PAI SECURE COMPROMISED DATA EXPENSE REIMBURSEMENT INDEMNIFICATION PROGRAM

PLEASE REVIEW THE PROGRAM CAREFULLY.

THIS PAI SECURE COMPROMISED DATA EXPENSE REIMBURSEMENT INDEMNIFICATION PROGRAM (the “PROGRAM”) IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS DISCOVERED DURING THE PROGRAM PERIOD AND FOR THOSE MERCHANTS AS INDEMNIFIED UNDER THE PROGRAM AS PROVIDED HEREIN. WORDS AND PHRASES IN BOLD FACED TYPE HAVE SPECIFIC MEANING. PLEASE REFER TO ARTICLE VI. DEFINITIONS FOR SPECIFIC DEFINITIONS OF BOLD FACED WORDS AND PHRASES.

For those merchant customers of Payment Alliance International, Inc. (“PAI”) who have (i) agreed to accept coverage under the PAI Secure Program; (ii) who agree to be bound by the terms and conditions of this Program; and (iii) who are current on all PAI Secure monthly payments to PAI, (hereinafter referred to as the “Indemnified Merchants”), PAI and Indemnified Merchant, in consideration of the payment of premium and subject to all Program terms and conditions, agree as follows:

I. INDEMNIFICATION COVERAGE

PAI will either reimburse or pay on behalf of the Indemnified Merchant those expenses which the Indemnified Merchant is contractually obligated to pay to a claimant under the merchant agreement as a result of an incident; provided always that any such claim is discovered during the Program Period and qualifies as a covered claim. In no event shall PAI be obligated to pay expenses after the applicable Limit of Liability has been exhausted by payment of expenses.

PAI shall have the right to investigate, contest, defend, appeal and/or settle any claim, as it deems expedient. PAI shall have no duty to defend the Indemnified Merchant against any legal action or proceeding to which this indemnification applies. No party shall, except at their own expense, assume any obligation, incur any cost, charge, or expense or enter into any settlement without PAI’s consent.

II. LIMIT OF LIABILITY
1. Regardless of the number of claims made, PAI's liability for all expenses arising from each Indemnified Merchant from an incident shall be limited to the lesser of:
   a. actual expenses less any “Each Incident” Deductible for the eligible coverage for an Indemnified Merchant; or
   b. the “Each Incident” Limit of Liability appearing in the Certificate of Coverage less any “Each Incident” Deductible appearing in the Certificate of Coverage.

2. All expenses arising from the same incident shall be considered a single claim for the purpose of this Program and shall be subject to the same Limit of Liability.

3. Prior to PAI having any obligation to pay expenses, each Indemnified Merchant shall retain all liability for expenses in an amount equal to the "Each Incident" Deductible appearing in the Certificate of Coverage.

4. The “Aggregate” Limit of Liability appearing in the Certificate of Coverage is the total limit of PAI's liability under this Program for all expenses arising from all Indemnified Merchants under a single incident.

III. PROGRAM PERIOD, TERRITORY

1. This Program becomes effective on the Program Effective Date shown in the Certificate of Coverage and continues for an initial Program Period of one (1) month. This Program shall automatically renew continuously for successive one (1) month terms upon expiration unless canceled or non-renewed by merchant or PAI, pursuant to the provisions set forth in VII. Condition 11. Renewal dates will hereinafter be referred to as Program Anniversary Date.

2. This Program applies only to Indemnified Merchants domiciled in the United States of America (including its territories and possessions).

IV. WHEN A CLAIM IS DISCOVERED

A claim shall be deemed discovered on the date appearing on the first notification by the card association to either: the acquiring bank, processor or the Indemnified Merchant identifying the Indemnified Merchant's failure of security and resulting data compromise. This date of discovery shall be the date of loss for claims under this Program.

