



**ARC Pay Agreement**

The parties to this ARC Pay Agreement and the attached ARC Pay Supplemental Terms and Conditions (“**Supplement**”), collectively referred to as the “**Agreement**,” are Airlines Reporting Corporation, headquartered in Arlington, Virginia (“**ARC**”) and \_\_\_\_ (“**Entity**”), which submits to ARC an ARC Pay Transaction (as hereafter defined) for which the form of payment is a credit, charge, or debit card (collectively “**Credit Card**”).

The purpose of this Agreement is to address how Entity submits and processes ARC Pay Transactions and to outline the rights and obligations of the parties to this Agreement.

In consideration of these statements and the mutual covenants and agreements, the parties acknowledge, understand, and agree as follows:

Article I.        Scope of Agreement

**1. Defined Terms:**

Capitalized terms not defined elsewhere in this Agreement have the following meaning:

- 1.1. “**Account**” means an account at any federally insured financial institution in the United States, established and maintained by Entity and reasonably approved by ARC.
- 1.2. “**Alternative Business Requirement Agreement**” or “**ABRA**” means part of a monitoring program into which an Entity may be required to enter if ARC, in its sole discretion, determines that the Entity is or may be engaging in, or has or may have engaged in, conduct that could result or may have resulted in a breach of any of the terms of this Agreement or of any requirements established by any Payment Brand, or is conducting or has conducted business in a way which could be deemed harmful to the ARC Pay product or brand or to ARC’s brand or reputation.
- 1.3. “**Application**” means any and all information that ARC may require Entity to submit to ARC in order to determine whether or not to grant Entity’s access to the ARC Pay product.
- 1.4. “**Arbiter**” means the Travel Agent Arbiter established as an independent entity (Travel Agent Arbiter Program Inc.) to decide disputes between, among others, ARC and Entities.
- 1.5. “**ARC-Accredited Entity**” means an Entity that has entered into, and is subject to the terms and conditions of, a Reporting Agreement.
- 1.6. “**ARC Mark**” shall have the meaning set forth in Section 18.
- 1.7. “**ARC Pay Transaction**” means any request by the Entity to access any Payment Network through ARC, including but not limited to a sale, authorization, Apple Pay transaction, tokenization, or 3D secure authentication.



- 1.8. **“Carrier”** means any airline, railroad or other Entity that: (1) has appointed a resident agent subject to the service of process within the United States; (2) is authorized by the government of any nation to engage in passenger transportation; and (3) has executed the Carrier Services Agreement with ARC, or is otherwise authorized by ARC, to participate in ARC programs and services.
- 1.9. **“Cardholder”** (also referred to as **“Card Member”** in some Payment Brand materials) means the person whose name appears on the Credit Card and who purports to be the person in whose name the Credit Card is issued.
- 1.10. **“Cardholder Data”** shall have the same meaning as set forth in the glossary of the PCI Security Standards.
- 1.11. **“Chargeback”** means the reversal and return of the value of an ARC Pay Transaction (or disputed portion thereof) to a Cardholder by the issuer of Cardholder’s Credit Card.
- 1.12. **“Collateral”** means cash, bond, trust, personal or corporate financial guaranty, and/or any financial instrument or mechanism used to secure a debt, as determined to be necessary by ARC in its sole discretion.
- 1.13. **“Consolidator”** means an Entity that processes ARC Pay Transactions on behalf of one or more Sub-Entities. This includes, but is not limited to, an Entity operating as a broker or wholesaler, or any other similar business model involving, among other things, volume-based discounts.
- 1.14. **“Credit Card Association”** means any of (i) Visa; (ii) Mastercard; (iii) American Express; (iv) Discover; (v) Diners Club International Ltd.; (vi) JCB International Co., Ltd.; (vii) China UnionPay Co., Ltd; and (viii) any other organization or association that hereafter contracts with ARC to authorize, capture, and settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- 1.15. **“Immediate Notice”** means written notice by the Entity to ARC as soon as possible, but in any event, received by ARC in a period of no longer than forty-eight (48) hours.
- 1.16. **“Internet Entity”** means an Entity that operates only on the Internet without a brick-and-mortar physical location.
- 1.17. **“Laws”** means any law, statute, ordinance, rule, regulation, order, writ, judgment, injunction, treaty, or decree of any nation or government, any state, municipality or other political subdivision thereof and any entity, body, agency, commission or court, whether domestic, foreign or multinational, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any executive official thereof.
- 1.18. **“Mark”** shall have the meaning set forth in Section 19.

- 1.19. **“Payment Brand”** means any Credit Card payment brand accepted by ARC for processing, including, without limitation, Visa, Mastercard, Discover, American Express and other Credit Card providers.
- 1.20. **“Payment Network”** means any Credit Card Association, electronic funds transfer network, electronic check services association or automated clearing house association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device or operates a network on which a Payment Device is processed.
- 1.21. **“Payment Network Regulations”** means all applicable Laws, Rules, and operating regulations, guidelines, specifications and related or similar requirements of any Payment Network.
- 1.22. **“PCI Security Standards”** means the Payment Card Industry Data Security Standards, including but not limited to the Cardholder Information Security Program and “What to Do if Compromised” document of Visa, the Site Data Protection Program of Mastercard, American Express’s Data Security Operating Policy, the Discovery Data Security DISC Program, and the security programs of any other Payment Network, and any modifications to, or replacements of, such programs that may occur from time to time.
- 1.23. **“Personal Information”** means any information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.
- 1.24. **“Privacy and Information Security Requirements”** means all applicable Laws relating in any way to the privacy, confidentiality, collection, retention, use or security of Personal Information or Transaction Information, including: EU Data Directive 95/46/EC, as of May 25, 2018, the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”); the Gramm- Leach-Bliley Act; Laws regulating unsolicited email communications; security breach notification laws; Laws imposing minimum security requirements; Laws requiring the secure disposal of records containing certain Personal Information; and all other similar international, federal, state, provincial, and local requirements.
- 1.25. **“Prompt Notice”** means written notice by the Entity to ARC as soon as practicable, but in any event, received by ARC in a period of no longer than five (5) calendar days.
- 1.26. **“Reporting Agreement”** means a separate agreement to which Entity, Carrier, and ARC are parties, governing Entity’s sale of tickets for air travel provided by Carrier.
- 1.27. **“Representative(s)”** means any of Entity’s employees, affiliates, subcontractors, or agents, or any third-party associated with Entity.
- 1.28. **“Reserve Account”** shall have the meaning set forth in Section 14.2.
- 1.29. **“Rules”** means the rules, regulations, and other requirements of any Payment Brand or related authority, including, without limitation, those of the PCI Security



## ARC Pay Agreement

Standards Council, LLC and the National Automated Clearing House Association, as amended from time to time.

- 1.30. **“Security Incident”** means an occurrence that affects the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of applicable security policies, security procedures, or acceptable use policies. A Security Incident includes, but is not limited to, a data breach, any unauthorized disclosure of any Personal Information or other data relevant to the terms and conditions hereof, and/or any actual or attempted phishing.
- 1.31. **“Services”** means the payment processing and related services provided by ARC to Entity pursuant to this Agreement, including but not limited to the Web Services, as may be further detailed herein.
- 1.32. **“Sub-Entity”** means any individual or business entity that controls, is controlled by, or is under common control with Entity, whether or not such control is established by operation of contract or law or is reasonably apparent based on relevant facts and circumstances. This includes, but is not limited to, an ARC-Accredited Entity or VTC that issues or engages in Transactions facilitated by a Consolidator.
- 1.33. **“System Provider”** means a third-party whose services Entity may use to issue ARC Pay Transactions under this Agreement and/or in support of its obligations under a Reporting Agreement or a VTC Agreement. System Providers include, but are not limited, to Computerized Reservations Systems and Global Distribution Systems.
- 1.34. **“Transaction Information”** means any information concerning a Transaction, including, but not limited to, Personal Information and financial data.
- 1.35. **“VTC” or “Verified Travel Consultant”** means an individual or business entity that has entered into the ARC VTC Program Agreement (**“VTC Agreement”**) with ARC and does not hold the authority to issue passenger tickets for travel on Carrier.

