

TCH Merchant Manager Agreement

This Merchant Manager Agreement (hereinafter “this Agreement”) is made between TCH, Inc., a Utah corporation, whose address is 4185 Harrison Blvd., Suite 202, Ogden, Utah 84403, (hereinafter “TCH”) and the Merchant, whose name and address are set forth as items one and two, respectively, on Schedule I attached to this Agreement (hereinafter “Merchant”).

TCH AND MERCHANT ARE THE ONLY PARTIES TO THIS CONTRACT. THERE ARE NO INTENDED THIRD PARTY BENEFICIARIES TO THIS CONTRACT.

AGREEMENT

In consideration of the premises and the mutual covenants and obligations contained herein and for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree by and between themselves as follows:

- A. Merchant and its affiliates operate one or more motor fuel facilities at various locations that accept the TCH forms of identification as payment for goods and services. Merchant and TCH have previously agreed to and accepted the terms and conditions of the Merchant Agreement, into which this Addendum is hereby incorporated. The parties agree that all terms and conditions of the Merchant Agreement shall continue to apply unless superseded by this Addendum.
- B. When Merchant uses or accesses, or permits any other person(s) or entity to use or access Merchant Manager, Merchant agrees to the terms and conditions of this Agreement. TCH provides notifications of modifications in Merchant Manager Agreement and any other related to the operational aspects of this Agreement on the TCH Homepage on the world wide web at www.tch.com under a section entitled “Company Information” (herein referred to as “Company Information”). If Merchant finds the Agreement unacceptable at any time, Merchant should discontinue use of Merchant Manager. Use of Merchant Manager after TCH has made such changes available will be considered agreement to the change.
- C. Merchant Manager is an online program offering a variety of content, products and services. TCH grants to Merchant, for Merchants internal business purposes only, a nonexclusive, limited and revocable right to access and use Merchant Manager. Merchant agree not to use Merchant Manager for any other purpose, including commercial purposes, such as co-branding, framing linking, or reselling any portion of Merchant Manager without our prior written consent.
- D. Merchant is responsible for obtaining, installing, maintaining and operating all equipment necessary for access to Merchant Manager, in accordance with such requirements as may be (i) provided by the equipment manufacturers and (ii) any other documentation TCH will provide to Merchant in connection with Merchants accounts and services. Merchant agree to utilize a reputable antivirus software program on equipment and that Merchant will update such antivirus software periodically in accordance with a commercially reasonable schedule. TCH is not responsible for any errors or problems that arise from the malfunction or failure of Merchants equipment.
- E. Merchant is additionally responsible for obtaining Internet services via the Internet service provider of choice, for any and all fees imposed by such Internet service provider and any associated communications service provider charges. Merchant acknowledges that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet and Merchant hereby expressly assumes such risks (to the extent the law allows Merchant to do so
- F. TCH may, at its option, change the parameters for the password used to access Merchant Manager (“Password”) without prior notice to Merchant, and if TCH does so, Merchant will be required to change password the next access to Merchant Manager. To prevent unauthorized access to accounts and to prevent unauthorized use of Merchant Manager, Merchant agree to protect and keep confidential User ID, Password, or other means of

accessing accounts via Merchant Manager. If Merchant discloses User IDs and/or Passwords to any person(s) or entity, Merchant assume all risks and losses associated with such disclosure. If Merchant permits any other person(s) or entity to use Merchant Manager or to access or use User IDs and/or Passwords, Merchant is responsible for any transactions and activities performed from Merchants User Id. If Merchant believes someone may attempt to use or has used Merchant Manager without permission, or that any other unauthorized use or security breach has occurred, Merchant agree to immediately notify TCH at 1-888-824-7378.

- G. TCH may, from time to time, introduce new features to Merchant Manager or modify or delete existing features at its sole discretion. TCH shall notify Merchant of any of these changes to features if TCH is legally required to do so. By using any new or modified features when they become available, Merchant agree to be bound by the rules concerning these features.
- H. Access to Merchant Manager will be \$30.00 per month. The fee for Merchant Manager will be deducted from Merchant's settlement. TCH reserves the right from time to time to add or modify charges and will notify Merchant via "Company Information".
- I. TCH may terminate or suspend this Agreement, or terminate, suspend or limit access privileges to Merchant Manager, in whole or part, at any time for any reason without prior notice. The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this Agreement for all purposes.

