

## **PAIDE SOFTWARE AGREEMENT**

This Paide Software Agreement (“Agreement”) is made effective as of the date set forth below by and between Paide a California Corporation (“Paide”) with its principal place of business at 19800 MacArthur Boulevard, Suite 300, Irvine, California 92612 and the entity and/or individual who enters into this Agreement as set forth below or on any application form (“Merchant”). This Agreement sets out the terms and conditions under which Merchant may utilize the Paide Software as defined below.

By clicking on the "I AGREE" button at the end of this Agreement or by continuing to use the Paide Software, it becomes a legally binding contract. Merchant acknowledges and agrees that: (i) it has reviewed and understands the Agreement; (ii) it agrees to be legally bound by the terms and conditions of the Agreement; and (iii) its use of the Paide Software and any related products or services will be governed by this Agreement. If Merchant does not agree or is not willing to be bound by the terms and conditions of this Agreement, Merchant should not click on the "I AGREE" button and should not seek to obtain or use the Paide Software.

### **RECITALS**

WHEREAS, Paide provides point of sale software (payment gateway), account updater services, tokenization, fraud screening, and related goods and services (the “Paide Software”); and

WHEREAS, Paide wishes to provide Paide Software to Merchant so that Merchant may utilize Paide Software.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

#### **SECTION ONE – SERVICES PROVIDED BY PAIDE**

1.01. Services. Paide will provide the portions of the Paide Software as set forth on the application for the Paide Software. Paide and Merchant shall agree upon the services to initially be provided under this Agreement and may update, amend and changes the goods and services provided to the Merchant upon the mutual consent of Paide and Merchant.

1.02. Limited License. Paide hereby grants to Merchant a perpetual, revocable (but only as provided herein), worldwide, nonexclusive, non-sublicensable, and non-transferable license, under intellectual property rights owned or licensed by Paide, to use Paide Software provided however that:

- (a) such license is subject to all obligations and restrictions imposed on Merchant in this Agreement;
- (b) such license extends only to Merchant’s employees and contractors, but only to the extent that such employees and contractors use Paide Software for the sole purpose of collecting payments on the behalf of Merchant, and for no other purpose whatsoever;
- (c) such license extends only to Merchant use of Paide Software solely to perform the functions specified herein, and in compliance therewith, and

(d) while exercising such license, Merchant shall treat Paide Software as Paide's Confidential Information under this Agreement.

1.03. Limitations on Rights Granted. Except as expressly provided to the contrary in this Agreement, Merchant shall not, and shall not knowingly cause or permit any non-party, to use or reproduce Paide Software. Merchant shall not, and shall not knowingly cause or permit any non-party, to disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time share Paide Software, or otherwise apply any procedure or process to Paide Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for Paide Software or any algorithm, process, procedure or other information contained in Paide Software. Except as expressly authorized herein, Merchant may not rent, lease, assign, sublicense, transfer, modify, alter, or time share the Paide Software.

1.04. Independent Contractors. The relationship of Paide and Merchant is that of independent contractors. Neither Merchant nor its employees, consultants, contractors or agents are agents, employees, partners or joint ventures of Paide, nor do they have any authority to bind Paide by contract or otherwise to any obligation. They will not represent to the contrary, either expressly, implicitly, by appearance or otherwise.

1.05. Compliance With Laws. Merchant will comply with the rules and regulations of Visa, MasterCard, Discover, American Express and all other such associations and all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Paide Software. Merchant agrees to comply with any Automated Clearing House rules applicable to automatic and electronic transfer of funds including without limitation, laws, regulations, and rules governing correct authorizations by consumers and businesses, disclosures and notices required in connection with electronic funds transfer, and all necessary waivers and releases. Merchant has the sole responsibility to verify Paide's list of merchant card processors to be used under terms of this Agreement to determine if Paide can properly transmit the necessary credit card information to Merchant's credit card processor. Merchant acknowledges that Paide's list can be modified from time to time and must be verified by Merchant prior to being set up with Paide. Merchant has the sole responsibility for obtaining the proper authorization from Merchant's own credit card processor and/or settlement bank to be able to use Merchant's merchant account for key entry transactions and transactions being processed over the internet or online. Merchant shall be solely responsible for credits, returns, disputes and all costs associated with data transmissions. Merchant will be solely responsible to obtain accurate credit card and ACH information and authorization from its customers, and will transmit said information to Paide via the internet or service originally agreed upon by all parties.

1.06. Authorizations. Merchant will obtain from each participating consumer or business the required ACH and necessary credit card information in proper form authorizing automatic debits to such consumer or business bank account to transfer payment amounts to Merchant's bank deposit account. Merchant warrants that Merchant will properly warehouse all authorizations obtained from consumers or businesses and will provide such authorizations for inspection upon request by Paide or any regulatory body governing these types of transactions. Merchant hereby authorizes Paide to make direct deposit of payments from consumer or business bank accounts and to debit Merchant for fees and other charges as set forth herein.