V. EXCLUSIONS

PAI shall not be obligated to pay, and this Program does not apply to, any claim, demand or expenses arising from or in connection with:

1. an incident discovered prior to the Program period.
2. the Indemnified Merchant is not an Eligible merchant as defined in the Certificate of Coverage or the card transaction is not an Eligible Card Transaction as defined in the Certificate of Coverage.
3. the **merchant agreement** is not an Eligible Merchant Agreement.
4. a condition specifically known to the **Indemnified Merchant** to exist on or before the **Program period** that gives rise to an **incident**. This exception does not apply to network equipment, operating systems, or software applications in the possession of the **Indemnified Merchant**.
5. any fraudulent, illegal, dishonest or criminal act committed by, at the direction of, or with the knowledge of:
   a. the **Indemnified Merchant**; or
   b. any director, officer, employee, representative, consultant or contractor of the **Indemnified Merchant**; or
   c. the card issuer, membership service provider, **processor**, independent sales organization or card **association**.
6. an inadvertent accounting or arithmetic error or omission.
7. any subsequent claim made by or against a **merchant** that has suffered a data breach as determined by the **mandatory audit**, until PCI Compliance status is subsequently attained or reacquired by such **merchant**.
8. any costs incurred or required for a **merchant** to become PCI compliant.
9. any breach, damage, cost, expense, penalty or fine incurred, assessed, transferred or charged back by any **card association**, **card issuer**, **processor**, membership service provider, independent sales organization or acquiring bank for non-compliance with accepted **PCI Data Security Standards** unless a **data compromise** at the **Indemnified Merchant** level has occurred.
10. any transaction originating from the illegal use of card-holder **compromised data** which results in a credit or debit to the card-holder account.
11. war (whether or not declared), civil war, insurrection, rebellion, or revolution; military, naval, or usurper power, governmental interventions, expropriation, or nationalization; or any of the foregoing including acts of terrorism.

VI. **DEFINITIONS**

When used in this Program, including endorsements and schedules forming a part hereto:

1. “**card**” means credit cards, debit cards, stored value cards, and pre-funded cards.
2. “**card association**” means MasterCard, VISA, Discover, American Express, or JCB.
3. “**card replacement cost**” means any written **demand** received from the **card association** for reimbursement of the monetary costs required to reproduce and distribute **cards** as a direct result of **data compromise** incurred by the **Indemnified Merchant**.
4. “**claim**” means a **demand** for monetary reimbursement of **expenses** as a result of an **incident**.
5. “**claimant**” means either a:
   a. third party auditor incurring and seeking reimbursement for **mandatory audit** fees; or
   b. a financial institution or **card association** assessing **PCI Assessments**, **related costs** and/or **card replacement cost** against the **Indemnified Merchant**;
and making **demand** for **expense** reimbursement from the **Indemnified Merchant** of such amounts.
6. “data compromise” means the exposure of card information that compromises the security, confidentiality, or integrity of personally identifiable information due to the Indemnified Merchant’s failure of security.

7. “date of discovery” means the date appearing on the first notification by the card association to either the acquiring bank, processor or the Indemnified Merchant of the Indemnified Merchant’s failure of security and resulting data compromise.

8. “demand” means any written request by the claimant for payment by the Indemnified Merchant of contractually recoverable PCI Assessments, related costs, mandatory audit fees and/or card replacement cost.

9. “expenses” means PCI Assessments, related costs, mandatory audit fees, and/or card replacement cost assessed against the Indemnified Merchant by the card association or acquiring bank in response to or as a result of a data compromise. Expense does not include any other economic damage, legal expenses, punitive or exemplary damages, legal or regulatory fines or penalties assessed directly or indirectly against any Indemnified Merchant, the return of fees or other consideration paid to the Indemnified Merchant, or that portion of any award or judgment caused by the trebling or multiplication of actual damages under federal or state law.

10. “failure of security” means:

   a. the actual failure and inability of the security of the Indemnified Merchant’s computer system to mitigate loss from or prevent computer data infiltration; physical theft of hardware or firmware controlled by the Indemnified Merchant (or components thereof) on which electronic data is stored from a premises occupied and controlled by the Indemnified Merchant. Failure of security shall also include such actual failure and inability above, resulting from the theft of a password or access code by non-electronic means in direct violation of the Indemnified Merchant’s specific written security policies or procedures; or

   b. physical loss of information from the Indemnified Merchant (including loss of receipts, employee theft and stolen databases). In no event, shall any of the above constitute a failure of security if resulting from operational errors or any failure in project planning.

