



## Merchant Agreement For PopID Check In For Access

Last Updated: August 30, 2023

Thank you for joining PopID's platform ("PopID Platform" or simply "Platform") and providing select PopID users with another place to use authenticate their identity with the biometrics! The use of the PopID biometric device registered to Merchant ("Device"), will be used by your qualified customers, members, staff, and/or guests using their registered account on the PopID Platform ("Customers") to check in at, or gain access to, the locations where you install the Device after PopID authenticates their identity through the PopID Platform ("Authenticated," "Authenticating," or "Authentication"). We refer to our website, apps, accounts, products, and services, collectively as the "Platform."

It is important to us that when use join or use the PopID Platform you are fully aware of your respective legal rights and obligations. For that reason, we have created the terms and conditions contained in this Merchant Agreement for PopID Check-In for Access ("Check In Agreement" or "Agreement"), as the legally binding contract between you, the business signing up to accept utilize this service (including your agents and representatives) ("Merchant," "you," and "your") and PopID, Inc. ("us," "we," "PopID," or "Company"), which governs your PopID Check In Account for Entry (formerly known as PopEntry) ("Check In Account"), and your use of Platform to allow your Customers to check-in or gain access to a location with their biometrics through the Platform.

By creating a Check In Account or using the a Device or the Platform for check in, you also agree to our Privacy Policy, Acceptable Use Policy, Notice and Consent to Receive Electronic Disclosures (all as amended from time to time), and other applicable terms and conditions that apply to you, which can be found at [www.popid.com/legal](http://www.popid.com/legal), and are expressly incorporated into this Agreement by this reference. Merchant agrees that it has read and agrees to all of PopID's terms and policies applicable to Merchant's use of any Device, the Check In Account, the Service, and the Platform. To the extent any terms of this Agreement are inconsistent with any terms of the Privacy Policy, Acceptable Use Policy, or the Consent to Receive Electronic Disclosures, the terms of the Privacy Policy, Acceptable Use Policy, and the Consent to Receive Electronic Disclosures, respectively, govern. All of our policies, including those of our partners, are collectively referred to as "Policies."

If Merchant or any of its Customers uses the Platform for any use other than for check in for entry on one of Merchant's Device, such as for loyalty programs or payment as either a merchant accepting PopPay or an individual making a purchase using PopPay, such use is governed by additional agreements and terms applicable to those uses. For example, if Merchant or one of its Customers uses the Plaintiff as a consumer or non-merchant or when not covered by this Merchant Entry Agreement, that use is subject to the terms of the PopPay User Agreement, the Privacy Policy, Acceptable Use Policy, the Notice and Consent to Receive Electronic Disclosures, and other applicable terms and conditions that apply to that use, which can be found at [www.popid.com/legal](http://www.popid.com/legal).



**\*\*PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE REGISTERING FOR A MERCHANT ENTRY ACCOUNT OR USING THE DEVICE OR PLATFORM AS THESE TERMS AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.**

◆ **NOTICE REGARDING CUSTOMER’S OBLIGATIONS TO OBTAINED PRIOR INFORMED CONSENT FOR USE OF DEVICE:**

It is Customer’s obligation to ensure that any person whose photo is or might be captured by the Device has first provided their informed, written consent to the collection, use, analysis, and storage of their biometric information as provided in the PopID User Agreement ([www.popid.com/terms](http://www.popid.com/terms)) and Privacy Policy ([www.popid.com/privacy](http://www.popid.com/privacy)), including the collection of their photos and biometric information, by registering for a PopID account at [www.popid.com](http://www.popid.com). Customer must provide advanced written notice to individuals that by coming in front of the Device they consent to those terms and that if they do not consent to those terms they must not approach or walk in front of the device. Customer hereby agrees to defend, indemnify, and hold harmless Company from any and all first-party or third-party claims, demands or lawsuits, as well as all costs or damages incurred by Company, as a result of or arising from Customer’s breach of its obligations contained in this notice.

