACH-enabled Punchey Account, you may request a physical check. Check requests will be subject to a processing fee and an identity verification process. Funds for any given transaction will not be deposited until the transaction is deemed complete. Transactions will be deemed complete when we have received or sent the funds and when the designated financial institutions or we have accepted the transaction or funds. You are responsible for monitoring your transactions and ensuring that our payments to you are correct. You must notify us of any errors in payments made to you within sixty (60) days of the error first appearing on your electronic transaction history. Failure to notify us of such an error will be deemed a waiver of any right to amounts owed to you.

## **Payout Schedule - Standard Transactions**

Once you validate your US bank account, Punchey will automatically initiate a payout to your bank account at the end of every business day. Payouts to your bank account will normally register within 1-2 business days.

## **Availability of Funds**

Should Punchey need to conduct an investigation or resolve any pending dispute related to your Punchey Account, we might defer payout or restrict access to your funds for the entire time it takes for us to do so. We also may defer payout or restrict access to your funds as required by law or court order, or if otherwise requested by law enforcement or governmental entity.

## **Reserve & Punchey Account Balances (If you leave money with us)**

At any time and from time to time, we may temporarily suspend or delay payments to you and/or designate an amount of funds that we must maintain in your Punchey Account or in a separate reserve account (a “Reserve”) to secure the performance of your payment obligations under this Agreement. We may require a Reserve for any reason, including if you have a high rate of,

refunds, or other indications of performance problems related to your use of the Service. The Reserve will be in an amount as reasonably determined by us to cover anticipated Chargebacks, returns, unshipped merchandise and/or unfulfilled services or credit risk based on your processing history or such amount designated by our processor. The Reserve may be raised, reduced or removed at any time by Punchey, in its sole discretion, based on your payment history, a credit review, the amount of any arbitration award or court judgment against you in Punchey's favor, or otherwise as Punchey or its processor may determine or require. If you do not have sufficient funds in your Reserve, we may fund the Reserve from any funding source associated with your Punchey Account, including but not limited to any funds (a) deposited by you, (b) due to you under this Agreement, or (c) available in your bank account, or other payment instrument registered with us. You grant us a security interest in and lien on any and all funds held in any Reserve, and also authorize us to make any withdrawals or debits from the Reserve, without prior notice to you, to collect amounts that you owe us under this Agreement, including without limitation for any reversals of deposits or transfers made to your Punchey Account. You will execute any additional documentation required for us to perfect our security interest in any funds in the Reserve. This security interest survives for as long as we hold funds in your Reserve.

You may, but are not required to hold monetary balances that you receive in your Punchey Account (your "Balance"). When you carry a Balance, your funds will be co-mingled and held with other participants' funds in one or more pooled accounts at one or more FDIC-insured banks by us on your behalf and for the benefit of you and other users holding balances (each a "Pooled Account"). US dollar balances held in the pooled account are eligible for FDIC pass-through insurance, meaning that your Balance may be insured up to the FDIC maximum, which is currently \$250,000. We have sole discretion over the establishment and maintenance of any pooled account. Funds associated with your Punchey Account will at all times be held separate from our corporate funds. We will not use your funds for our corporate purposes (including the granting of any security or similar interest), will not voluntarily make funds available to our creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit our creditors to attach the funds. You will not receive interest or any other earnings on any funds that we handle for you. As consideration for using the Service, you irrevocably assign to us all rights and legal interests to any interest and/or other earnings that may accrue or are attributable to our holding of your Balance in a pooled account or Reserve (described below).

### **Dormant Punchey Accounts**

If there is no activity in your Punchey Account (including access or payment transactions) for at least two (2) years, consecutively, and you have a Balance, we will notify you by sending an email to your registered email address and give you the option of keeping your Punchey Account open and maintaining the Balance, withdrawing the Balance, or requesting a check. If you do not respond to our notice within thirty (30) days, we will automatically close your Punchey Account and escheat your funds in accordance with applicable law, and if permitted, to the Punchey Service.