## **SECTION TWO – THE PAIDE SOFTWARE**

2.01. Providing Paide Software. During the term of this Agreement, Paide shall provide the Paide Software and use its commercially reasonable efforts to provide the Paide Software and maintain them in an uninterrupted and error-free fashion consistent with its practices in effect as of the date of this

Agreement. However, the parties acknowledge that the Paide Software is computer network based services which may be subject to outages and delay occurrences. In such an event, Paide shall use its commercially reasonable efforts to diligently and promptly remedy any and all material interruptions. Paide will not be liable in any manner for any interruptions, outages, or other delay occurrences relating to the Paide Software including any attributed to Paide's vendors.

### **SECTION THREE – PAYMENT OF FEES**

3.01. Fees in General. Merchant shall pay fees to Paide as set forth herein, in the application for the Paide Software, as set forth on Paide's website and as disclosed to Merchant in any other documents or materials by Paide.

3.02. Fees for Paide Software. Merchant agrees to pay Paide for the Paide Software via deduction of all applicable fees directly from Merchant's bank account. Merchant shall provide Paide with all necessary bank account, routing and related information. Paide will deduct automatically all such fees and charges on or about the first business day of each month for the preceding month's services. Interest shall accrue at the lesser of 1.0% per month or the maximum amount permitted by applicable law ("Late Fee") for any fees that remain unpaid beyond any due dates. In the event of a dispute made in good faith as to the amount of fees, Merchant agrees to remit payment on any undisputed amount(s); and, the Late Fee shall not accrue as to any disputed amounts unless not paid within thirty (30) calendar days after said dispute has been resolved by both parties. Merchant shall have sixty (60) days from the payment by Merchant of any fees due under this Agreement to notify Pivotal of any errors in payment of fee by Merchant. If Merchant does not notify Pivotal within the sixty (60) day time period, Merchant shall be deemed to have accepted without question such fee payment and may not in the future contest the amount Merchant paid or seek reimbursement for any discrepancies. Upon receipt of notice, Pivotal shall have thirty (30) days to correct any errors

### **SECTION FOUR – TERM AND TERMINATION**

4.01. Term. (a) The initial term of this Agreement shall be for a period of three (3) years, commencing on the date first set forth below. This Agreement shall thereafter be automatically renewed for additional terms of one (1) year each unless either party notifies the other no later than thirty (30) days prior to the end of the current term that it does not wish to renew this Agreement.

(b) Notwithstanding any other provisions in this Agreement, Paide may cease providing the Paide Software on one (1) days notice in the event that (i) there is a data security breach or other event that involves a high level of potential exposure to damages on the part of Paide due to breach of this Agreement by Merchant that Paide believes in its reasonable judgment to require this Agreement to be terminated immediately or (ii) the card associations, sponsoring bank or other third party with control over Paide orders Paide to cease providing the goods and services offered under this Agreement. Merchant shall have the right to cure in the event that Paide ceases to provide the Paide Software and if such cure is made the Paide Software will again be provided pursuant to the terms of this Agreement.

4.02. Default. Either party shall have the right to terminate this Agreement at any time if:

(a) the other party breaches any of the provisions of this Agreement and fails to cure such breach within thirty (30) days of its receipt of written notice thereof from the non-breaching party; or

(b) the other party (i) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (ii) becomes the subject of any voluntary or involuntary proceeding in

bankruptcy, liquidation, dissolution, receivership, attachment or assignment or composition for the benefit of creditors.

4.03. Termination by Either Party. Either party may terminate this Agreement for any reason, or no reason at all, by providing the other party with thirty (30) days notice.

4.04 Effect of Termination. Upon termination of this Agreement: (a) Merchant's license to use the Paide Software shall be automatically and immediately revoked, (b) Merchant shall immediately stop using such Paide Software and shall either destroy or deliver to Paide any originals and copies of the Paide Software in Merchant's possession, custody or control or in the control of any entity or individual to which Merchant has provided the Paide Software, (c) Merchant shall provide to Paide a written certification of such destruction or delivery, signed by an authorized agent of Merchant, and (d) Merchant shall promptly pay to Paide all fees and charges accrued and unpaid through the effective date of the termination.

4.05. Upon any termination of this Agreement, Paide agrees, upon written request from Merchant within thirty (30) days of the termination of this Agreement, to provide the Merchant with any available credit card information relating to Merchant's customers subject to the following conditions: (i) Merchant must provide Paide with proof that Merchant is in compliance with the PCI DSS standards by giving Paide a certificate or report on PCI DSS compliance from a qualified provider and any other information reasonably requested by Paide (ii) the transfer of such information is compliant with the latest version of the PCI DSS Standard and (iii) the transfer of such information is allowed under the applicable card association rules, state laws, federal laws and any other applicable laws, rules or regulations.