## 2. This Agreement:

- 2.1 Becomes effective between ARC and Entity when both (a) ARC has approved Entity’s Application (**“Approval”**) and (b) Entity issues an ARC Pay Transaction (the **“Effective Date”**). By issuing an ARC Pay Transaction, Entity agrees that it has the present intent to accept the Agreement and shall be bound by all of the terms and conditions of this Agreement;
- 2.2 Governs the terms and conditions under which Entity is authorized to issue and submit an ARC Pay Transaction to ARC, as part of a product currently known as “ARC Pay,” the name of which may change from time-to-time;
- 2.3 Supersedes any and all prior agreements between ARC and the Entity regarding ARC Pay and any ARC Pay Transaction, unless otherwise stated in a separately executed agreement or other document to which ARC and the Entity are both parties;



## **ARC Pay Agreement**

- 2.4 Does not in any way guarantee, or otherwise obligate ARC to permit, Entity's access to any of ARC's other products or services, including but not limited to those that may be subject to a Reporting Agreement; and
- 2.5 Incorporates by reference the latest version of "ARC Pay Supplemental Terms and Conditions" as if fully set forth herein and any terms and conditions of use applicable to ARC Pay, as may be updated from time-to-time.

### **3. Entity acknowledges and agrees:**

- 3.1. This Agreement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Virginia. State and federal courts of the Commonwealth of Virginia shall have personal jurisdiction over all matters arising under this Agreement;
- 3.2. This Agreement was entered into in Arlington, Virginia and all Transactions issued pursuant to this Agreement shall be deemed to have occurred in Virginia;
- 3.3. Disputes between Entity and ARC shall be resolved by the Arbiter according to the rules and procedures determined by the Arbiter. The Arbiter's decision shall be final and binding. However, neither Entity nor ARC is prohibited from seeking judicial relief to enforce the Arbiter's decision or to compel compliance with this Agreement prior to filing of an answer, or other responsive pleading, in a proceeding concerning such requirement or prohibition before the Arbiter;
- 3.4. Entity has had the opportunity to review this Agreement with counsel. This Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of this Agreement;
- 3.5. That Entity is obtaining and using the Services from ARC to facilitate lawful Transactions between Entity and its Cardholders and using the associated demand deposit account only for lawful business purposes as permitted under this Agreement; and
- 3.6. That Entity designates ARC as its non-exclusive agent for purposes of facilitating Transactions between Entity and its Cardholders. Entity represents that payment by a Cardholder to ARC for the Entity's product or services shall be considered by Entity to constitute payment to the Entity. Entity may seek or obtain similar Transaction-related services from non-ARC-related entities at any time.

### **4. ARC Pay Transactions**

- 4.1. ARC, as merchant of record on the ARC Pay Transaction, agrees to process ARC Pay Transactions submitted by Entity, subject to the terms and conditions of this Agreement.
  - 4.1.1. Because ARC is the merchant of record, ARC may, for any reason, reject, void or not process any ARC Pay Transaction that Entity issues.
  - 4.1.2. Entity is prohibited from making any misstatements or misrepresentations, whether orally or in writing, to any Cardholder indicating or implying that ARC



## ARC Pay Agreement

is responsible for originating or initiating any ARC Pay Transaction involving a charge to such Cardholder's Credit Card. Any Cardholder complaint or inquiry containing such assertions regarding ARC shall entitle ARC to immediately terminate this Agreement for cause.

**4.2.** Entity acknowledges and agrees that Entity is prohibited from issuing an ARC Pay Transaction without specific authorization from the Cardholder and may not utilize an authorization of an existing ARC Pay Transaction in order to issue a subsequent ARC Pay Transaction.

**4.3.** Entity shall not impose materially different terms for ARC Pay Transactions dependent on the form of payment.

**4.4.** Entity acknowledges and agrees that to issue an ARC Pay Transaction, Entity shall obtain a valid approval code from the Credit Card Association at the time the Cardholder acknowledged and agreed to accept the ARC Pay Transaction.

**4.5.** Entity acknowledges and agrees that Entity:

**4.5.1.** Shall not submit any ARC Pay Transaction using the Credit Card of Entity, its owner, officer, or Representative, or on the Credit Card of anyone other than the Cardholder or passenger, and only when the Cardholder has given Entity permission to use Cardholder's Credit Card for specific ARC Pay Transactions; and

**4.5.2.** Shall identify to its Cardholder(s) it will assess an ARC Pay charge and identify the amount of the ARC Pay charge.

**4.6. Prohibited Transactions**

**4.6.1.** Entity's use of ARC Pay is limited to ARC Pay Transactions only involving the sale of travel-related products or travel-related services. Any ARC Pay Transaction involving a combination of travel- and non-travel-related products or services, whether fraudulent or not, shall be considered invalid and a breach of this Agreement.

**4.6.2.** Entity shall provide any and all information requested by ARC for verification that ARC Pay Transactions are travel-related. ARC reserves the right to determine, in its sole discretion, whether or not an ARC Pay Transaction is travel-related or invalid.

**5. Compliance with Laws, Payment Card Industry Data Security Standards, and Payment Network Regulations**

**5.1.** Entity shall comply with all Payment Network Regulations. Entity shall not affect or submit any ARC Pay Transaction, or impose any other fee or charge, that could be treated as a finance charge under the Federal Truth in Lending Act, 12 CFR Part 226 (Subpart A), or any similar Law.

**5.2.** In the event of a Security Incident involving Cardholder Data, Entity shall immediately (but in any event not later than 48 hours after knowledge of the Security Incident) notify in writing any acquirer that processes any transactions concerning



## **ARC Pay Agreement**

the Cardholder Data, including, but not limited to, 1) ARC and 2) the applicable Payment Brand in compliance with any and all Payment Network Regulations. Such notification shall include, at a minimum, information about (i) the nature of the Security Incident, including where possible, the categories and approximate number of individuals concerned; (ii) the types and approximate volume of data impacted; (iii) the anticipated consequences of the Security Incident; and (iv) the measures taken or proposed to be taken by Entity to address the Security Incident. If any of the aforementioned information is unavailable or unknown to Entity at the time of the initial notification, such information shall be included in a supplementary notification that will be provided by Entity to ARC and any applicable Payment Brand as soon as possible upon obtaining such information, but in any event not later than 48 hours after it obtains such information.

**5.2.1.** In the event of a Security Incident involving Cardholder Data, Entity shall fully cooperate with ARC and any Payment Brand and take all steps directed by either ARC or any Payment Brand to assist in any investigation, mitigation, and/or remediation of any Security Incident.

### **5.3. Security Programs Compliance**

**5.3.1.** At all times while the Agreement is in effect, Entity shall comply with any and all applicable requirements of PCI Security Standards. Entity is solely responsible for ensuring compliance with all PCI Security Standards.

**5.3.2.** Entity hereby agrees to pay any and all fines and penalties that may be assessed by a Payment Brand on ARC as a result of Entity's noncompliance with the requirements of PCI Security Standards, Entity's data breaches, or by Entity's failure to accurately validate its compliance with PCI Security Standards.

**5.3.3.** Entity acknowledges and agrees that Entity may be prohibited from participating in Payment Brand programs if it is determined that Entity is non-compliant with the PCI Security Standards.

**5.3.4.** Each Entity shall validate its PCI Security Standards on an annual basis, with initial validation to occur no later than ninety (90) days after Approval.

**5.4.** In the event of a business failure, including but not limited to a bankruptcy, insolvency, or other suspension of Entity's business operations, Entity shall not sell, transfer, or disclose any materials that contain Cardholder account numbers, Personal Information, or other Transaction information to third parties without ARC's written consent. Entity and/or its Representative shall either return this information to ARC or provide ARC with acceptable proof of destruction of this information (in ARC's sole discretion).

**5.5.** If Entity is undergoing any investigation, including but not limited to a forensic investigation regarding PCI Security Standards, Entity shall disclose to ARC the existence of the investigation and fully cooperate with any investigation until it is completed. ARC warrants that it complies with the applicable required PCI Security Standards and that ARC is a PCI Security Standards Validated Service Provider.