## **CHARGEBACKS**

### **Your Chargeback Liability**

The amount of a transaction may be reversed or charged back to your Punchey Account (a “Chargeback”) if the transaction (a) is disputed, (b) is reversed for any reason by the Network, our processor, or a Payer’s or our financial institution, (c) was not authorized or we have any reason to believe that the transaction was not authorized, or (d) is allegedly unlawful, suspicious, or in violation of the terms of this Agreement.

### **How We Collect For Chargebacks**

For any transaction that results in a Chargeback, we may withhold the Chargeback amount in a Reserve. We may deduct the amount of any Chargeback and any associated Fees, fines, or penalties listed in the Fee Schedule or assessed by the Association or our processor from your Punchey Account (including without limitation any Reserve), any proceeds due to you, your bank account, or other payment instrument registered with us. If you have pending Chargebacks, we may delay payouts from your Punchey Account. Further, if we reasonably believe that a Chargeback is likely with respect to any transaction, we may withhold the amount of the potential Chargeback from payments otherwise due to you under this Agreement until such time that: (a) a Chargeback is assessed due to a customer’s complaint, in which case we will retain the funds; (b) the period of time under applicable law or regulation by which the customer may dispute that the transaction has expired; or (c) we determine that a Chargeback on the transaction will not occur. If we are unable to recover funds related to a Chargeback for which you are liable, you will pay us the full amount of the Chargeback immediately upon demand. You agree to pay all costs and expenses, including without limitation attorneys’ fees and other legal expenses, incurred by or on behalf of us in connection with the collection of all Punchey Account deficit balances unpaid by you.

### **Excessive Chargebacks**

If we determine that you are incurring an excessive amount of Chargebacks, we may establish controls or conditions governing your Punchey Account, including without limitation, by (a) establishing new processing fees, (b) creating a Reserve in an amount reasonably determined by us to cover anticipated Chargebacks and related fees, (c) delaying payouts, and (d) terminating or suspending the Service.

### **Contesting Chargebacks**

You agree to assist us when requested, at your expense, to investigate any of your transactions processed through the Service. To that end, you permit us to share information about a Chargeback with the payer, the payer’s financial institution, and your financial institution in order to investigate and/or mediate a Chargeback. We will request necessary information from you to contest the Chargeback. If the Chargeback is contested successfully, we will release the reserved funds to your Punchey Account. If a Chargeback dispute is not resolved in your favor by the Association or issuing bank or you choose not to contest the Chargeback, we may recover the Chargeback amount and any associated fees as described in this Agreement. You acknowledge that your failure to assist us in a timely manner when investigating a transaction, including providing necessary documentation within fifteen (15) days of our request, may result



in an irreversible Chargeback. We reserve the right, upon notice to you, to charge a fee for mediating and/or investigating Chargeback disputes.

### **Our Set Off Rights**

To the extent permitted by law, we may set off against the Balances for any obligation you owe us under this Agreement, including without limitation any Chargebacks. All Fees are charged at the time we process a transaction and are deducted first from the transferred or collected funds and thereafter from the Balance in your Punchey Account. If you owe us an amount that exceeds your Balance, we may charge or debit a payment instrument registered in your Punchey Account. Your failure to fully pay amounts that you owe us on demand will be a breach of this Agreement. You will be liable for our costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and any applicable interest.

### **Punchey Processing Errors**

We will attempt to rectify processing errors that we discover. If the error resulted in your receipt of less than the correct amount to which you were entitled, Punchey will credit your Punchey Account for the difference. If the error results in your receipt of more than the correct amount to which you were entitled, Punchey will debit the extra funds from your Punchey Account. Punchey will only correct transactions that you process incorrectly if and when you notify us of such an error. Your failure to notify us of a processing error within thirty (30) days of when it first appears on your electronic transaction history will be deemed a waiver of any right to amounts owed to you.

### **Your Responsibilities**

#### **You Are Responsible For Taxes**

You are responsible for determining any and all taxes assessed, incurred, or required to be collected, paid, or withheld for any reason in connection your use of our software and services ("Taxes"). You also are solely responsible for collecting, withholding, reporting, and remitting correct Taxes to the appropriate tax authority. We are not obligated to, nor will we determine whether Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any transaction.

