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Terms and Conditions

These Terms and Conditions ("Terms") shall apply in addition to and be read consistently with your specific CardX Client Application. "You," "your," or "Merchant" shall mean any party submitting an application for the Solutions (as defined below) and/or being granted access to the Solutions by CardX.

Intelligent Rate and Zero-Cost Credit (collectively, the "Solutions") are proprietary payment solutions created by CardX, LLC ("CardX," "we," "us," or "our"). Your permitted use of the Solutions will also be referred herein as a "License" and is subject to these legally binding Terms and constitutes your agreement to be bound by and to act in accordance with these Terms.

YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS LIMIT OUR LIABILITY AND THAT YOU ARE RELEASING US FROM VARIOUS CLAIMS IN SECTIONS 3, 5 AND 6 BELOW. THESE TERMS ALSO CONTAIN A BINDING ARBITRATION PROVISION IN SECTION 7 THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS WITH RESPECT TO THE SERVICES.

1. License. "Use of the Solutions" exclusively and solely means using the Solutions to process the payments made by your patrons or customers. No other use is permitted unless expressly allowed by CardX in writing. The License shall be non-exclusive in that the parties understand that CardX may license all or any part of the Solutions to any other person or entity at its sole discretion and under any terms it desires. You may not, without the written permission of CardX, transfer, assign, or pledge all or any part of the License. The terms of Appendix I set forth additional obligations of the parties with respect to the Solutions and your Use of the Solutions.

2. Fees and Discount Rate; Termination.

A monthly subscription fee may be assessed on your Use of the Solutions. Please note that, based on standard processor settings, the discount rate is assessed on your sales volume in gross, meaning all volume including any sales that may be refunded or charged back. We may modify your pricing (including the subscription fee, discount rates, or any other aspect of our pricing) from time to time by providing you thirty (30) days' advance notice, either through the Solutions, to your most current email address on file with us, or otherwise. In the event any payment owed to us is late, we may suspend your Use of the Solutions, without further notice, until such payment, together with any other amounts due under these Terms, is paid. Interest of 1.5% per calendar month or the



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have on file for you. You will send all notices to us at support@cardx.com. In addition, we may terminate these Terms and your subscription immediately upon notice if you breach any material provision of these Terms or engage in any activity which is likely to cause us to incur civil or criminal liability or any other material harm. Any provisions of these Terms which, by their nature, are intended to survive termination (including, but not limited to, Section 3-7 hereof), shall do so.

3. DISCLAIMERS

THE SOLUTIONS ARE PROVIDED "AS IS," AND CARDX AND ANY SALES PARTNER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES RELATING TO SECURITY, UNINTERRUPTED OR ERROR-FREE OPERATION, OR FREEDOM FROM VIRUSES. NO ADVICE OR INFORMATION (ORAL OR WRITTEN) OBTAINED BY YOU FROM CARDX OR ANY SALES PARTNER SHALL CREATE ANY WARRANTY.

Without limiting the foregoing, CardX disclaims any responsibility for errors or omissions in the content, accuracy, completeness, performance, or timeliness of the Solutions, nor does CardX guarantee the content, accuracy, completeness, performance, or timeliness of the Solutions, or that your use of the Solutions will guarantee compliance with any laws, rules, or applicable standards (including but not limited to the PCI DSS). Similarly, information provided by the Solutions is subject to change at any time by CardX without prior notice.