- 5.6. Office of Foreign Assets Control (OFAC) Compliance.** For any Entity operating in the United States, Entity acknowledges and agrees that ARC and Entity are entities governed by the Laws of the United States and, as such, ARC cannot provide any products or services to Entity or its Cardholders that contravene the Laws of the United States, including but not limited to the Laws promulgated by OFAC or the United States Department of the Treasury or any successor thereto.
- 5.7. Export Laws Compliance.** Entity shall comply with all United States Laws governing the export and re-export of hardware, software or technology applicable to the Services and any associated equipment.
- 5.8. Privacy Compliance.** Entity shall comply with any and all Privacy and Information Security Requirements. Entity represents and warrants as follows: (a) its provision of any Personal Information to ARC in connection with this Agreement is permitted under the Privacy and Information Security Requirements, as well as any privacy policies or other statement or disclosure to which such Personal Information is subject, and the terms of Entity's contracts with its customers or other third parties ("**All Applicable Requirements**"); (b) the use, analysis and processing of the Personal Information by ARC for the purposes set forth in this Agreement are permitted in accordance with All Applicable Requirements and that the individuals to whom the Personal Information relates have been properly informed and, if necessary, have given proper consent, at the point of collection of Personal Information by the collecting entity, in accordance with the Privacy and Information Security Requirements, including disclosures on the collection, processing, uses, and sharing practices (including any overseas transfers) of Personal Information by Entity, ARC, and/or any Payment Brand as set out in this Agreement; and (c) in accordance with the Privacy and Information Security Requirements and where required, it develops and implements appropriate procedures for handling requests by individuals to whom the Personal Information relates for access to and/or correction of Personal Information maintained by Entity or ARC. ARC shall cooperate with Entity in responding to such requests and shall provide access to Personal Information maintained by ARC where appropriate. If an access request is made directly to either party, the other party shall cooperate with such party in promptly responding to the request.
- 5.9. Anti-Money Laundering.** Entity shall comply with applicable anti-money laundering Laws, including but not limited to those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), the Anti-Money Laundering Act of 2020, and the applicable anti-money laundering Laws of any jurisdiction where Entity conducts business.
- 5.10. Verification.** Entity shall provide any documentation requested by ARC regarding verification of Entity's compliance with any requirements of this Section 5, including, but not limited to, the requirements concerning Security Programs Compliance stated in Section 5.8. Failure to do so within any timeframe required by ARC constitutes a material breach of this Agreement and may result in the termination of this Agreement for cause by ARC.

## **6. Data Retention, Disclosure, and Use; Intellectual Property Rights**

- 6.1 Entity Retention, Disclosure, and Use.** Entity shall retain Cardholder Data and Transaction Information for such periods of time required by Laws and the



Payment Network Regulations and thereafter shall destroy, in a manner that will render the information unreadable, all such information. Entity shall not disclose Cardholder Data, including but not limited to, Credit Card numbers, a Cardholder's Personal Information, or any other Transaction Information to any third party, except to Entity's Representatives, ARC or ARC's Representatives, or as otherwise required to perform its obligations under this Agreement or as required by applicable Laws and/or the Payment Network Regulations. Entity shall not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose. After written authorization, Entity may retain only the Cardholder account number, name, and card expiration date if Entity has a reasonable business purpose to retain such information. Entity shall only use the Cardholder Data and Transaction Information to support the Services.

- 6.2 ARC Disclosure and Use.** Entity hereby grants ARC, its Representatives, and applicable referral partners a worldwide, non-exclusive right to collect, use, reproduce, distribute, store, and share with third parties any Cardholder Data, Transaction Information and/or information regarding Entity, its principals, or Representatives that ARC otherwise obtains in connection with the Agreement, for the following purposes: (i) to provide the Services and to carry out related administrative and account maintenance functions and internal fraud and compliance monitoring; (ii) disclosure to credit rating agencies and to the financial institution where the demand deposit account is maintained, if applicable; (iii) to develop ARC's products or services generally; (iv) usage or disclosure by ARC in the course of any proposed sale or other change to ARC's business; (v) collection, usage, disclosure and/or retention by ARC as required or permitted by Laws; (vi) to ensure Entity has complied and is complying with Entity's obligations under this Agreement. ARC may prepare, use, and share with third parties, aggregated, non-Personal Information derived from Transaction Information of all of ARC's Cardholders or specific segments of ARC's Cardholders.
- 6.3 Usage Data.** Entity acknowledges and agrees that ARC may monitor, record, collect, store, maintain, use and copy Transaction Information and/or metadata and other statistical data, which it will derive from the Transaction Information on behalf of Entity. ARC will own all right, title and interest in all information it collects with respect to Entity's use of the Services, including statistical information and traffic analysis data ("**Usage Data**"). ARC may use all Usage Data for any purpose without any obligation to Entity or any third-party; provided however, that ARC may only disclose Usage Data to third parties so long as the Usage Data is disclosed only in the aggregate and not in a manner so that it is attributable to Entity or any of Entity's customers, and in compliance with applicable Laws.
- 6.4 ARC Property.** ARC and its licensors own and retain all right, title and interest, including any and all patents, trademarks, copyrights, trade secrets and other intellectual property rights, whether registered or not, in any and all jurisdictions ("**Intellectual Property Rights**"), in the following: (i) the Services; (ii) the ARC Marks; (iii) the ARC Confidential Information; and (iv) all derivative works of all of the foregoing (collectively, the "**ARC Property**"). In the event any right, title or interest arises or vests at any time in Entity to any ARC Property, Entity shall promptly disclose to and hereby assigns to ARC all such right, title and interest. Entity shall execute, and cause its Representatives to execute, all necessary documents to give legal effect to such assignment or otherwise secure ARC's ownership of the ARC Property. During and after the Term, Entity shall fully



cooperate with ARC's efforts to procure Intellectual Property Rights in the ARC Property (including signing all papers) as ARC may request. Entity waives, and shall cause its Representatives to waive, all rights to royalties and claims for other amounts for the ARC Property, including any improvements thereto. Except as expressly specified in this Agreement, all rights in the ARC Property are reserved by ARC.

**7. Entity's Business**

**7.1** Entity shall provide ARC with Immediate Notice of its intent to (i) transfer or sell more than 50% of its total assets, or liquidate; (ii) change the nature of its business in any manner, including but not limited to selling any products or services not related to its current business; (iii) change fifty percent (50%) or more of the ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Entity's business; or (v) alter in any way Entity's approved monthly volume and average ticket average;

**7.2** Entity acknowledges and agrees that failure to provide Immediate Notice as required in Section 7.1 will cause ARC irreparable harm and may be deemed a material breach of the Agreement and may result in either (in ARC's sole discretion): 1) the termination of this Agreement for cause by ARC; or 2) ARC exercising any or all of its rights and remedies pursuant to this Agreement and applicable law, including but not limited to, offsetting funds otherwise due and owing to the Entity and/or altering the Entity funding schedule.

**7.3** Entity shall provide Immediate Notice to ARC of any bankruptcy, receivership, insolvency or similar action initiated by or against Entity.

**7.4** Entity shall provide Prompt Notice to ARC of any changes to the information provided to ARC in the Application, including but not limited to: a change to Entity's financial condition of such change; any additional location or new business; the identity of principals and/or owners; the form of business organization; type of goods and services provided; Entity's name, address, or website/URL; and the manner in which sales are completed. Entity shall also provide ARC Prompt Notice if Entity sells or closes its business. Entity is liable to ARC for all losses and expenses incurred by ARC arising out of Entity's failure to properly notice or report changes to ARC, including but not limited to, legal fees and costs incurred by ARC. ARC may terminate this Agreement for cause upon a change to the information in the Application, whether ARC independently discovers such change, learns of such change by a third party or through public information, or Entity notifies ARC of such change.

**8. Disclaimer of Warranties**

**8.1** THE SERVICES ARE PROVIDED "AS IS," AND ARC DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES AND ENTITY'S USE OF THIRD PARTY SERVICES, EQUIPMENT, SOFTWARE, OR DATA IN CONNECTION WITH THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY,



## ARC Pay Agreement

SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT, UNINTERRUPTED OR ERROR-FREE USE, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE.