If in a given calendar year you receive (i) more than \$20,000 in gross amount of payments and (ii) more than 200 payments, Punchey will report annually to the Internal Revenue Service ("IRS"), as required by law, your name, address, Tax Identification Number (such as a Social Security Number (SSN), or Employer Identification Number (EIN)), the total dollar amount of the payments you receive in a calendar year, and the total dollar amount of the payments you receive for each month in a calendar year.

## **You Are Responsible For Customer Service With Your Customers**

You are solely responsible for all customer service issues relating to your goods or services, including pricing, order fulfillment, order cancellation by you or customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support, and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from us. As between you and us, we are solely responsible for customer service issues relating to any Punchey Account, payment, card processing, debiting or crediting.

## **Refunds and Returns Policy**

### **Punchey, Inc. Refund Policy Guidelines**

By accepting this agreement and submitting payment card transactions through Punchey, you agree to provide refunds, process returns and when necessary make adjustments for your goods or services in accordance with this agreement and Network and Association Rules (including but not limited to: Visa, MasterCard, American Express and Discover Card) through your Punchey Online Account. If your refund policy prohibits returns or is unsatisfactory to the buyer, it is possible that you still may receive a Chargeback relating to any such sales. Your return policy must be present at the point of sale location, provided to customers and must be reviewed and approved by Punchey. Changes to your return policy also need to be submitted to us for approval. The amount of any refund is required to include all associated taxes that must be refunded and shall not exceed the total on the original transaction. However, should a customer have paid postage to return an item you are permitted to increase this total by the exact amount required to reimburse the customer for postage that the customer paid to return merchandise. Should you accept returns that require an uneven exchange of goods (for example when the sales price is not the same), you must issue a credit for the total amount of the merchandise being returned and complete a new sale for any new merchandise. Please note: Network Rules require that you will (a) disclose your return or cancellation policy to customers at the time of purchase, (b) maintain a fair return, cancellation or adjustment policy, (d) not accept cash or any other item of value for preparing a Card sale refund, and (d) not give cash refunds to a customer in connection with a Card sale, unless required by law.

For a period of ninety days (90) after you submitted a successful transaction you may issue a refund through your Punchey Online Account for that transaction. If your Punchey balance be insufficient to cover the amount of any refund, Punchey will withdraw up to the requested refund amount from your bank account after receiving your confirmation. Under no circumstances will Punchey be obligated to accept any returns of goods or services you have provided or rendered on your behalf.

### **Receipt management and text receipts**

When your customer is present at the time of the transaction and signs the Punchey Signature Screen, you benefit from the Payment Network rules for card present transactions. You agree to request that your customer personally sign for all transactions greater than \$25.00 when your customer is present. You must make a written receipt available to your customers for any transaction greater than fifteen dollars (\$15.00). You may give your customers the option to

receive or decline a written receipt. As a convenience, but not in lieu of a written receipt, you may also offer Punchey electronic receipts for delivery through SMS or email to your customers. Punchey will send you real-time receipts via a text message that you may also use as secondary authentication. Standard message and data rates may apply (check with your carrier).

## **Privacy and Security**

### **Security – We Do Our Best But We Can't Guarantee Security**

We have implemented technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

In addition, you acknowledge that certain risks exist in accepting electronic payments. While Punchey does its best to maintain a secure transaction system, such a system can be hacked or exposed to certain vulnerabilities. In addition, should your hardware, computer or payments system, device or computer be compromised, cardholder data may be exposed to nefarious parties. In no way shall Punchey be liable for any breach in security on such systems or in such environments.

### **Your Privacy**

Your privacy is very important to Punchey. Upon acceptance of this Agreement you confirm that you have read, understood and accepted Punchey's Privacy Policy.

### **Privacy Of Others**

By using the Service, you may receive information about Payers or other users. You must keep such information confidential and only use it in connection with the Service. You may not disclose or distribute any such information to a third party or use the information for marketing purposes unless you receive the express consent of the user.