◆ **NOTICE REGARDING FUTURE CHANGES TO TERMS:**

We may make changes to this Check In Agreement at any time as stated in this notice and in the section below titled Changes to Check In Agreement. Any changes we make will be effective immediately when we post a revised version of the Check In Agreement to our website at [popid.com](http://popid.com) or to your Check In Account. The “Last Updated” date above will tell you when the Merchant Agreement was last changed. Each time you use your Check In Account, any Device, or the Platform, you irrevocably agree to the terms and conditions of the Check In Agreement then posted to our website and/or your Check In Account. To the extent that the terms and conditions of the updated Check In Agreement differ from a prior version of the Check In Agreement which you previously agreed to, the more recent version of Check In Agreement supersedes and governs your use of the Check In Account, any Device, and the Platform, from the date of posting forward.

**YOU AGREE THAT WE MAY PROVIDE NOTICES, DISCLOSURES AND AMENDMENTS (“NOTICES”) TO THIS AGREEMENT, AND OTHER INFORMATION RELATING TO YOUR CHECK IN ACCOUNT, BY ELECTRONIC MEANS, INCLUDING, WITHOUT LIMITATION, POSTING SUCH NOTICES IN YOUR CHECK IN ACCOUNT OR ONLINE AT [WWW.POPID.COM/LEGAL](http://WWW.POPID.COM/LEGAL). YOUR CONTINUED USE OF YOUR CHECK IN ACCOUNT, ANY POPID HARDWARE (INCLUDING ANY DEVICE), AND/OR THE PLATFORM CONSTITUTES YOUR REAFFIRMATION OF THE TERMS OF YOUR CHECK IN AGREEMENT WITH POPID BASED ON THE TERMS AND CONDITIONS CONTAINED IN THE VERSION OF THE CHECK IN AGREEMENT THEN AVAILABLE ON OUR WEBSITE [WWW.POPID.COM/LEGAL](http://WWW.POPID.COM/LEGAL).**



◆ NOTICE REGARDING ARBITRATION AND CLASS, REPRESENTATIVE, AND CONSOLIDATED ACTION WAIVER:

This Agreement contains an arbitration agreement and class, representative, consolidated action waiver in section below titled Arbitration. Specifically, you and we agree that any dispute or claim relating in any way to this Agreement, your use of the Platform, your Check In Account, and/or products or services sold, distributed, issued, or serviced by us or through us, will be resolved by binding, individual arbitration, rather than in court. By agreeing to individual arbitration, you and we each waive any right to participate in a class, representative, private attorney general, or consolidated lawsuit or arbitration. This agreement and waiver—along with some limited exceptions—is explained in the section titled Arbitration, below.

◆ COVID-19 WARNING:

An inherent risk of exposure to COVID-19 exists in any place where people gather. COVID-19 is an extremely contagious disease that can lead to severe illness and death. You assume all risks, hazards, and dangers arising from or relating in any way to the risk of contracting a communicable disease or illness—including, without limitation, exposure to COVID-19 or any other bacteria, virus, or other pathogen capable of causing a communicable disease or illness, whether that exposure occurs before, during, or after your use of the Platform, any Device, and regardless of how caused or contracted—and you hereby waive any and all claims and potential claims against PopID—and against any individual or companies affiliated with PopID—relating to such risks, hazards, and dangers.

1. You Agree to the Terms of this Check In Agreement. Each time you access or use your Check In Account, or access or use the Platform as a Merchant to allow your Customers to check in, including by registering for a Check In Account, or using a Device, you agree to be bound by this Check In Agreement (as updated from time to time) and any additional terms that apply to you or that use. If you do not agree with any of these terms and condition in this Check In Agreement, including the Privacy Policy, please do not register for Check In Account and if you have already done so, please immediately cease all use of the Platform, Device, and your Check In Account, and cover and/or remove the Device and deactivate your Check In Account.