### 9. Amendments to This Agreement

- 9.1** Except as otherwise provided by this Agreement, ARC may amend this Agreement, at any time, if it makes the amendments available to Entity at least ten (10) calendar days prior to the amendment's effective date. Entity's concurrence with future amendments to this Agreement is effective at the time Entity submits an ARC Pay Transaction to ARC.
- 9.2** ARC may change the amount or percentage of fees charged, at any time, and will make the changes available to Entity at least thirty (30) calendar days prior to the effective date of the change.

### 10. Termination of This Agreement

- 10.1** Entity may submit written notice of voluntary termination of this Agreement at any time.
- 10.1.1** Termination shall take effect fourteen (14) calendar days after receipt of notice by ARC. However, notwithstanding any notice of termination of this Agreement, the Entity shall continue to comply with all of the terms and conditions set forth herein until the effective date of termination. Entity acknowledges and agrees that said obligations of the Entity set forth herein shall continue to exist and shall remain in full force and effect until the effective date of termination. ARC, however, shall have no obligation to process a Transaction after the Entity provides notice of termination of this Agreement.
- 10.2** ARC may terminate this Agreement with Entity, for convenience, at any time for any reason.
- 10.2.1** Termination, for convenience, shall take effect fourteen (14) calendar days after the date indicated on ARC's notice. ARC shall have no obligation to process a Transaction after it issues a notice of termination of this Agreement to the Entity.
- 10.3** ARC may terminate this Agreement with Entity, for cause, effective immediately, and without notice, if:
- 10.3.1** Entity fails to pay ARC any monies due and owing to ARC under this Agreement;
- 10.3.2** Entity is in breach of any provision of this Agreement and/or defaults hereunder;
- 10.3.3** ARC, in its sole discretion, determines that there is an adverse change in Entity's business or financial condition, including but not limited to, Entity becoming insolvent or the subject of a receivership proceeding;



## ARC Pay Agreement

- 10.3.4** ARC, in its sole discretion, determines that Entity or any of its owners, partners, officers or employees have participated in the commission or attempted commission of a fraud or misrepresentation against ARC, a Payment Network, Credit Card company, issuer, or a Cardholder;
- 10.3.5** Entity is no longer a party to a Reporting Agreement or the VTC Agreement (“**Former Entity**”), or is alleged by ARC to be in breach of a Reporting Agreement or the VTC Agreement; or
- 10.3.6** Entity engages in Transactions involving a sole proprietorship, corporation, partnership, association, or other organized enterprise, which:
- i. Is a Former Entity;
  - ii. Is a partially- or wholly-owned subsidiary of Entity or of a Former Entity (“**Subsidiary**”);
  - iii. Is a VTC; or
  - iv. Is a Sub-Entity,

if Entity had knowledge or could have obtained knowledge based on reasonable due diligence, that the Former Entity, Subsidiary, VTC, or Sub-Entity has or may have participated in the commission or attempted commission of a fraud against ARC, a Payment Network, Credit Card Association, issuer, or a Cardholder.

## Article II. Monitoring; Documentation; Security Interests

### 11. Accounting Monitoring

- 11.1** Entity agrees that ARC may suspend, within ARC’s sole discretion, the disbursement of Entity’s funds for any reasonable period of time required to investigate suspicious or unusual deposit activity or fraud. ARC will make good faith efforts to notify Entity promptly. ARC shall have no liability for any losses, either direct or indirect, which Entity may attribute to any suspension of funds disbursement.
- 11.2** In the event of unusual ARC Pay Transactions that have been “suspended” and cannot be verified as valid sales or have been verified as Cardholder disputes, Entity agrees that a security processing fee not to exceed 110% of the unusual ARC Pay Transaction(s) may be assessed.
- 11.3** Entity’s presentation to ARC of Excessive Activity shall be a breach of this Agreement. “Excessive Activity” refers to any period of two or more calendar months during which Entity has a Chargeback ratio that exceeds .5% by number of Transactions or a Chargeback ratio that exceeds .5% by dollar volume. Entity authorizes, upon the occurrence of Excessive Activity, ARC to take additional actions as it deems necessary, including, but not limited to, suspension of processing privileges, increase of any fees that may be charged to Entity, creation or maintenance of a Reserve Account in accordance with this Agreement, and/or termination of this Agreement.

- 12. Records.** In addition to any records routinely furnished to ARC under this Agreement, Entity shall preserve a paper or electronic copy of all actual paper ARC Pay Transactions



and, if a mail, phone order or preauthorized order is involved, the Cardholder's signed authorization for the ARC Pay Transaction, for at least three (3) years after the date Entity presents the ARC Pay Transaction. ARC may produce records, information and/or other data in ARC's possession, custody or control requested pursuant to a lawfully-issued subpoena or other legal process without notice to Entity.

**13. IRS Withholdings and Reporting.** Upon ARC's request, Entity shall verify its identity by providing ARC with a Tax Identification Number ("**TIN**") such as a Social Security Number or Employer Identification Number ("**EIN**") for each Entity Account. In the event Entity fails to provide its TIN, ARC may, in its sole discretion, place a restriction on Entity's Account and may restrict the receipt of funds into Entity's Account or withhold a percentage of payments deposited into Entity's Account in order to satisfy any applicable requirements of the Internal Revenue Service.

**14. Security Interests, Reserve Account, Recoupment and Set-Off**

**14.1** This Agreement is a security agreement under the Uniform Commercial Code. Entity grants to ARC a perfected and first priority security interest in and lien upon: (i) the Account and all funds at any time in the Account, whatever the source of such funds, (ii) the Reserve Account and all funds at any time in the Reserve Account, whatever the source of such funds, (iii) future ARC Pay Transactions, (iv) all Entity's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement; (v) any Collateral held pursuant to this Agreement; and (vi) all Entity deposit accounts now owned or hereafter acquired and the proceeds of all of the foregoing (collectively, the "**Secured Assets**"). Upon request of ARC, Entity shall execute one or more financing statements or other documents to evidence this security interest. Entity irrevocably authorizes its bank to execute any financing statements or other documents necessary related to this security interest. Entity represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens will secure all of Entity's obligations under this Agreement and any other agreements between Entity and ARC including, but not limited to, Entity's obligation to pay any amounts due to ARC. With respect to such security interests and liens, ARC shall have all rights afforded under the Uniform Commercial Code, any other applicable Law and in equity. Entity shall obtain from ARC written consent prior to granting a security interest of any kind in the Secured Assets to a third-party. ARC reserves the right to charge Entity a fee of up to \$500 to compensate ARC for perfection of its security interest pursuant to this section.

**14.2** ARC may establish and maintain an interest-bearing account at any federally insured financial institution ("**Reserve Account**"), with sums provided by Entity that are sufficient to satisfy Entity's current or future obligations as determined by ARC in its sole discretion. Entity agrees and acknowledges that any funds held by ARC in the Reserve Account are held in trust for the sole benefit of ARC and ARC retains sole control of any Reserve Account. Entity shall have no right to withdraw funds or debit the Reserve Account.

**14.2.1** ARC shall have the right to initiate a debit to the Account or any other account at any institution to establish or maintain funds in the Reserve Account. ARC may deposit into the Reserve Account funds it would otherwise be obligated to pay Entity, for the purpose of establishing or maintaining the



## ARC Pay Agreement

Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

**14.2.3** Prior to or at the time of any bankruptcy, insolvency, or other proceeding, Entity agrees that ARC may exercise its rights under this Agreement to, among other things, use funds held in the Reserve Account to offset any amounts due and owing to ARC. Entity further agrees that it will not object, oppose, or otherwise contest any pleading filed by ARC in the bankruptcy proceeding seeking to enforce its rights and remedies under the terms of this Agreement. In the event of a bankruptcy proceeding, ARC does not consent to the assumption of this Agreement. Nevertheless, if this Agreement is assumed, Entity agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. § 365, as amended from time to time, Entity shall establish or maintain a Reserve Account in an amount satisfactory to ARC;

**14.2.4** Funds in the Reserve Account shall remain in the Reserve Account for a minimum of 180 days following termination of this Agreement. After that time, ARC shall return any funds due and owing to Entity that remain in the Reserve Account only upon full satisfaction of all of Entity's current and anticipated future obligations to ARC under this Agreement or any other agreement between the Entity and ARC.