### **User Content**

Punchey account holders and businesses may submit content about themselves or their business to the Punchey service ("User Content"). You are not permitted to use incorrect, purposely falsified or omitted information. Furthermore, you agree that you have created such content yourself or have received permission from a third party to use such content and you are not in breach of any copyright. You grant us and our subsidiaries, affiliates, and successors a worldwide, non-exclusive, royalty-free, fully-paid, transferable, and sub-licensable right to use, reproduce, modify, adapt, publish, prepare derivative works of, distribute, publicly perform, and publicly display User Content throughout the world and universe in any media to promote or provide the Service and Punchey's business.

You agree not to upload to the Service or otherwise post, transmit, distribute, or disseminate through the Service any material that: (a) is false, misleading, unlawful, obscene, indecent, lewd, pornographic, defamatory, libelous, threatening, harassing, hateful, abusive, or inflammatory; (b) encourages conduct that would be considered a criminal offense or gives rise to civil liability; (c)

breaches any duty toward or rights of any person or entity, including rights of publicity or privacy; (d) contains corrupted data or any other harmful, disruptive, or destructive files; (e) advertises products or services competitive with Punchey's or its partners' products and services, as determined by Punchey in its sole discretion; or (f) in Punchey's sole judgment, is objectionable, restricts or inhibits any person or entity from using or enjoying any portion of the Service, or which may expose Punchey, its affiliates, or users to harm or liability of any nature. Although Punchey has no obligation to screen, edit, or monitor any User Content, Punchey reserves the right, and has absolute discretion, to remove, screen, edit, or disable any User Content at any time and for any reason without notice. You understand that by using the Service, you may be exposed to User Content that is offensive, indecent, or objectionable. We take no responsibility and assume no liability for any User Content, including any loss or damage to any of your User Content.

### **Copyright infringement**

It is Punchey's policy to terminate the access privileges of those who repeatedly infringe the copyright rights of others. If you believe that your work has been posted on the Service in a way that constitutes copyright infringement, please contact Punchey's copyright agent at the address below and provide the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyright-protected work that you claim has been infringed; (c) the location on the Service of the material that you claim is infringing; (d) your address, telephone number, and email address; (e) a statement by you regarding your good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (f) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. By submitting a copyright infringement notice, you acknowledge and agree that Punchey or its copyright agent may forward the information you provide in this notice to the person who uploaded the allegedly infringing material.

You may write to Punchey's designated agent for notice of copyright infringement at:

Punchey, Inc.  
Attn: Copyright Agent  
95 High St  
2nd Floor  
Milford, CT 06460

If you believe that your removed or disabled User Content is not infringing, or that you have the authorization or right to post and use that User Content from the copyright owner, the copyright owner's agent, or pursuant to law, you may send a counter-notice containing the information required by Section 512(g)(3) of the Digital Millennium Copyright Act (17 USC § 512(g)(3)). Punchey or its copyright agent will forward your counter-notification to the party who submitted the original copyright infringement claim. If the original claimant does not file an action seeking a court order to restrain you from engaging in infringing activity related to the removed or

disabled User Content within 10 business days of receiving the counter-notice from Punchey, then Punchey may, in its sole discretion, reinstate the removed or disabled material.

## **Termination**

### **Termination Of Service**

If your Punchey Account is terminated for any reason or no reason, you agree: (a) to continue to be bound by this Agreement, (b) to immediately stop using the Service, (c) that the license provided under this Agreement shall end, (d) that we reserve the right (but have no obligation) to delete all of your information and account data stored on our servers, and (e) that Punchey shall not be liable to you or any third party for termination of access to the Service or deletion of your information or account data. However, all necessary information will be maintained to comply with governmental and Card Brand requirements.

### **Your Right To Terminate**

You may terminate this Agreement and other Punchey agreements by closing your Punchey Account at any time. Upon closure of a Punchey Account, any pending transactions will be cancelled. Any funds that we are holding in custody for you at the time of closure, less any applicable Fees, will be paid out to you according to your payout schedule, assuming all payout-related authentication requirements have been fulfilled (for example, you may not close your Punchey Account as a means of evading your payout schedule). If an investigation is pending at the time you close your Punchey Account, we may hold your funds as described herein. If you are later determined to be entitled to some or all of the funds in dispute, we will release those funds to you.