11. “incident” means an action, inaction, error, omission or breach of duty by the Indemnified Merchant resulting in a verifiable failure in security and resulting data compromise.

12. “Indemnified Merchant” means any Eligible Merchant as defined in the Certificate of Coverage that has been specifically covered under this Program.

13. “mandatory audit” means a targeted and documented examination of the Indemnified Merchant triggered by one or more cardholders indicating potential or actual fraudulent activities that the card association has cause to believe occurred due to the Indemnified Merchant’s non-compliance with accepted PCI Data Security Standards. Mandatory audits must be initiated by the card association in writing and must be conducted by an independent party selected by either the card association or PAI and requires the independent party to examine the physical operations of the Indemnified Merchant in order to either locate the source of the problem or to determine if non-compliance of the PCI Data Security Standards actually occurred.

14. “merchant” means an individual or entity properly authorized by the processor to enter and secure approval for card transactions through the processor’s payment system or a third-party acting in the processor’s behalf, and for whom
processor provides card processing services, including forwarding sales drafts and card vouchers to a card issuer.

15. “merchant agreement” means written contract between a merchant, PAI an acquiring bank and card association establishing the merchant’s contractual liability for PCI Assessments, related costs, mandatory audit fees, and card replacement costs resulting from a data compromise.


17. “PCI Assessment” means any written demand received by the Indemnified Merchant from the card association or acquiring bank for monetary assessments or fines due to the Indemnified Merchant’s non-compliance with accepted PCI Data Security Standards that result in a data compromise incurred by the Indemnified Merchant.

18. “PCI Data Security Standards” means generally accepted and published Payment Card Industry standards for data security (DSS), including but not limited to the following objectives:
   a. Install and maintain a firewall configuration to protect cardholder data;
   b. Do not use vendor-supplied defaults for system passwords and other security parameters;
   c. Protect stored cardholder data;
   d. Encrypt transmission of cardholder data across open, public networks;
   e. Use and regularly update anti-virus software;
   f. Develop and maintain secure systems and applications;
   g. Restrict access to cardholder data by business need-to-know;
   h. Assign a unique ID to each person with computer access;
   i. Restrict physical access to cardholder data;
   j. Track and monitor all access to network resources and cardholder data;
   k. Regularly test security systems and processes; and
   l. Maintain a Program that addresses information.

19. “Program” means this PAI Secure Compromised Data Expense Reimbursement Indemnification Program administered by PAI.

20. “Program Period” means the period of time beginning at 12:00 a.m. at the address shown in the Certificate of Coverage on the Program Effective Date shown in the Certificate of Coverage and ending at 12:00 a.m. on the earlier of the Program Expiration Date shown in the Certificate of Coverage or its earlier cancellation date, if applicable.

21. “Processor” means a payment card industry (PCI) compliant system vendor approved by the card association and acquiring bank to provide card processing services.

21. “related costs” means any other costs in the process leading up to the PCI Assessment as demanded in writing the card association and for which the Indemnified Merchant is liable under the merchant agreement. Related costs includes compliance case costs of the card issuer associated with the monitoring of at risk credit card accounts filed under the rules of the card brands. Related costs does not include the amount of fraud losses or charge backs incurred on cards included in a data compromise event filed under the rules of the card brands.

VII. CONDITIONS

1. Premium Reporting and Billings:
a. The merchant shown in the Certificate of Coverage is responsible for the payment of premium and will be the payee for any return premiums. PAI shall maintain records of the information necessary for premium computation.

b. Premium shall be computed in accordance with PAI’s rates as specified in the Program or as amended. Within fifteen (15) days after the close of each Coverage Period in the Certificate of Coverage, merchant shall remit all premiums due to PAI. Coverage will not be effective unless PAI receives the appropriate premium.