2. Term. This Check In Agreement, including Merchant’s obligation to pay the monthly fee, applies to each Device and is effective and binding for each Device for longer of the initial period of the length specified in the Order Form, or (1) year (“Initial Term”) commencing on the earlier of the date you (a) register for a Check In Account, the Device is delivered to Merchant, or the Device is installed at the Location (the “Effective Date”) and will remain in full force and effect until the date this Agreement is terminated or expires, as provided in this Agreement. Unless terminated earlier pursuant to the express terms of this Agreement, this Agreement will automatically extend at the end of the Initial Term for each Device for successive one (1) year periods (each, an “Extended Term”) immediately after the end of the Initial Term and each subsequent Extended. The Initial Term and each Extended Term are collectively referred to herein as the “Term.” For each Device, Merchant or Company may elect to not extend the Term of this Agreement for an additional Extended Term by giving written Notice to the other Party of its election to not extend the Term of this Agreement no less than 60 days before the next anniversary of the Effective Date of this Agreement. For avoidance of doubt, Merchant must pay Company any and all fees or other amounts owed under this Agreement during the Term regardless of



whether or not Merchant or its Customer's use any Device or the Platform during some or all of the Term.

3. Purchase of Biometric Check In Device. The Customer hereby purchases from the Company the biometric devices ("Device(s)") listed in the order form signed or submitted to Company or otherwise requested from Company in writing ("Order Form."), at the price specified in the Order Form, and if no price is specified in the Order Form, then Merchant agrees to purchase each Device from Company at the price of USD \$1,500 ("Device Fee"). Merchant agrees to inspect each Device upon delivery, installation, and then daily for the duration of the Term. Merchant agrees to notify PopID in writing if any Device is lost, missing, or damaged, as soon as practicable after discovering such damage or loss. Except as otherwise expressly stated, the Device Fee does not include any direct or indirect local, state, federal or foreign taxes, levies, duties, or similar governmental assessments of any nature whatsoever, including value-added, excise, use or withholding taxes (collectively, the "Taxes"). Merchant is responsible for paying all Taxes associated with or assessed in relation to each Device and Merchant will indemnify the Company against payment of any such Taxes and any claims arising from such Taxes.

4. Monthly Per Device SAAS Fee. Separate from and in addition to the fee to purchase each Device, Merchant will pay PopID a monthly fee for the use of the PopID Platform with each Device, in the amount specified in the Order Form for each Device, and if no monthly amount is specified in the Order Form, then for \$150 per month, per device ("SAAS Fee"). The SAAS Fee must be paid by Merchant in advance each month in order to have any right to use the Platform or the Device with the Platform at any time during the Term. Except as otherwise expressly stated, the SAAS Fee does not include any direct or indirect local, state, federal or foreign taxes, levies, duties, or similar governmental assessments of any nature whatsoever, including value-added, excise, use or withholding taxes (collectively, the "Taxes"). Merchant is responsible for paying all Taxes associated with or assessed in relation to any SAAS Fee and Merchant will indemnify the Company against payment of any such Taxes and any claims arising from such Taxes.

5. Transfer of Risk and Limited Warranty for Device. Merchant acknowledges and agrees that risk of theft, damage or other loss of the Device, or any part thereof, passes to the Merchant upon the earlier of the delivery of the Device to Merchant, or installation of the Device at the Location. Notwithstanding the forgoing sentence, for a period of one (1) year from the earlier date of when a Device was delivered to Merchant, or installed at the Location, and only during times where Merchant is in full compliance with this Agreement, the Company agrees to provide a limited warranty to repair the Device and/or replace the Device with a similar or better new or used biometric device (which shall then be treated as a "Device"), for damage arising solely and exclusively as a result of a defective part or material in the Device, and so long as such damage was not caused, in whole or in part, by the Merchant's or its Customer's negligence or misuse of the Device. Notwithstanding the forgoing, this limited warrant will be void if Company determines that any such damage was caused, in whole or in part, by a virus, worm, or other malicious software or code, or an act or occurrence outside the control of the Company other than a defect in the Device at the time of delivery to the Merchant or installation of the Device at the location, whichever is earlier.