### **Suspension Or Termination By Us**

We may terminate this Agreement and close your Punchey Account for any reason or no reason at any time upon notice to you. We may also suspend the Service and access to your Punchey Account (including the funds in your Punchey Account) if you (a) have violated the terms of the Punchey agreements and policies or this Agreement, (b) pose an unacceptable credit or fraud risk to us, or (c) provide any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct

### **Effect Of Termination**

We will not be liable to you for compensation, reimbursement, or damages in connection with your use of the Service, or any termination or suspension of the Service. Any termination of this Agreement does not relieve you of any obligations to pay any Fees or costs accrued prior to the termination and any other amounts owed by you to us as provided in this Agreement.

### **Equipment**

If you are using equipment rented from Punchey, Inc. ("Rental Equipment") or are provided equipment by Punchey free of cost ("Loaner Equipment") you have thirty (30) days from the termination of The Agreement to return the device(s) to Punchey or you will be charged Punchey's full retail price for such equipment. If you have purchased equipment on an

installment plan ("Installment Purchase") Punchey will bill you for your remaining balance at the time of termination. Punchey does not accept equipment returns on Installment Purchases.

## **PART 2: Additional Legal Terms**

### **Indemnity**

You will indemnify, defend and hold us and our processors harmless (and our respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, Tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of our Policies or the Networks' rules; (b) your wrongful or improper use of the Service; (c) any transaction submitted by you through the Service (including without limitation the accuracy of any Product Information that you provide or any claim or dispute arising out of products or services offered or sold by you); (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (e) your violation of any law, rule or regulation of the United States or any other country; (f) any other party's access and/or use of the Service with your unique username, password or other appropriate security code.

### **Reps & Warranties**

You represent and warrant to us that: (a) you are at least eighteen (18) years of age; (b) you are eligible to register and use the Service and have the right, power, and ability to enter into and perform under this Agreement; (c) the name identified by you when you registered is your name or business name under which you sell goods and services; (d) any sales transaction submitted by you will represent a bona fide sale by you; (e) any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a purchaser; (f) you will fulfill all of your obligations to each customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with the purchaser; (g) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to your business, including any applicable tax laws and regulations; (h) except in the ordinary course of business, no sales transaction submitted by you through the Service will represent a sale to any principal, partner, proprietor, or owner of your entity; (i) you will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; (j) your use of the Service will be in compliance with this Agreement.

### **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PUNCHEY, ITS PROCESSORS, SUPPLIERS OR ITS LICENSORS (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT

RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE. UNDER NO CIRCUMSTANCES WILL PUNCHEY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR PUNCHEY ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PUNCHEY AND ITS PROCESSORS (AND THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF THE SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL PUNCHEY, ITS PROCESSORS, AGENTS, SUPPLIERS, OR LICENSORS (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES EARNED BY US IN CONNECTION WITH YOUR USE OF THE SERVICE DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF PUNCHEY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. The Service is controlled and operated from its facilities in the United States. Punchey makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

### **Disputes**

If a dispute of any kind arises, we want to understand and address your concerns quickly and to your satisfaction. Please contact the Punchey Help Center with any dispute. If we cannot resolve

your concerns, we agree to an informal and inexpensive dispute resolution process requiring individual arbitration. “Disputes” between you and Punchey (“Punchey” includes its processors, suppliers or licensors (or their respective affiliates, agents, directors or employees)) are defined for the purposes of this Agreement to include any claim, controversy or dispute (whether involving contract, tort, equitable, statutory or any other legal theory) between you and Punchey including but not limited to any claims relating in any way to this Agreement (including its breach, termination and interpretation), any other aspect of our relationship, Punchey advertising, and any use of Punchey software or services. “Disputes” also include any claims that arose before this Agreement and that may arise after termination of this Agreement.