2. Duties of Indemnified in the Event of Claim:

a. Within thirty (30) days of the date of discovery, the Indemnified Merchant shall provide a written Notice of Claim to PAI. Such Notice of Claim shall include the fullest information obtainable, including but not limited to:

(i.) the circumstances by which the Indemnified Merchant discovered the incident;
(ii.) expenses which may result or have resulted from the incident;
(iii.) evidence and description of the incident giving rise to the claim; and
(iv.) a copy of the merchant agreement and any demand, notification letters, mandatory audit reports, fee and expense invoices and other documents pertinent to the claim that are in the possession of the Indemnified Merchant.

b. The Indemnified Merchant shall cooperate with PAI in all investigations and, upon PAI's request, assist in making statements, in the conduct of suits and in enforcing any right of contribution or indemnity against any third party who may be liable to the Indemnified Merchant because of damages. If PAI is prejudiced by the failure of the Indemnified Merchant to comply with any of these duties, PAI's liability or obligation to the Indemnified Merchant as to that claim shall terminate.

c. Payment by the Indemnified Merchant of any expenses shall not automatically bind PAI with respect to any claim. The Indemnified Merchant shall not, except at the Indemnified Merchant's own risk, make any expense payments without PAI's prior approval.

3. Loss Payment

a. Upon receipt of Notice of Claim, PAI shall commence investigation and request all items, statements and information that PAI reasonably believes will be required. Additional requests may be made if during the investigation of the claim, such additional requests are necessary.

b. Upon receipt of all items, statements and information required by PAI to verify the claim and determine coverage, PAI shall notify the Indemnified Merchant or their duly authorized representative in writing of PAI's
acceptance or rejection of the claim. If PAI rejects the claim, in whole or in part, PAI shall state the reasons for the rejection. The Indemnified Merchant may accept such rejection, exercise their rights under the Program, or submit an amended Notice of Claim. An amended Notice of Claim must be submitted within thirty (30) days of PAI’s rejection and contain such additional information as necessary for PAI to reevaluate the reasons for rejection. If PAI is unable to accept or reject the claim within the time period specified herein, PAI shall notify the Indemnified Merchant or their duly authorized representative within that time period of PAI’s reasons for needing additional time.

c. Payment of the claim shall be made within thirty (30) days after PAI reaches agreement with the claimant, or the entry of a judgment against PAI. PAI will make any payment to the claimant.

4. Reimbursement: While PAI has no duty to do so, if PAI pays expenses within the amount of any applicable deductible, the Indemnified Merchant shall be liable to PAI for such amount. Upon written demand, the Indemnified Merchant shall reimburse such amount to PAI within thirty (30) days thereof.

5. Other Coverage: The Program provided hereunder shall be in excess of any other valid and collectible coverage available to the Indemnified Merchant whether such other such coverage is stated to be primary, pro rata, contributory, excess, contingent or otherwise.

6. Multiple Policies: If this Program coverage applies to the same incident, claim, or data compromise, the maximum Limit of Liability under all Indemnification policies combined shall not exceed the sum of unexhausted portion of the “Per Incident” Limit of Liability from such coverage. Loss payment shall be prorated between such coverage based upon the unexhausted portion of the “Per Incident” Limit of Liability of each.

7. Subrogation: In the event of any payment under this Program, PAI shall be subrogated to all rights of recovery therefore against any person or organization. PAI and the Indemnified Merchant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Indemnified Merchant shall do nothing after any loss to prejudice such rights without first obtaining the written consent of PAI. However, PAI shall not exercise its right of recovery against the Indemnified Merchant, processor, acquiring bank or card association in respect of any claim paid under this Program unless such claim was the result of fraudulent, illegal, dishonest or criminal acts of such party.

8. Assignment: The duties and interests of the Indemnified Merchant may not be assigned or transferred without the prior written consent of PAI.