## **SECTION FIVE - OBLIGATIONS.**

5.01. Confidential Information. The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Paide Software and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the receiving party. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (iii) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The receiving party shall promptly notify the disclosing party of any unauthorized disclosure or use of the Confidential Information. The receiving party shall cooperate and assist the disclosing party in preventing or remedying any such unauthorized use or disclosure.

5.02. Indemnification. (a) Merchant agrees to indemnify, defend, and hold harmless Paide, its employees or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by Merchant or any employee, agent or affiliate of Merchant to comply with the terms of this Agreement; (ii) any warranty or representation made by Merchant being false or misleading; (iii) negligence of Merchant or its subcontractors, agents or employees, (iv) any representation or warranty made by Merchant or any employee or agent of Merchant to any third person other than as specifically authorized by this Agreement or (v) any alleged or actual violations by Merchant or its subcontractors, employees or agents of any card association rules, governmental laws, regulations or rules.

(b) Indemnification by Paide. Paide agrees to indemnify, defend, and hold harmless Merchant, and its employees and directors from and against any loss, liability, damage, penalty or expense (including, without limitation, reasonable attorneys' fees, expert witness fees and cost of defense) it or they may suffer or incur as a result of a claim, action or lawsuit by an independent third party (excluding affiliates of Merchant) in connection with a claim that the Paide Software infringes or is alleged to infringe a third party intellectual property right including, but not limited to trademarks, patents and trade secrets. Paide shall, however, not be liable if the claim, action or lawsuit (a) is asserted by an affiliated company of Merchant; (b) results from use of Paide Software in breach of this Agreement (c) modification of the Paide Software by Merchant or its agents, or (d) a claim, action or lawsuit by an independent third party caused by a product for which Paide is not responsible.

5.03. Disclaimer of All Warranties. THE PAIDE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. PAIDE DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, TO MERCHANT AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PAIDE OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF PAIDE'S OBLIGATIONS.

5.04. LIMITATION OF LIABILITY. PAIDE SHALL NOT BE LIABLE TO MERCHANT OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PAIDE SOFTWARE, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF PAIDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL PAIDE'S TOTAL LIABILITY TO MERCHANT OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNTS PAID BY MERCHANT UNDER THIS AGREEMENT IN THE PRIOR SIX (6) MONTHS REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE.

5.05. Taxes. Merchant shall pay, indemnify and hold Paide harmless from (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on Paide's income, and (ii) all government permit fees, customs fees and similar fees which Paide may incur

with respect to this Agreement. Such taxes, fees and duties paid by Merchant shall not be considered a part of, a deduction from, or an offset against, payments due to Paide hereunder.

5.06. Merchant represents and warrants to Paide as follows:

(a) Merchant has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against Merchant in accordance with its terms and no provision requiring Merchant's performance is in conflict with its obligations under any charter or any other agreement (of whatever form or subject) to which Merchant is a party or by which it is bound.

(b) Merchant is duly organized, authorized and in good standing under the laws of the state of its organization and is duly authorized to do business in all other states in which Merchant's business make such authorization necessary or required.

5.07. Trademarks. Subject to the limitations in this Agreement, Paide grants Merchant the nonexclusive right and license to use Paide's trademarks (the "Trademarks") during the term of this Agreement solely in conjunction with the use of the Paide Software. Paide grants no rights in the Trademarks or in any other trademark, trade name, service mark, business name or goodwill of Paide except as licensed hereunder or by separate written agreement of the parties. Merchant agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any Trademark or any other trademark, trade name or product designation belonging to or licensed to Paide (including, without limitation registering or attempting to register any Trademark or any such other trademark, trade name or product designation). During the term of this Agreement, Merchant agrees not to use any trademark, trade name or product name confusingly similar to a trademark, trade name or product name of Paide, except for the Trademarks expressly licensed hereunder. Upon expiration or termination of this Agreement, Merchant will immediately cease all display, advertising and use of all of the Trademarks and will not thereafter use, advertise or display any trademark, trade name or product designation which is, or any part of which is, similar to or confusing with any Trademark or with any trademark, trade name or product designation associated with Paide or any of Paide's products and services.

5.08. Intellectual Property. "Intellectual Property" means all of the following owned by a party: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, Paide grants no right or license to Merchant by implication, estoppel or otherwise to the Paide Software or any Intellectual Property Rights of Paide. Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of Paide, in the Paide Software) and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. Paide (and not Merchant) shall have the sole right, but not the obligation, to pursue copyright and patent protection, in its sole discretion, for the Paide Software and any Intellectual Property Rights incorporated therein. Merchant will cooperate with Paide in pursuing such protection, including without limitation executing and delivering to Paide such instruments as may be required to register or perfect Paide's interests in any Intellectual Property Rights and any assignments thereof. Merchant shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from Paide in connection with this Agreement.