### **Individual Arbitration**

You and Punchey agree to arbitrate all Disputes. Arbitration is more informal than a lawsuit in court and seeks to resolve disputes more quickly. Instead of a judge or a jury, the case will be decided by a neutral arbitrator who has the power to award the same damages and relief that a court can. ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND YOU ARE WAIVING YOUR RIGHTS TO HAVE YOUR CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST PUNCHEY. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case shall there be a class arbitration). All Disputes shall be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association ([www.adr.org](http://www.adr.org)) or JAMS ([www.jamsadr.org](http://www.jamsadr.org)) according to this provision and the applicable arbitration rules for that forum. Consumer claimants (individuals whose transaction is intended for personal, family, or household use) may elect to pursue their claims in their local small-claims court rather than through arbitration. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, fully applies. Any arbitration hearing will occur within the county or parish where you reside. The arbitrator’s award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. For any Dispute, Punchey will pay its the arbitration fees. If you prevail on any claim for which you are legally entitled to attorney’s fees, you may recover those fees from the arbitrator. For any claim where you are seeking relief, Punchey will not seek to have you pay its attorney’s fees, even if fees might otherwise be awarded, unless the arbitrator determines that your claim was frivolous. For purposes of this arbitration provision, references to you and Punchey also include respective subsidiaries, affiliates, agents, employees, predecessors, successors and assigns as well as authorized users or beneficiaries of Punchey services. Subject to and without waiver of the arbitration provisions above, you agree that any judicial proceedings (other than small claims actions in consumer cases) will be brought in and you hereby consent to the exclusive jurisdiction and venue in the state courts in the City of Boston, MA or federal court for Massachusetts.

### **Limitation On Time To Dispute**

Unless otherwise required by law, an action or proceeding by you relating to any Dispute must commence within one year after the cause of action accrues.



### **Governing Law State**

This Agreement and any Dispute will be governed by Connecticut law and/or applicable federal law (including the Federal Arbitration Act) as applied to agreements entered into and to be performed entirely within Massachusetts, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction.

### **Modification Of Terms Of Service Right To Amend Contract**

We have the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the software or services with notice that we in our sole discretion deem to be reasonable in the circumstances, including notice on our website at [punchey.com](http://punchey.com) or any other website maintained or owned by us for the purposes of providing services in terms of this Agreement, and communicate to you. Any use of our software or services after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

### **Other Provisions**

Except as expressly provided in this Agreement, these terms are a complete statement of the agreement between you and Punchey, and they describe the entire liability of Punchey and its vendors and suppliers (including processors) and your exclusive remedy with respect to your access and use of the Service. In the event of a conflict between this Agreement and any other Punchey agreement or policy, this Agreement shall prevail on the subject matter of this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. Headings are included for convenience only, and shall not be considered in interpreting this Agreement. The Agreement does not limit any rights that Punchey may have under trade secret, copyright, patent or other laws. Punchey's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

### **Survival**

In addition to any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement, the following sections of this Agreement survive and remain in effect in accordance with their terms upon the termination of this Agreement: 6, 7, 13, 15-20, 25, 28-33, 37-38, 45-53.

## **Addendum 1**

### **Marketing & Advertising Programs**

As a merchant utilizing the Punchey Processing service, you have the ability to purchase, opt-in to and/or administer various marketing, advertising, loyalty programs, promotional activities, rewards programs, referral systems, lead generation tools, cash vouchers stored value systems or cards, or e-mail marketing programs direct collectively referred to as ("Programs"). Users of such programs, be they business account holders or consumers must adhere to Punchey's beta program terms of conditions located here: <https://www.punchey.com/legal>. Punchey may keep account of such systems on your business's behalf and for benefit of your business's customers.

#### **3rd Party Program Terms**

Third party programs are defined as any Program sponsored by another entity where Punchey serves as the facilitator or administrator of such Program. Merchants can and should set their own terms of conditions, stipulations and rules for their individual Programs. Such stipulations, conditions and rules must be legal under subject to state and local law.

#### **Program Liability**

IN NO WAY IS PUNCHEY LIABLE OR RESPONSIBLE FOR ACCOUNT BALANCE DISCREPANCIES OR OTHER PROGRAM PROBLEMS, DUE TO MERCHANT ERROR, CUSTOMER ERROR, OR ERRORS BY PUNCHEY ITSELF. Furthermore, Punchey, acting as an administrator of such programs, in no way excepts culpability or responsibility for breaches or misinterpretations by merchants of local, state, and federal law. In particular, Merchants should ensure voucher and coupon programs adhere to local and state laws. In any case, potential losses incurred by Punchey Inc. under any settlement, arbitration or court hearing are limited to fees collected for administering such Programs over the previous three months.