**14.3** ARC shall have, and may exercise at any time, the right to recoupment and offset of any and all amounts due to ARC from the Entity under the terms of this Agreement or any other agreement between the Entity and ARC. ARC may, without notice to Entity, apply funds held by ARC in the Reserve Account against any outstanding amounts Entity owes under this Agreement or any other agreement between Entity and ARC.

**14.4** Any Collateral held by ARC pursuant to this Agreement shall also be deemed Collateral for any other obligation due and owing by Entity to ARC. In the event of Entity's default in the performance of any of its duties, obligations, or performance requirements under the Agreement or any other Agreement between Entity and ARC, ARC may, in its sole discretion, enforce all of its rights in the Collateral, including its right of offset and/or collection of any such amounts due and owing to ARC from the Collateral.

**14.5** The rights conferred upon ARC in this Section are not intended to be exclusive of each other or of any other rights and remedies of ARC under this Agreement, at law or in equity. Rather, each and every right of ARC at law or in equity shall be cumulative and concurrent and in addition to every other right.

## 15. Third Parties

**15.1** Entity shall provide Prompt Notice if Entity decides to use electronic authorization or data capture terminals, software, or hardware provided by any entity other than ARC or its authorized designee ("**Third-Party Supplier**") to process ARC Pay Transactions. If Entity elects to use a Third-Party Supplier, Entity agrees (i) the Third-Party Supplier will be Entity's agent in the delivery of ARC Pay Transactions to ARC via Visa Net or a similar data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or



this Agreement. ARC shall not be responsible for any losses or additional fees incurred by Entity as a result of any error by a Third-Party Supplier or a malfunction in any electronic authorization or data capture terminals, software, or hardware provided by it.

- 15.2** Entity may be using special services or software provided by a third party to assist Entity in processing ARC Pay Transactions, including authorizations and settlements, or accounting functions. Entity is responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure Entity has and complies with any software updates. ARC has no responsibility for any ARC Pay Transaction until the point in time ARC receives Transaction Information.

Article III. **ABRA; Liability, Responsibility, and Payment for ARC Pay Losses**

**16. ABRA**

- 16.1 Requirements.** ARC may, in its sole discretion, at any time, require Entity to enter into an ABRA, which shall be subject to the terms of this Agreement. Conduct which may cause ARC to require an ABRA can include, but is not limited to, excessive Chargebacks or fraud. Entity's failure to do so upon ARC's request or to comply with any ABRA requirements shall constitute, among other things, a breach of this Agreement entitling ARC to terminate this Agreement for cause. Any ABRA requirements shall be determined in ARC's sole discretion and may include, but are not limited to, the following: increased and/or additional fees; Chargeback rate reduction requirements; holdbacks; rolling reserves; and requiring the posting of Collateral.
- 16.2 Personal Guaranty.** ARC may, at its sole discretion, require an Entity subject to ABRA to cause it or its principals to execute and provide to ARC a valid guaranty in any form required by ARC.

**17. Liability for ARC Pay**

- 17.1** Entity acknowledges and agrees that under this Agreement, Entity remains solely liable for any liability, including, but not limited to, liability resulting from fraud or misrepresentation, that ARC incurs as the merchant of record for an ARC Pay Transaction issued by Entity, as the ARC Pay Transaction is solely between Entity and the Cardholder.
- 17.2** Entity acknowledges and agrees that if an ARC Pay Transaction is rejected or charged back to ARC or otherwise not paid by any Payment Network, Credit Card company, issuer, or bank for any reason, Entity shall be liable for and will reimburse ARC for any losses ARC incurs due to such nonpayment immediately upon ARC's demand. Entity authorizes ARC to deduct from Entity's Account or withhold from money due and owing to the Entity by ARC, by way of setoff, the amount of the ARC Pay Transaction that was rejected or charged back to ARC.
- 17.3** A Consolidator is jointly and severally liable with any and all of its relevant Sub-Entities for any and all liability of any such Sub-Entity pursuant to this Agreement, including, but not limited to, ARC's attorneys' fees and costs incurred in pursuing its rights and remedies under this Agreement.



## ARC Pay Agreement

**17.4** Entity acknowledges and agrees that any Cardholder or other consumer (a “**Consumer**”) transaction successfully processed through ARC Pay shall be deemed complete as to the Consumer once accepted by ARC Pay, and no Consumer shall be held liable or otherwise denied any purchased good or service on account of any payment delay or dispute between ARC and the Entity.

**17.4.1** Entity shall provide a receipt or other confirmation of payment submitted through ARC Pay and shall include on such receipt or confirmation provided to a Consumer a statement informing the Consumer that payment to the Entity is made through ARC Pay. Payment to ARC shall be deemed payment to the Entity and shall be effective upon receipt by ARC.

**17.5** In addition to any other remedy under this Agreement (including but not limited to termination), Entity shall be subject to the following penalties occurring during any rolling period of twelve (12) months for one or more breaches by Entity of Sections 2.2, 4.1.2, and/or 18 of this Agreement (each such breach, a “**Violation**” as hereafter defined):

**17.5.1** First Violation - written warning;

**17.5.2** Second Violation - \$5,000; and

**17.5.3** Third Violation - \$10,000.

For purposes of this Section 17.5, a “**Violation**” means each separate instance of any misrepresentation or breach of Sections 2.2, 4.1.2, and/or 18 as determined by ARC in its sole discretion. In making the determination, ARC may, but is not required to, consider the number of separate Cardholder or other relevant consumer complaints received related to each misrepresentation. ARC shall notify Entity of each Violation and any requirements that ARC may impose on the Entity as a result of the Violation, including but not limited to, ceasing and desisting from further Violations and payment of monetary penalties as described above. Entity’s failure to comply with any such requirements shall constitute a breach of this Agreement and grounds for termination for cause. ARC may collect payment of any monetary penalties by any means not prohibited by this Agreement, including but not limited to use of any Collateral or amounts held in the Reserve Account.

The above penalties shall apply independently and in addition to any other penalties and/or breaches provided for elsewhere in this Agreement, including, but not limited, to any requirements related to ABRA or termination of the Agreement.

**17.6** For any breach of this Agreement by Entity, in addition to any other rights or remedies of ARC hereunder, ARC may, at its sole discretion, revoke any rebates, discounts, or other favorable commercial terms extended to any Entity.

### Article IV. General Provisions

**18.** Entity shall not use any promotional materials or display in any manner any ARC Mark or Marks of any Payment Brand in any way which implies that ARC and/or the Payment Brand endorses any goods or services other than Card services and Entity shall not refer to any Payment Brand in stating eligibility for Entity’s products or services. Entity’s limited rights to use the ARC Marks shall terminate with termination of this Agreement and Entity shall cease





## ARC Pay Agreement

all use of the ARC Marks upon notification by the applicable Card association to discontinue use. Entity shall be fully liable to ARC for any and all loss, cost and expenses incurred by ARC, arising out of failure to return or destroy such materials following termination of the Agreement or Entity's misuse of the ARC Marks.

19. Entity authorizes ARC to use any Marks owned by or associated with any Entity, solely for promotional purposes related to ARC Pay, including as part of any written promotional materials or documents that ARC may disseminate, at any time this Agreement remains in effect. Such promotional materials may include, but are not limited to, brochures or other physical, written materials; visual or auditory media; Internet websites; mobile or web-based applications, press releases; and advertising in newspapers and/or other periodicals, in any form or format. Notwithstanding the foregoing, Entity may revoke, opt out, amend, or otherwise modify the authorization described in this paragraph by written notice to ARC at any time ("**Opt-Out Request**"). Upon receipt of any Opt-Out Request, ARC shall promptly take any actions it deems reasonably necessary, in its sole discretion, to comply with the Opt-Out Request.
20. Entity shall indemnify and hold harmless ARC and ARC's officers and Representatives, from all responsibility and liability for any damage, expense, or loss to any person, entity, or thing caused by or arising from any act, omission, or misrepresentation of Entity, or Entity's Representatives relating directly or indirectly to the performance of the duties and obligations of Entity under this Agreement.