PRICING

- A. Merchant authorizes TCH to re-price all purchases made by Customers at corresponding location in which Merchant has set up via "Manage Deals" option in Merchant Manager. Such transactions will be re-priced by according to the method indicated in "Manage Deals". Merchant accepts the responsibility to understand the mechanics of the pricing method(s) indicated in "Manage Deals" for that customer.
- B. The transaction will be re-priced at the time of authorization.
- C. The transaction information and detail will be delivered to the customer at the re-priced amounts.
- D. TCH shall pay Merchant the re-priced amounts less the ordinary fees according to the existing settlement procedures.
- E. In the event that the Merchant wishes to change the terms of the pricing arrangement administered by TCH pursuant to this agreement, Merchant shall adjust or cancel all pricing arrangements via "Manage Deals".

MISCELLANEOUS AGREEMENTS

- A. To the extent that either party hereto obtains any information from the other party expressly designated as confidential or proprietary business information, or which should reasonably be deemed to be confidential information, the party receiving said information shall keep the information confidential and shall not use or disclose it except as necessary to perform this Agreement and as otherwise directed by the party claiming the right to confidentiality. This paragraph shall not apply to information that is: (1) already in the public domain, (2) known or obtained by the other party not claiming confidentiality from some source other than the party claiming confidentiality or (3) used in any dispute resolution forum between the parties hereto, or (4) required to be disclosed by law or judicial mandate.
- B. All references to money in this agreement are deemed to be lawful money of the United States.
- C. Merchant is responsible to Cardholders for (and TCH has no responsibility for) the nature, quality, quantity and merchantability of the motor fuels, and other products or services which Merchant or its agents or contractors provide to Cardholders. Merchant will deal directly with each Cardholder with respect to any claim, complaint or adjustment regarding such products or services which constitutes a Charge, and will deal with Cardholders reasonably and courteously in resolving or attempting to resolve such claims, complaints or adjustments.

- D. In addition to any obligations of Merchant contained in Section 1(n) in the Merchant Agreement, Merchant hereby agrees to indemnify and save TCH and its Affiliates harmless on an after-tax basis from and against, and agrees to pay, any and all losses, damages, claims, liabilities, penalties, costs and expenses, including without limitation, fees and disbursements of counsel, arising out of the sale, use or quality of any fuels, products or services provided or made available by Merchant to Cardholders.
- E. No waiver of any breach of this Agreement or the Merchant Agreement shall be construed as a waiver of any subsequent or other breach of the same provision or any other provision of this Addendum or the Merchant Agreement.
- F. This Agreement and the Merchant Agreement, and all schedules and exhibits attached to or referred to herein and therein, constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and shall supersede and replace all prior negotiations and agreements whether written or oral.
- G. This Agreement may be terminated by either party at any time upon thirty (30) days prior written notice; provided, however, that if either party shall fail to pay the other party any sum when due, the party to whom such sum is owed may immediately terminate this Agreement without notice and refuse to process any further transactions.
- H. This Agreement may be amended only by an instrument in writing duly signed by both parties hereto.
- I. Notwithstanding the provision of Section (G) above regarding termination of this Addendum and/or the Merchant Agreement, either party may immediately terminate this Agreement in the event of insolvency, receivership or voluntary or involuntary bankruptcy of the other party, or in the event of an assignment for the benefit of such other party's creditors, or in the event that a substantial part of such other party's property is or becomes subject to any levy, seizure, lien, assignment or sale for or by any creditor or government agency without being released or satisfied within thirty (30) days thereafter.
- J. Notices given pursuant to this Agreement shall be given in conformance with the terms and conditions of the Merchant Agreement. .

Schedule I attached hereto is incorporated herein by this reference as a part of this Addendum.

IN WITNESS WHEREOF, this Addendum is executed and made effective on the latest date appearing below the respective signatures.

TCH LLC:

Merchant:

By _____

By _____

Print Name _____

Print Name _____

Position _____

Position _____

Date _____

Date _____