6. Request for Service. The Customer may request a service call where the Device has been damaged or the PopID Platform is apparently not functioning as expected by emailing [support@popid.com](mailto:support@popid.com). However, if the inspection does not reveal any defect for which the Company is liable under the limited warranty contained in the section above, then the Customer will be liable to pay for the Company's call out fee, which shall be the greater of \$100 or \$50 per person hour plus any out of pocket costs incurred by Company. The Company shall have no obligation to undertake modifications, improvements, changes nor install new attachments to the Device or the Platform which may be recommended or directed by insurance companies or government, state, municipal, federal, or other authorities.

7. Submission of Truthful Information and Merchant's Representations and Warranties. To become a Merchant of PopID for Check In, you must provide to us and certain of our partners information of a personal nature about you and your business including your legal name, the legal name of your business, as well as details regarding your financial account at an approved financial institution (collectively, "Merchant Information"), as well as information about your Customers. In addition to any other agreement, representation, or warranty contained in this Agreement, as a condition of registering for, obtaining, or using a Check In Account, Device, or the Platform, Merchant represents, warrants, and agrees:

- a. If an individual, you are at least 18 years of age;
- b. you are financially responsible;
- c. you have the authority to enter into and be bound by the terms and conditions contained in this Agreement;
- d. you have and will only register or maintain one Check In Account at any time;
- e. all information you submit to us relating to your application to use and continued use of the Platform is correct, complete, and fully describes and details the nature, type, and scope of the business in which you are engaged, and that you will update any such information as soon as it changes or otherwise becomes inaccurate or complete;
- f. you have registered your Check In Account in the legal name of your business, or in the case of an individual, in your legal name;
- g. if an individual account, you are a sole proprietorship validly existing in the United States or its territories, and if an entity, that the entity was validly formed, registered and is in good standing in at least one of the fifty United States or its territories;
- h. your business is a legal enterprise, and you are not undertaking activities illegal under applicable Federal, State, or local law including, without limitation, activities of a fraudulent, misleading, or deceptive nature.
- i. you will comply with all applicable federal, state, and local laws, rules, and regulations (collectively, "Laws") and our Policies.
- j. you will not engage in any activity which could cause harm to the Platform, PopID or the or the PopID or PopPay brands;
- k. you will assist us if we are required to ascertain your compliance with any Rules, Laws, or Policies.
- l. that all uses of any Device, or the Platform, are bona fide and no use is for any purpose unless allowed by this Agreement;
- m. Merchant will immediately advise the Company of any defects or damage to any Device or any interruptions, disconnections or other failures in the Service or the Platform;



- n. not intentionally interfere with or disrupt the integrity or performance of any Device or the Platform;
- o. not install or attempt to install any software or any computer code of whatsoever nature or form on any Device, the Service, or the Platform;
- p. not sell, distribute, transmit or otherwise deal with the Device, the Service, and the Platform, except as is permitted herein;
- q. not copy any features, functions, integrations, interfaces or graphics of the Device, the Service, or the Platform;
- r. not lend, rent, sublicense or assign to any third (3<sup>rd</sup>) party or otherwise deal with, the Device, the Service, or Platform, except as expressly authorized in this Agreement;
- s. not copy, reproduce, disassemble, reverse engineer, or create derivative works of the Device, the Service, or the Platform, or in any other way alter, translate, modify, or adapt the Device or the Platform;
- t. not challenge the Company's ownership of the Platform or its Proprietary Marks;
- u. grant to the Company, at all reasonable times upon reasonable notice, access to the Location and any Device to view any Device and/or undertake reviews, updates and repairs on any Device, the Service, and/or the Platform;
- v. keep all usernames and passwords assigned to it by the Company strictly confidential and use best efforts to prevent unauthorized access to, or use of, the Device, the Service, and the Platform;
- w. ensure that Customer's provide accurate information to the Company during the registration process for a PopID account and have a legal right of entry to the Location prior to granting them access to the Location or the Device;
- x. ensure that each Device is connected to a high-speed internet connection at all times.
- y. the proprietary marks (including, without limitation, trademarks, logos, trade names, service marks, trade dress, and other identifying symbols and words) used by you are not infringing upon any third-party's rights.
- z. PopID, including its partners, has no liability, of whatsoever nature, for any of activity, in whole or in part, that you do in violation of this Check In Agreement, the Acceptable Use Policy, or that is, in whole or part, fraudulent or illegal, and Merchant will indemnify, defend, and hold us harmless.