### 21. Confidentiality

- 21.1 **Confidential Information.** Each party acknowledges and agrees that they may receive confidential or proprietary information of the other party, including, without limitation, computer programs, customers, employees, methods, processes, work flow, data flow, functional and technical specifications, business plans, accounting and financial information, pricing information regarding purchases and sales and other material designated as confidential expressly or by the circumstances under which it is provided ("**Confidential Information**"). Without limiting the generality of the foregoing, any information concerning ARC received by Entity due to ARC's provision of the Services, and all components thereof, shall be treated as ARC's Confidential Information.
- 21.2 **Obligations.** Each party shall use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care. A party may disclose Confidential Information of the other to third parties performing services hereunder where (i) such disclosure is reasonably necessary to or otherwise occurs in that entity's scope of responsibility, and (ii) the disclosure is in accordance with the terms and conditions of this Agreement and subject to commercially reasonable obligations of confidentiality. Neither party shall (i) make any use or copies of the Confidential Information of the other except as necessary to perform its obligations under this Agreement, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) refuse for any reason (including a default or material breach of this Agreement by the other party) to promptly provide the other party's Confidential Information (including all copies thereof) to it if requested in writing to do so. Upon the expiration or termination for any reason of this Agreement and the completion of a party's obligations under this Agreement, each party shall



## ARC Pay Agreement

(except as otherwise provided in this Agreement), return or destroy, as the other may direct, all documentation in any medium that contains, refers to, or relates to the other party's Confidential Information, and retain no copies. In addition, the parties shall take reasonable steps to ensure that their Representatives comply with these confidentiality provisions.

- 21.3 Exceptions.** The obligations of this Section 21 shall not apply to any information which any party can demonstrate: (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was rightfully in the possession of the receiving party at the time of disclosure to it; (iv) is received from a third party who had a lawful right to disclose such information to it; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. In addition, a party shall not be considered to have breached its obligations under this Section 21 for disclosing Confidential Information of the other party as required to satisfy any legal demand of a government, judicial or administrative body; provided, however, that, the upon receiving any such demand and to the extent legally permissible to do so, such party provides prompt notice (and in any event not later than five (5) calendar days) to the other party so that the other party may take appropriate actions in response to any such demand.
- 21.4 Notification.** In the event of any material disclosure or loss of, or inability to account for, any Confidential Information of the furnishing party, the receiving party shall give immediate notice (and in any event not later than 72 hours) to the other party upon the occurrence of any such event.
- 21.5 No Obligation to Disclose.** Nothing contained in this Agreement shall be construed as obligating a party to disclose its Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any rights or license to the Confidential Information of the other party.
- 22.** Any notice provided under this Agreement shall be considered given as of the mailing date of the notice. Notices can be given to Entity's home office address, MyARC Primary Administrator, and/or Operational Email Address, or if to ARC, to [ARCPay@arccorp.com](mailto:ARCPay@arccorp.com).
- 23. Limitations of Liability:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ENTITY ACKNOWLEDGES AND AGREES THAT ARC'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY ENTITY TO ARC DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY SUCH LIABILITY, OR IF SUCH EVENT OCCURS WITHIN 12 MONTHS OF THE EFFECTIVE DATE, THEN ARC'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE AVERAGE MONTHLY AMOUNT OF FEES PAID BY ENTITY TO ARC SINCE THE EFFECTIVE DATE, MULTIPLIED BY TWELVE . ARC SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL PUNITIVE, OR EXEMPLARY DAMAGES. Nothing in this Section attempts to exclude liability that cannot be excluded under applicable law.
- 24.** Entity agrees to reimburse ARC for expenses and reasonable attorney's fees and costs incurred by ARC in connection with ARC enforcing or defending any terms and conditions of this Agreement.



## **ARC Pay Agreement**

25. This Agreement cannot be assigned to any third party by Entity without the prior written consent of ARC. ARC can assign this Agreement without Entity's prior consent, written, or otherwise.
26. A waiver by either party of any breach or default by either party shall not be construed as a waiver of any other breach or default whether or not similar and whether or not occurring before or after the subject breach.
27. If any provision of this Agreement is held invalid by the Arbiter or a court of law or equity, the remaining provisions shall remain in full force and effect and shall be construed as if the invalid provisions were not included in this Agreement.
28. ARC and its wholly-owned subsidiary, Settlement Plan Management, Inc. (SPMI), may from time to time receive funds from Credit Card companies and/or Credit Card acquiring banks and/or travel agents pursuant to this Agreement, and ARC agrees, on behalf of itself and SPMI, that ARC and/or SPMI shall manage such funds (less any fees due and payable from time to time to ARC and/or SPMI) during the term of this Agreement.



**ARC Pay Supplemental  
Terms and Conditions**

The following ARC Pay Supplemental Terms and Conditions (the “**Supplement**”) are incorporated as if fully set forth in the ARC Pay Agreement between Entity and ARC (the “**Agreement**”). All capitalized terms not defined herein have the meaning ascribed to them in the Agreement:

Article V. Acceptance; Internet Entities; Gateway Programming

**1. Application and Acceptance**

- 1.1 As part of the acceptance process, ARC may, at its sole discretion, conduct any investigation or inquiry of Entity or its Representatives, as ARC deems appropriate. Entity shall ensure that it and its Representatives shall fully cooperate with any and all of ARC’s requests and promptly provide all information requested by ARC hereunder. Entity shall further ensure that its Representatives fully cooperate with any and all of ARC’s requests under this Agreement. Such investigation or inquiry may include, but is not limited to, in-person or virtual inspections of the physical premises, whether located in the U.S. or internationally (including any call centers actually or believed to be affiliated with Entity, whether by ownership or contract) and/or the electronic systems of Entity or its Representatives. In all instances Entity’s owners, managers, associates, Representatives, and all other parties who have the right to act on behalf of the Entity shall be vetted as part of ARC’s due diligence and Know Your Customer (KYC) procedures.
- 1.2 ARC may, at its sole discretion, require that any Sub-Entity of a Consolidator submit an application to become an ARC-Accredited Entity or VTC, or any other information, documents, or materials, as a condition to such Consolidator’s continued processing of ARC Pay Transactions on behalf of Sub-Entity.

**2. Entity acknowledges and agrees:**

- 2.1 That ARC may, at any time and without prior notice, inspect, audit, and make copies of, the books and records of Entity that pertain to ARC Pay Transactions to determine whether Entity is in compliance with this Agreement, including, but not limited to, compliance with applicable law and industry security standards; an
- 2.2 Entity’s business name must avoid consumer confusion. Entity shall not use or display in any manner any Marks of ARC or any airline without the prior written consent of ARC or such airline, proof of which shall be provided to ARC at Application or immediately upon request. Neither Entity nor its Representatives shall make any statements or representations, directly or indirectly, whether verbally or in writing, to Entity’s Cardholders or any third party, that Entity or its Representatives are in any way affiliated with ARC, its affiliates, or any airline, except with respect to the required disclosure set forth in Section 19 of the Agreement.

**3. Internet Entity Requirements**

**3.1** Internet Entities shall, at a minimum, include the following information and processes on their Internet sites:

**3.1.1** Prominent display of Entity's name as "Entity"

**3.1.2** Clearly state and inform Cardholder of how the ARC Pay Transaction will be identified on the Cardholder's statement;

**3.1.3** A complete description of goods or services offered;

**3.1.4** Delivery standards including method and time for delivery;

**3.1.5** Terms and conditions of purchase, or legal descriptions;

**3.1.6** Return/refund policy described in reasonable detail;

**3.1.7** Opportunity to view and confirm order before order submission;

**3.1.8** Secure method for payment data transmission;

**3.1.9** Currency of ARC Pay Transaction provided (USD);

**3.1.10** Disclosure of Entity's outlets to country of origin;

**3.1.11** Display of Credit Card Association or Payment Network logos;

**3.1.12** Clear disclosure of Entity's privacy policy;

**3.1.13** Alternate Entity contact info options; and

**3.1.14** Display of web hosting company contact information.

**4. Gateway Programming**

**4.1 Applicability to this Agreement.** In addition to all the other provisions of this Agreement, the provisions of this Section 4 shall apply if Entity utilizes web services from ARC, including any payments gateway, vault services, any application program interface ("**API**"), code samples, web services, integration specifications, and any offline components (collectively "**Web Services**"). For the avoidance of doubt, "Web Services" includes API.