## **Addendum 2**

### **Punchey, Inc. Limited Warranty & Return Policy**

Punchey warrants that all products will be free from material defects in materials and workmanship, under normal use, for a period of twelve (12) months from date of shipment to end-user. Accessories and peripherals to the products such as batteries, cables, power adapters, etc. are excluded from the twelve (12) month warranty period stated above and carry a ninety (90) day warranty from the date of shipment to end user. If a hardware defect arises and a valid claim is received by Punchey within the Warranty Period, at its option and to the extent permitted by law, Punchey will either (1) repair the product at no charge, using new parts or refurbished parts that are equivalent to new in performance and reliability, or (2) exchange the product with a product that is new or refurbished that is equivalent to new in performance and reliability and is at least functionally equivalent to the original product. Punchey may request that you replace defective parts with user-installable new or refurbished parts that Punchey provides in fulfillment of its warranty obligation. When a product or part is exchanged, any replacement and the item being replaced remain Punchey's property. Parts provided by Punchey in fulfillment of its warranty obligation must be used in products for which warranty service is claimed. No refunds will be issued if the product is leased from Punchey however Punchey will do its best to replace or repair the item as soon as possible.

#### **EXCLUSIONS AND LIMITATIONS**

TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, PUNCHEY SPECIFICALLY DISCLAIMS ANY AND ALL-STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. IF PUNCHEY CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THE EXPRESS WARRANTY AND TO THE REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY PUNCHEY IN ITS SOLE DISCRETION. SOME STATES (COUNTRIES AND PROVINCES) DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION MAY LAST, SO THE LIMITATIONS DESCRIBED ABOVE MAY NOT APPLY TO YOU. No Punchey reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired

This Limited Warranty applies only to the hardware product manufactured by or Apple, DATECS Ltd, and MagTek, Inc. that the corresponding trademark, trade name, can identify a leased by Punchey and that or logo annexed to it. The Limited Warranty does not apply to any other hardware product or any other software. Manufacturers, suppliers, or publishers, other than those mentioned above, may provide their own warranties to the end user purchaser, but Punchey, in so far as permitted by law, provides their products "as is".

This warranty does not apply: (a) to consumable parts, such as batteries, unless damage has occurred due to a defect in materials and workmanship; (b) to cosmetic damage, including but not limited to scratches, dents, and broken plastic on ports; (c) to damage caused by use with non-Punchey products; (d) to damage caused by accident, abuse, misuse, liquid contact, fire, earthquake or other external causes; (e) to damage caused by operating the product outside the permitted or intended uses described by Punchey; (f) to damage caused by service (including upgrades and expansions) performed by anyone who is not a representative of Punchey or an Punchey Authorized Service Provider (“AASP”); (g) to a product or part that has been modified to alter functionality or capability without the written permission of Punchey; or (h ) if any original serial number has been removed or defaced. If the device is damaged due to reasons (a) – (h) mentioned above, a merchant will be charged a fee specified in the table below.

#### OBTAINING WARRANTY SERVICE

Please access and review the online help resources described below before seeking warranty service. If the product is still not functioning properly after making use of these resources, you must follow Punchey’s warranty processes. The procedure for the returns and exchanges is specified below in “The Returns of Defective or Failed Products”. Upon receipt of the replacement product or part, the original product or part remains the property of Punchey and you agree to follow instructions, including, if required, arranging the return of original product or part to Punchey in a timely manner. If you fail to return the replaced product or part as instructed or the replaced product or part is not eligible for warranty service, Punchey will charge your account for the amount specified below in the table (the original cost of the device).

#### **Returns of Defective or Failed Products:**

- Products to be returned must first be issued a Return Material Authorization (RMA) number. You must contact Punchey and obtain the RMA number before returning the product.
- RMA numbers are valid for 15 days from the date issued.
- Products returned without RMA number or with invalid RMA number will be refused and returned to you.
- All products must be returned to the address specified on the RMA document.
- Punchey will pay two-day transportation charges for shipment of repaired or replaced Products to customer.
- Punchey’s maximum liability for warranty claims is limited to the invoice price of the Product claimed defective.