8. Crediting and Debiting Your Payment Method. You must also provide us with an authorization for us or another service provider that we contract with to provide those services to charge your credit card, debit card (collectively "Card"), or account at an approved financial institution ("Bank Account") ("Card" and "Bank Account" are collectively "Payment Methods," and each a "Payment Method"). By creating a Check In Account, you expressly authorize us, or another provider we contract with, to originate charges/debits to your Payment Method(s), including, debits to any Card provided in accordance with the terms of this Agreement, or for any Bank Account provided, transfers via the Automated Clearing House ("ACH"), or similar electronic funds transfer ("EFT") platform, from your Bank Account in accordance with the terms of this Agreement. You also authorize us or another provider we contract with, to initiate charges to any Card or debit transfers, via ACH or other ETF platform, from your Bank Account if you owe us money for any reason, including but not limited to, amounts owed for our paid services, chargebacks, ACH reversals, EFT reversals, or refunds we (or the Card Network(s), NACHA, or



issuing bank or governing body of ACH or other EFT platform) determine, you must pay or refund to us and/or to a Customer. You also authorize us (or another provider we contract with) to initiate, process, transmit, and settle through its sponsor bank ACH debits or credits to or from your linked Bank Account. Your authorization will remain in effect after termination of this Agreement and until we (or another provider we contract with) have received written notice terminating this authorization and all your obligations to us (and any other provider we contract with) have been paid in full. You irrevocably authorize us to immediately charge/debit your Payment Method for the amounts of any chargebacks, ACH returns, fines, losses, and costs we (or another provider we contract with) may incur because of your use of the Platform.

9. Merchant's Right to Use PopID Check In SAAS Service. During the Term, and only when Merchant is in full compliance with its obligations under this Agreement, including its payment obligations to PopID, PopID hereby grants to the merchant right to use the Platform on a software as a service basis ("SAAS") to allow Customers specifically authorized by Merchant in the Check In Account ("Authorized Users") to check in or access a physical location or event where the Device is registered to and located ("Check In Service" or "Service").