**4.2 Programming of Web Site.** Although ARC provides specific APIs or programming scripts to Entity or Entity's Web site programmer(s), Entity acknowledges and agrees that such sample programming scripts may be insufficient in and of themselves to allow Entity's website to function with the Web Services. Programming of Entity's website and its functionality are the sole responsibility of Entity.



## ARC Pay Agreement

- 4.3 Entity's Programming Agent.** Entity has the sole responsibility to select and employ any competent programming agent to accomplish the programming required to make Entity's website function correctly with the Web Services.
- 4.4 Fees Subject to Fluctuation.** Fees for the electronic commerce payment system offered by ARC may be based on the number and/or volume of monthly transactions processed by the Entity. Thus, notwithstanding anything to the contrary herein, the provisions of this Agreement which require notice prior to a change in fees shall not apply to any transactions or services covered by this Section 4.
- 4.5 Technical Support.** Entity shall be solely responsible for all website technical support and related issues.
- 4.6 Shutdowns/Updates.** ARC reserves the right, from time to time, without prior notice, to shut down and restart the Web Services for maintenance and/or Web Services upgrades or updates from time to time. ARC will use commercially reasonable efforts to keep service shutdowns as brief as possible. Entity must monitor updates and upgrades to the Web Services and update Entity's website and programming accordingly.
- 4.7 Intellectual Property.** Entity may only use the Web Services as expressly permitted by this Agreement. Entity shall Promptly Notice ARC of any unauthorized use, disclosure, reproduction or distribution of or concerning the Web Services which comes to Entity's attention or which Entity reasonably suspects. Without limitation of the foregoing, and except as otherwise expressly permitted herein:
- 4.7.1** Entity shall not itself, or through any affiliate, agent or third party, disassemble, reverse engineer or otherwise attempt to (a) derive source code or underlying ideas, algorithms, structure, protocols or organization from the Web Services, or any part thereof; or (b) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Web Services, or any part thereof, including any such mechanism used to restrict or control the functionality of the Web Services, or any part thereof.
- 4.7.2** Entity shall not itself, or through any affiliate, agent or third party, sell, lease, license, sublicense, distribute or otherwise provide to any third-party access to the Web Services, in whole or in part.
- 4.7.3** Entity shall not itself, or through any affiliate, agent or third party, modify or create derivative works from the Web Services, or any part thereof.
- 4.7.4** Entity shall not itself, or through any affiliate, agent or third party, use or reproduce any portion of the Web Services except as specifically permitted under this Agreement. Entity shall not (and shall not allow anyone under its direction or control to), remove, alter, cover or obfuscate any patent, copyright, trademark or other proprietary notices, labels or marks on or in the Web Services, or that appear when a party accesses the Web Services.
- 4.8 Disclaimer.** ENTITY EXPRESSLY AGREES THAT THE USE OF ARC'S WEBSITE, WEB SERVICES AND/OR CONTENT IS AT ENTITY'S SOLE RISK. THE



WEBSITE, WEB SERVICES AND/OR CONTENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS FOR ENTITY’S USE, WITHOUT WARRANTIES. ARC AND ITS LICENSORS DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND GUARANTIES, EXPRESS OR IMPLIED, MADE TO ENTITY, ENTITY’S AGENTS, OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS, WARRANTIES, OR GUARANTIES AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY OR COMPLETENESS OF THE WEB SERVICES OR ANY CONTENT STORED THEREIN OR OTHERWISE OF ANY SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SERVICES PROVIDED BY A THIRD PARTY. ARC AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE WEB SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (B) THE WEB SERVICES WILL MEET MERCHANT’S REQUIREMENTS OR EXPECTATIONS.

The parties acknowledge and agree that the Web Services are a computer network-based service which may be subject to outages and delay occurrences. As such, ARC does not guarantee continuous or uninterrupted access to the website or Web Services. Entity further acknowledges and agrees that access to the Web Services may be restricted for maintenance. ARC shall make reasonable efforts to ensure that transactions are processed in a timely manner; however, ARC shall not be liable for any interruption, outage, or failure to provide the Web Services.

Article VI. **Submitting and Processing ARC Pay Transactions**

**5. Voiding and Refunding a Submitted ARC Pay Transaction**

- 5.1** ARC may reject any ARC Pay Transaction or revoke its prior acceptance of an ARC Pay Transaction for any reason at ARC’s sole discretion, including but not limited to the following:
  - 5.1.1** the transaction giving rise to the ARC Pay Transaction was not made in compliance with all terms and conditions of this Agreement;
  - 5.1.2** the Cardholder disputes his or her liability for any reason, including but not limited to any Chargeback rights; or
  - 5.1.3** the transaction giving rise to the ARC Pay Transaction was not directly between Entity and the Cardholder.
- 5.2** If, upon review of an ARC Pay Transaction, ARC determines that such ARC Pay Transaction is invalid based on fraud or any breach of this Agreement, Entity agrees to void or refund the ARC Pay Transaction within 48 hours of ARC’s notice of invalidity.
- 5.3** ARC may offset from payments due to Entity any amount previously credited to Entity for an ARC Pay Transaction not accepted or later revoked by ARC.

- 5.4** Entity shall regularly and promptly review all statements of account, banking statements, and other communications sent to Entity and shall provide ARC with Prompt Notice if any discrepancy exists between Entity's records and those provided by ARC, the Entity's bank, or with respect to any transfer that Entity believes was not authorized by Entity or Cardholder. If Entity fails to notify ARC in writing within fourteen (14) calendar days after the date that ARC mails or otherwise provides a statement of account or other report of activity to Entity, Entity shall be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer. The foregoing does not limit in any way Entity's liability for any breach of this Agreement.

## **6. Chargebacks**

- 6.1** Simultaneously with each Cardholder Transaction, a Chargeback claim accrues against Entity in favor of ARC if ARC is required, or has the right, to pay to any Payment Brand any fees, discounts, Cardholder credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Entity by ARC. Entity agrees that it is fully liable to ARC for all Chargebacks, and that ARC is authorized to offset from incoming ARC Pay Transactions and/or to debit via ACH the Account, the Reserve Account, or any other account held at any other financial institution in the amount of any Chargeback. Entity agrees to accept for Chargeback any sale for which the Cardholder disputes the validity of the sale; or if ARC determines that Entity has in any way failed to comply with this Agreement or ARC's procedures, including but not limited to the following:
- (i) The ARC Pay Transaction is illegible, not signed by the Cardholder or has not been presented within the required time-frames;
  - (ii) The ARC Pay Transaction does not involve the Imprint of a valid, un-expired Credit Card;
  - (iii) A valid authorization number has not been correctly and legibly recorded on the ARC Pay Transaction;
  - (iv) The ARC Pay Transaction is a duplicate of a prior ARC Pay Transaction or is the result of two or more ARC Pay Transactions generated on one Credit Card for a single sale;
  - (v) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased;
  - (vi) The price of goods or services on the ARC Pay Transaction differs from the amount which Entity presents for payment;
  - (vii) The ARC Pay Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the ARC Pay Transaction or the ARC Pay Transaction has been made on an expired or non-existing account number;
  - (viii) ARC believes, within its sole discretion, that Entity has violated any provision of this Agreement;
  - (ix) ARC determines that the ARC Pay Transaction record is fraudulent or that the ARC Pay Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance or offset for any reason





## ARC Pay Agreement

whatsoever, including without limitation negligence, fraud or dishonesty on the part of Entity or Entity's Representatives; or

- (x) Entity fails to provide an ARC Pay Transaction or legible copy thereof to ARC in accordance with this Agreement.