YOU AND YOUR HEIRS, SUCCESSORS, AND ASSIGNS HEREBY FOREVER IRREVOCABLY RELEASE, DISCHARGE, AND HOLD HARMLESS CARDX AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS, AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (COLLECTIVELY, "RELEASED PARTIES") FROM, AND AGREE NOT TO SUE ANY RELEASED PARTY FOR, ANY LIABILITIES, CLAIMS, OBLIGATIONS, SUITS, ACTIONS, DEMANDS, EXPENSES, OR DAMAGES WHATSOEVER (COLLECTIVELY, "LIABILITIES") THAT YOU MAY HAVE AGAINST ANY RELEASED PARTY WHETHER EXISTING NOW OR IN THE FUTURE, WHETHER KNOWN OR UNKNOWN, ARISING OUT OF OR IN CONNECTION WITH YOUR OR A THIRD PARTY'S CONDUCT RELATED TO USE OF THE SERVICES. YOU UNDERSTAND AND ACKNOWLEDGE THAT THE FOREGOING SENTENCE RELEASES AND DISCHARGES ALL LIABILITIES, WHETHER OR NOT THEY ARE CURRENTLY KNOWN TO YOU, AND YOU WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542. YOU UNDERSTAND THE MEANING OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR



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any of CardX's rights hereunder for past or future actions.

If any term or other provision of these Terms is determined to be invalid, illegal, or unenforceable, all other conditions and provisions of the Terms shall nevertheless remain in full force and effect.

We may modify these Terms for any reason, for example, to reflect changes to the law or changes to our Services. You should look at the Terms regularly and the "Last Updated" date at the bottom of these Terms. We'll use reasonable efforts to give you notice of these modifications, such as posting notice of modifications to these Terms on this web page, through the Services, or via email. By continuing to use the Services after we make these modifications, you agree that you will be subject to the modified Terms. If you do not agree to the modified Terms, you must discontinue your use of the Services.

5. Limitations of Liability.

TO THE EXTENT NOT PROHIBITED BY LAW, CARDX (AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) AND ITS LICENSORS, SUPPLIERS, ADVERTISERS, AND DISTRIBUTORS, WILL NOT BE RESPONSIBLE FOR (A) LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (B) ANY DAMAGES OR LOSSES DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO CLAIMS AGAINST YOU BY A CARD NETWORK OR REGULATORY BODY IN CONNECTION WITH THE USE OF OUR SERVICES.

TO THE EXTENT NOT PROHIBITED BY LAW, THE TOTAL LIABILITY OF CARDX AND ITS AFFILIATES (AND ITS AND THEIR RESEPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) AND THEIR LICENSORS, SUPPLIERS, ADVERTISERS, AND DISTRIBUTORS, FOR ANY AND ALL CLAIMS UNDER THESE TERMS OR RELATING TO YOUR USE OF THE SERVICES IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES (OR, IF WE CHOOSE, TO SUPPLY YOU THE SERVICES AGAIN).

IN ALL CASES RELATING TO PROVIDING YOU THE SERVICES, CARDX AND ITS AFFILIATES (AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) AND ITS LICENSORS, SUPPLIERS, ADVERTISERS, AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE OR THAT IS DUE TO EVENTS OUTSIDE OF ITS OR THEIR REASONABLE CONTROL, INCLUDING, BUT NOT LIMITED TO, WARS, CRIMINAL ACTIVITIES, STORMS, NATURAL DISASTERS, ACTS OF GOVERNMENT, SUPPLY INTERRUPTIONS, HACKING AND OTHER MALICIOUS ACTIVITIES OF THIRD PARTIES, OR TELECOMMUNICATION OR INTERNET FAILURES.

6. Indemnification.

Merchant shall defend, indemnify and hold harmless CardX, its affiliates, and each of their officers,

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arising out of: (i) Merchant's use of the Services; (ii) the negligence or willful misconduct of Merchant; (iii) any unauthorized access to or use of the Services; or (iv) Merchant's acts or omissions in connection with the Processor agreement and Merchant's relationship and transactions with the Processor. Merchant will promptly reimburse CardX for any Losses imposed on CardX by a card network or regulatory body due to a breach of applicable law or a data security breach for which Merchant is responsible, as determined by the regulatory body or card association under its operating rules.

7. Governing Law and Binding Arbitration.

The laws of the United States and the State of Illinois, excluding Illinois' conflict of laws rules, will apply to any disputes arising out of or relating to these Terms or the Services.