5.09. Data Security Compliance. Merchant agrees to comply with privacy and security requirements under the Payment Card Industry Data Security Standard (“Association Requirements”) with regards to Merchant’s use, access, and storage of certain credit card non-public personal information (“Cardholder Information”) on behalf of Paide. Visa, MasterCard, Discover, American Express, any ATM or Debit Networks, and the other financial service card organizations shall be collectively known herein as “Associations.” Merchant shall comply with its obligations under any applicable law or regulations as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of Cardholder Information. Merchant agrees that it shall protect the privacy of Cardholder Information to at least the same extent that Paide must maintain that confidentiality under the Association Requirements or applicable law. Merchant agrees to ensure that any agent, including a subcontractor, to whom it provides Cardholder Information received from, or created or received by Merchant on behalf of Paide, agrees to the same restrictions and conditions that apply through this Agreement to Merchant with respect to such information. Upon five (5) business days notice or immediately upon any unauthorized access to, use or disclosure of any Cardholder Information, Paide may at its discretion, conduct an on-site audit and review of Merchant’s procedures and systems.

5.10. Data Accuracy. Merchant shall provide Paide with data necessary for the electronic funds transfer (“collection data”) in the form and at the times prescribed by Paide and shall make periodic checks and updates necessary to cause the collection data to be current and accurate at all times. The format and schedule requirements for delivery of collection data by Merchant may be changed by Paide during the term of this Agreement, and Merchant shall deliver collection data in conformity with changed requirements set forth from time to time by Paide. Merchant warrants to Paide that all data and entries delivered to Paide by Merchant will (a) be correct in form, (b) contain true and accurate information, (c) be fully authorized by the consumer or business, and (d) be timely under the terms and provisions of this Agreement.

5.11. Merchant Account Services. In the event Merchant applies for and is approved for merchant account services, Merchant’s use of such services shall be governed by the terms of the applicable merchant account services agreement. Merchant account services are not covered by this Agreement.

## **SECTION SIX - GENERAL PROVISIONS**

6.01. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

6.02. Drafting. No provision of this Agreement shall be construed against any party merely because that party or counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

6.03. Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

6.04. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Merchant may not assign this Agreement without the written consent of Paide. Paide may assign this Agreement in its sole discretion without the written consent of Merchant.

6.05. Amendments. This Agreement may be amended by Paide by posting a new version of this Agreement within the control panel or any place that Merchant has access to in order to view the revised Agreement. Any new version of this Agreement will immediately replace in its entirety this Agreement.

6.06. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), or first class mail, postage prepaid, sent to the addresses set forth herein.

6.07. Section Headings: The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

6.08. Entire Agreement; Binding Effect. This Agreement, including the application form, all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

6.09. Governing Law; Waiver of Jury Trial; Arbitration. This Agreement will be governed by and construed in accordance with the laws of the State of California without reference to conflict of law provisions. Any action, proceeding, arbitration or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in the federal judicial district that includes State of California. PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. Any claim, dispute or controversy ("Claim") by either Merchants or Paide against the other, or against the employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents or assigns of the other, arising from or relating in any way to this Agreement or to our relationship, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association, under its Commercial Arbitration Rules in effect at the time the Claim is filed, except as otherwise provided below. All Claims are subject to arbitration, no matter what theory they are based on or what remedy they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between Merchant and Paide. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the American Arbitration Association in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Any arbitration hearing at which you appear will take place at a location within the federal judicial district that includes State of California. This arbitration agreement applies to



all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security or other property interests for contractual debts now or hereafter owed by either party to the other. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, MERCHANT AND PAIDE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY, AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

6.10. Jurisdiction; Venue; Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California (irrespective of its choice of law principles). The parties hereby agree that any suit to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between the parties hereto shall be brought in federal or state court in State of California. Each party hereby agrees that such courts shall have exclusive personal jurisdiction and venue with respect to such party, and each party hereby submits to the exclusive personal jurisdiction and venue of such courts.

6.11. Attorney's Fees. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal.

6.12. Merchant hereby grants to Paide a nonexclusive, non-transferable right during the term of this Agreement to use Merchant's name and logo to identify Merchant as a customer of Paide on the Paide web site and in Paide's collateral marketing materials.

6.13. Survival. All representations, covenants and warranties shall survive the execution of this Agreement, and sections 3.01, 3.02, 4.04, 4.05, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.09, 6.10, 6.11. 6.12 and 6.13 shall survive termination of this Agreement.