9. Action Against PAI: No action shall lie against PAI unless, as a condition precedent thereto, there has been full compliance with all of the terms of this Program, and both the Indemnified Merchant’s liability and the amount of the Indemnified Merchant’s obligation to pay has been finally determined either by judgment against the Indemnified Merchant after actual trial or by agreement of
the Indemnified Merchant, the claimant and PAI, in writing. Any person or organization, or the legal representative thereof, who has secured a judgment or written agreement as referenced in the preceding paragraphs, shall thereafter be entitled to recover under this Program to the extent the Limit of Liability remains available for payment of expenses, and to the extent allowed by law. No person or organization shall have any right under this Program to join PAI as a party to any action against PAI or the Indemnified Merchant to determine the Indemnified Merchant’s liability, nor shall PAI be impleaded by PAI or the Indemnified Merchant or any legal representatives thereof.

10. Changes in Program Terms:

a. Neither notice to nor knowledge possessed by any representative acting on behalf of PAI, nor any conduct by any such representative, shall be construed as a waiver or estoppel against PAI for any reason. No right accruing to PAI, nor any provision of the Program, shall be waived or changed in any manner other than by express endorsement incorporated into this Program.

b. PAI may unilaterally revise terms and conditions of this Program by providing the Indemnified Merchant with thirty (30) days prior written notice. Notice of revision to the Program terms will be mailed by first class registered or certified mail to the Indemnified Merchant at the last mailing address known to PAI. Proof of mailing will be sufficient proof of notice.

11. Cancellation / Non-Renewal:

a. This Program may be canceled or non-renewed by merchant at any time by surrender of this coverage to PAI or by written notice of the future date cancellation or non-renewal is to take effect. Notice by PAI shall constitute notice by and to all Indemnified Merchants.

b. PAI may cancel this Program by mailing or delivering to merchant, at the last mailing address known to PAI, fifteen (15) days notice of cancellation for:

   (i.) non-payment of premium;
   (ii.) fraud or material misrepresentation;
   (iii.) Violation of Program conditions, contractual duties, or warranties;
   (iv.) Substantial change in risk, hazard or conditions;
   (v.) Acts or omissions of Indemnified which increase the risk or hazard Indemnified; or
   (vi.) Adverse underwriting or loss experience.

c. Notice will include the effective date and reason(s) for cancellation. Notice for non-payment of premium shall only require proof of mailing. Cancellation for non-payment of premium shall be invalid if payment is sent by certified mail and received by PAI or PAI's agent prior to cancellation date. The effective date of cancellation stated in the notice shall become the end of the Program period.
d. If Notice of Non-Renewal is received prior to the Program Expiration Date, coverage shall continue to remain in effect until thirty (30) days after such notice is received by PAI. Failure to provide renewal information or renewal premium requested by PAI prior to the Program Expiration Date shall be considered notice of PAI’s intent not to renew.

12. **Inspection of Records:** The Indemnified Merchant shall keep record of all information relative to this Program. PAI may examine the Indemnified Merchant's books and records, at any time during the Program period and within three (3) years after the end of the Program period, as far as it relates to the subject matter of this Program. By our right to examine or our making an examination, PAI makes no representation that the Indemnified Merchant's books and records are adequate or in compliance with any law, rule or regulation.

13. **Bankruptcy:** Bankruptcy or insolvency of an Indemnified Merchant shall not relieve PAI of any of its obligations under this Program. In the event of the bankruptcy or insolvency of an Indemnified Merchant, PAI shall have the right to assert any appropriate claim or demand in such proceedings for payment or any obligations of the Indemnified Merchant, including but not limited to, any amounts which PAI may advance on behalf of the Indemnified Merchant within the deductible.

14. To qualify as an Indemnified Merchant under the Program, the merchant must be authorized by and be in good standing with the processor and/or acquiring bank; having executed an active merchant agreement with the processor and/or acquiring bank.

15. **Entire Agreement:** This Program consisting of the terms and conditions contained herein for all participating and qualified Indemnified Merchants along with a legally enforceable merchant agreement creating the contractual relationship between PAI and the merchant embodies all agreements existing between the Indemnified Merchant and PAI, or any of its representatives, in connection with the Indemnified Merchant’s merchant card services and/or this Program.

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