**6.2** Entity acknowledges and agrees that ARC shall have full recourse to charge back the amount of a Credit Card sale for which the Cardholder disputes that he/she did not authorize the charge if the imprint of the Credit Card or the signature of the Cardholder was not obtained by Entity. Entity shall not initiate an ARC Pay Transaction in an attempt to collect a Chargeback. Entity shall be liable for all fees arising out of the Chargeback dispute process, including, but not limited to, (i) attorney fees and costs; (ii) any fees charged by any Payment Network or other third party; and/or (iii) any costs related to pre-arbitration notifications by the Payment Network.

**6.3** Entity shall provide to ARC or its designee any and all documentation ARC requires (in its sole discretion) as part of any Chargeback dispute process, including, but not limited to, information in response to pre-arbitration notifications by the Payment Network.

## 7. Processing Limits

**7.1** Entity's "**Approved Monthly Volume**" for sales drafts is that monthly volume set forth in the Application or as otherwise set forth in the Application approval letter from ARC to Entity or as may be later changed by ARC from time to time upon notice to Entity.

**7.2** If Entity exceeds the Approved Monthly Volume, either in the aggregate or with respect to any "method of sale": (i) ARC may suspend processing, hold the funds over the Approved Monthly Volume, and/or return all ARC Pay Transactions evidencing funds over the Approved Monthly Volume to Entity; and (ii) Entity is subject to a five percent (5%) fee on all monies processed over the Approved Monthly Volume.

**7.3** Entity's "**Transaction Cap**" is the per-transaction limitation in dollar amount set forth in the Application or as otherwise set forth in the Application approval letter from ARC to Entity or as may be later changed by ARC from time to time upon notice to Entity.

**7.4** If the amount of any ARC Pay Transaction exceeds the Transaction Cap, (i) ARC may suspend processing and/or return such ARC Pay Transaction, and (ii) Entity is subject to a five percent (5 %) fee on the amount of each ARC Pay Transaction above the Transaction Cap processed by ARC.

**7.5** On a quarterly basis, all of Entity's ARC Pay Transactions in the aggregate shall:

**7.5.1** Meet or exceed a minimum volume of ARC Pay Transactions processed, as agreed upon in writing by ARC and Entity, as applicable; and

**7.5.2** Include a representative sample of Entity's transactions across its overall business, whether or not processed using ARC Pay. For the avoidance of doubt, a representative sample includes, but is not limited, to a cross-



section of ARC Pay Transactions reflecting diversity of risk as measured by objective metrics including, but not limited to, Chargeback ratios or rates, as solely defined by ARC.

**8. Cardholder Disputes and Communications**

- 8.1 Entity agrees to deal and communicate directly with the Cardholder to resolve any claims or complaints about the nature or quality of services purchased from Entity.
- 8.2 Entity agrees to deal and communicate directly with the Cardholder to resolve any sales that are rejected or charged back to ARC.

**9. Notice to System Providers**

- 9.1 In its sole discretion, ARC may notify System Providers to stop or reinstate Entity's use of their system for the issuance of an ARC Pay Transaction.

**10. Consolidators**

- 10.1 For each ARC Pay Transaction, a Consolidator shall provide the following information regarding each Sub-Entity involved in the ARC Pay Transaction:
  - 10.1.1 Business name (including any d/b/a);
  - 10.1.2 Address;
  - 10.1.3 Phone number;
  - 10.1.4 Email address; and
  - 10.1.5 Upon ARC's request, any unique identifier assigned to any Sub-Entity by ARC.
- 10.2 Unless requested otherwise by ARC, the Consolidator shall provide all information required by Section 10.1 above by completing the "endorsement/restrictions" field pertaining to each ARC Pay Transaction.
- 10.3 Upon ARC's request, a Consolidator shall provide all information not identified above that is requested by ARC regarding any of its Sub-Entities, promptly and in any event within three (3) calendar days of such request by ARC.
- 10.4 ARC may, at its sole discretion, require Consolidator to take any corrective action regarding any Sub-Entity which may not be in compliance with the terms of this Agreement, including, but not limited to, restricting or prohibiting the Sub-Entity from further processing ARC Pay Transactions and providing written certification thereto.
- 10.5 If a Consolidator has knowledge or could have obtained knowledge based on reasonable due diligence, that any of its Sub-Entities has or may have participated in the commission or attempted commission of a fraud against ARC, a Payment Network, Credit Card Association, issuer, or a Cardholder, the Consolidator shall provide Immediate Notice to ARC thereof and immediately cease processing any ARC Pay Transactions associated with any such Sub-Entity.



**11. Account**

**11.1** Entity shall maintain sufficient funds in the Account to satisfy all obligations, including but not limited to fees, contemplated by the Agreement. Entity irrevocably authorizes ARC to debit the Account for Chargebacks (whether fraudulent or not), fees and any other penalties or amounts owed under this Agreement. Entity shall obtain prior written consent from ARC to make any changes to the Account. If Entity changes the Account in any manner and does not obtain ARC's prior written consent, ARC may terminate the Agreement for cause and may take other action necessary, as determined by ARC in its sole discretion.

**11.2** Entity shall promptly review all statements relating to the Account and notify ARC in writing of any errors. Entity's written notice shall include:

- 11.2.1** Entity name and account number;
- 11.2.2** the dollar amount of the asserted error;
- 11.2.3** a description of the asserted error; and
- 11.2.4** an explanation of why Entity believes an error exists and the cause of it, if known.

Such written notice shall be received by ARC within sixty (60) days after Entity received the periodic statement containing the asserted error and failure to provide such notice shall bar any claim of errors. Entity may not make any claim against ARC for any loss or expense relating to any asserted error for sixty (60) days following receipt of Entity's written notice from ARC. During such 60-day period, ARC shall be entitled to investigate the asserted error, and Entity shall not incur any cost or expense in connection with the asserted error without notifying ARC.

**11.3** Entity shall indemnify and hold ARC harmless for any action ARC takes against the Account pursuant to this Section. Entity shall also indemnify and hold harmless the institution at which Entity maintains the Account for acting in accordance with any instruction from ARC regarding the Account. This Section will survive termination of this Agreement.

**11.4** ARC may, without notice to Entity, apply funds held by ARC in the Reserve Account against any outstanding amounts Entity owes under this Agreement or any other agreement between Entity and ARC. Entity authorizes ARC to initiate debit/credit entries to the Account, as the Account may be changed from time to time, and to any other account maintained by Entity at any institution that is a receiving bank of ACH, in accordance with the terms and conditions of this Agreement. In the event Entity makes any changes the Account, this authorization will apply to the new Account. This authorization shall be effective until both: (i) ARC has received written notification from Entity terminating this authorization, and (ii) all obligations of Entity to ARC have been paid in full. Entity shall provide to ARC a voided Account check and shall fill in the Account numbers on the Application.



**12. Fees**

- 12.1** Entity agrees to pay, and authorizes ARC to deduct from Entity's designated Account, or otherwise withhold from money due and owing the Entity by ARC by way of set off, the following fees:
- 12.1.2** On a weekly basis, a nonrefundable processing fee for each submitted ARC Pay ARC Pay Transaction equivalent to 3.5% of the amount of the ARC Pay Transaction or \$0.70, whichever is greater;
  - 12.1.3** On a quarterly basis, a fee of \$0.019 for each settled ARC Pay Transaction processed during the preceding quarter;
  - 12.1.4** On a quarterly basis, a per-item "Gateway Fee" (in an amount to be reasonably agreed upon between ARC and Entity) for such Entity's use of the Web Services as provided in Article V of this Supplement;
  - 12.1.5** On a monthly basis, a fee of \$17.50 per Entity Location that submitted an ARC Pay Transaction in the previous month;
  - 12.1.6** On a weekly basis, if applicable, a nonrefundable rejection or chargeback handling fee of \$35.00 per ARC Pay Transaction that is rejected or charged back;
  - 12.1.7** On a monthly basis, if applicable, a nonrefundable handling fee of \$100.00 per ARC Pay Transaction that is rejected or charged back due to an invalid authorization code, as identified by the bank;
  - 12.1.8** On a periodic basis, if applicable, a nonrefundable fee that is equivalent to a fee that was levied on ARC by any third party; and
  - 12.1.9** Where applicable, an amount equal to the outstanding total owed by Entity for any unpaid fees or chargebacks.