Without limiting your waiver and release in Section 3, you agree to the following:

a. Purpose. Any and all Disputes (as defined below) involving you and CardX will be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. This Section 7 (the "Arbitration Provision") shall be broadly interpreted. Notwithstanding anything to the contrary in these Terms, this Section 7 does not apply to an action by either party to enjoin the infringement or misuse of its intellectual property rights, including copyright, trademark, patent, or trade secret rights.

b. Definitions. The term "Dispute" means any claim or controversy related to the Services, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before these Terms or any prior agreement; (3) claims that arise after the expiration or termination of these Terms; and (4) claims that are the subject of purported class action litigation in which you are not a member of a certified class. As used in this Arbitration Provision, "CardX" means CardX and any of its affiliates, predecessors, successors, and assigns, and each of their respective officers, directors, employees and agents, and "you" means you and any users or beneficiaries of your access to the Services.

c. Initiation of Arbitration Proceeding/Selection of Arbitrator. The party initiating the arbitration proceeding may open a case with JAMS, formerly Judicial Arbitration and Mediation Services, Inc., ("JAMS") by visiting its website (www.jamsadr.com) or calling its toll-free number (1-800-352-5267). You may deliver any required or desired notice to CardX by mail to 401 N. Michigan Avenue Suite 1610, Chicago, IL 60611.

d. Arbitration Procedures. This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by JAMS pursuant to its Expedited Arbitration Procedures (the

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govern. If there is a conflict between this Arbitration Provision and the JAMS Rules, this Arbitration Provision shall govern. If JAMS will not administer a proceeding under this Arbitration Provision as written, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision as written and applying the JAMS Rules. A single arbitrator will resolve the Dispute. Unless you and CardX agree otherwise, any arbitration hearing will take place in Chicago, Illinois. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator's essential findings and conclusions. The arbitrator's award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator's award. An arbitrator's award that has been fully satisfied shall not be entered in any court.

e. Waiver of Class Actions and Collective Relief. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS OR USERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

f. Arbitration Fees and Costs. The payment of the JAMS fees and costs will be governed by the JAMS Rules. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the JAMS's fees and costs shall be governed by the JAMS Rules and you shall reimburse CardX for all fees and costs that were your obligation to pay under the JAMS Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, CardX will pay all fees and costs that it is required by law to pay.

g. Severability and Waiver of Jury Trial. If any part of subsection (e) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable and the Dispute will be decided by a court. In this event, exclusive jurisdiction and venue for the adjudication of the



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clause will be severed from this Arbitration Provision and the remainder of this Arbitration Provision will be given full force and effect.

h. Continuation. This Arbitration Provision will survive the termination or expiration of these Terms.

You acknowledge and agree that these Terms constitute the entire agreement between you and CardX with respect to the use of the Solutions.

BY USING THE SOLUTIONS, YOU SIGNIFY YOUR UNDERSTANDING AND AGREEMENT TO COMPLY WITH THESE TERMS AND CONDITIONS.

Last Updated: April 11, 2023

Appendix I: Surcharging

CardX shall provide, and Merchant shall receive, Solutions for surcharging. Merchant agrees that it will also be bound by the terms and conditions of this Appendix I, which forms part of the Terms. Merchant acknowledges that no other agreements or understandings, unless stated by CardX in writing, shall be applicable to the Solutions.

1. Services

a. Compliance Functions. The Solutions will include the following compliance functions:

- i. Completion of required credit card association registrations for surcharging;
- ii. Determination as to whether a transaction was initiated using a credit card or a debit card;
- iii. Disclosure of the existence and amount of any fees added to credit card transactions for the acceptance of such credit card payments ("Surcharges") on payment page(s) and receipts (including, if the Surcharge is calculated as a percentage of the transaction amount, clear disclosure of the dollar and cents amount of the Surcharge);
- iv. Providing option to cancel a transaction before submission;
- v. Sending to the relevant credit card association the transaction amount and Surcharge amount together as a single transaction; and
- vi. When issuing a refund of the transaction amount, also refunding any Surcharge assessed on the transaction amount (pro-rated for partial refunds).



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providing CardX any information reasonably necessary for CardX to comply with applicable local, state, and federal laws, rules, and regulations ("Applicable Laws"), or to timely submit any applications, registrations, or other documents to the credit card associations or other regulatory bodies;

ii. Disclosure of the existence and amount of any Surcharges on a stand-alone basis (a) verbally, with respect to phone orders, and (b) in locations that the consumer is likely to see prior to committing to a transaction, including (but not limited to), as applicable, signs or postings, webpages, advertising materials, catalogues or menus.

iii. Providing disclosures that are prominent and easily visible to customers, including, but not limited to, placing disclosures prominently, using a font size comparable to or larger than surrounding text, in a contrasting color or with other visual elements intended to highlight the information. Additionally: (a) on websites, the information should appear, at a minimum, before proceeding to checkout, including on the first page that references credit card brands accepted, in addition to other specific pages that may be required by Applicable Laws; (b) if a point-of-sale register is being used for the transaction, the sign should be located near the register such that a customer would see it prior to initiating the checkout process; (c) on a sign prominently near an entrance or other high-traffic part of the facility (if applicable); and/or (d) on a receipt listing the surcharge as its own line item, showing a dollar amount and how that dollar amount is added into the total cost.

iv. Using the word "surcharge" to describe the fee, accurately reflecting the reason for the Surcharge and describing it as a Surcharge for accepting credit cards, and not characterizing the surcharge in a way that suggests it is not being imposed by the business itself (such as calling it "mandatory").

v. If the Surcharge is calculated as a percentage of the transaction amount, clearly disclosing in writing the dollar and cents amount of the Surcharge prior to processing the charge; provided that, in the context of a card not present transaction, the dollar amount of the surcharge must be disclosed prior to processing the consumer's credit card.

vi. When issuing a refund of the transaction amount, also refunding any Surcharge assessed on the transaction amount (pro-rated for partial refunds).

vii. Do not apply a Surcharge with respect to a transaction: (i) if the transaction is initiated using a debit card or prepaid card, or (ii) in excess of a percentage of the transaction amount equal to the lesser of 3% or Merchant's discount rate.



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x. Pay CardX the Debit Transaction Fee for each sale and refund that you submit, as well as any other fees or charges reflected in your merchant processing agreement and not replaced by the Solutions.

xi. Do not assess a Surcharge for the portion of a transaction that is tip on paper, and do pay CardX the discount fee for the gross amount of all tips on paper.

2. Applicable Laws

a. You shall comply with all Applicable Laws in connection with Surcharges, including all disclosure and notice obligations.

b. YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL HAVE SOLE RESPONSIBILITY AND LIABILITY FOR COMPLIANCE WITH APPLICABLE LAWS AS WELL AS FOR ANY DAMAGES OR LOSSES DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO CLAIMS AGAINST YOU BY A CARD NETWORK OR REGULATORY BODY IN CONNECTION WITH THE USE OF OUR SERVICES, INCLUDING IN THE EVENT YOU DETERMINE TO ACCEPT, OR ACCESS OR USE THE SOLUTIONS IN CONNECTION WITH, ANY TRANSACTIONS INITIATED IN, OR WITH A BILLING OR SHIPPING ADDRESS IN, ANY OF THE "EXCLUDED JURISDICTIONS" SET FORTH IN THE ATTACHMENT TO THIS APPENDIX I, AS UPDATED FROM TIME TO TIME.

c. You shall notify CardX immediately upon learning that any information provided to CardX is inaccurate or that it may have assessed a Surcharge in violation of Applicable Laws.

Excluded Jurisdictions

- Connecticut
- Massachusetts
- Puerto Rico



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FROM THE NEWSROOM

CardX CEO Quoted in Wall Street Journal Coverage of Surcharging

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