10. Merchant hereby expressly acknowledges, agrees, and warrants that:

- a. It has or will arrange for installation of each Device by a qualified contractor ("Certified Installer") only and no other person or entity and at the location for which PopID has registered the Device ("Registered Location") and no other location;
- b. It will not, and it will not allow any other person to, remove or move the Device from the Registered Location during the Term without the prior written consent of the Company;
- c. that the Company is the sole and exclusive owner of the Platform, including all software, and Merchant's right to use the Platform is on a software as a service basis, is revocable, non-exclusive, and non-transferable and is granted subject to the terms and conditions of this Agreement;
- d. any and all goodwill created by or arising out of Merchant's or its Customer's use of the Platform, or the Device shall inure solely and exclusively to the Company's benefit and upon expiration or termination of this Agreement, no monetary amount shall be assigned or attributable to any goodwill associated with the Merchant's or its Customer's use of the Platform or any Device;
- e. the Company may undertake updates to the Platform, from time to time and as and when it deems necessary, in its reasonable discretion, and upon the Company providing the Customer with access to the updates, the updates will form part of the Platform and the terms and conditions of this Agreement will apply thereto;
- f. it may grant access to the Location via the Device to Customers provided the Customer has first registered on the Company's website and agreed to the User Agreement, Privacy Policy, Acceptable Use Policy, and PopID's Consent to Receive Electronic Disclosures, and any other policy or regulation implemented by the Company, from time to time, in relation to the Plaintiff, the Device, or the contemplated use;
- g. it, and its Customers, will be required to provide personal information to the Company in order to use the Device and the Platform, and the Company will use, store, arrange and protect the Customer and the Customer's personal information in accordance with this Agreement and PopID's Privacy Policy, as amended, from time to time;
- h. the Company may monitor the Customer and its Customer's use of the Device and the Platform, and use data and information related to such use to evaluate, secure, and improve



the safety and integrity of the service, and compliance by Merchant and its Customers with the terms of this Agreement and PopID's Policies.

- i. the Company may use data and information in an aggregate and anonymous manner ("Aggregated Information") including, without limitation:
    - i. to compile statistical and performance information related to the provision and operation of the Device, the Platform, and/or the Service;
    - ii. for data gathering, analysis, service enhancement and marketing;
  - j. all right, title and interest in and to the Aggregated Information and all intellectual property rights therein, belong to and are owned solely by the Company;
  - k. Merchant may access event data collected via the PopID Plaintiff and stored by the Company via its Check In Account for one (1) year from the date such data is recorded unless stored for longer than one (1) year as an additional purchased service pursuant to a separate written agreement entered into in advance.
  - l. PopID may restrict or rescind Merchant's, or any of its Customer's, right to use any Device, the Service, or the Platform at any time, for any reason, in its sole and exclusive discretion.
11. Currency. All amounts referenced in this agreement are to United States Dollars ("USD").
12. Restricted Activities. You warrant to us that you will comply with our Acceptable Use Policy located at [www.popid.com/legal](http://www.popid.com/legal).
13. Actions We May Take if You Engage in Any Restricted Activities. If we believe that you have engaged in any prohibited or restricted activities, we may take a number of actions to protect ourselves, our customers, and others, at any time in our sole discretion. The actions we may take include, but are not limited to, the following:
- Terminate this Check In Agreement, limit your Check In Accounts and/or Devices, and/or close or suspend your Check In Account, immediately and without penalty to us;
  - Refuse to provide the Check In Service or the Platform to Merchant or its Customers now or in the future;
  - Limit Merchant's or its Customer's access to any Device, the Service, the Platform, or any part thereof, including our websites, software, systems (including any networks and servers used to provide any PopID services) operated by us or on our behalf;
  - Update inaccurate information you provided us;
  - Refer you or your Customers to the legal authorities;
  - Take legal action against you or your Customers; or
  - If you or your Customers have violated the terms of this Agreement, our Acceptable Use Policy, or any other Policy, then you are also responsible for any damages caused.

If we close your Check In Account or terminate your use of the Service or the Platform for any reason, we will provide you with notice of our actions. You are responsible for all claims, fees, fines, penalties, and other liability incurred by you, us, any Customer, or any other person or entity caused by or arising out of Merchant's or its Customer's breach of this Check In Agreement, our Acceptable Use Policy, any of our other applicable Policies, and/or your use of the Device, the Service, or the Platform.



We may also limit, or ban Merchant's or any of its Customer's use of the Check In Account, or any other account you or they have with us, for a period of time or indefinitely, if we reasonably believe in our sole discretion, that the use is unauthorized, fraudulent, unlawful, violates this Agreement any of our Policies, or otherwise seeks to take advantage of us or any other person or entity.

14. Third Party Products. Except as expressly stated otherwise in this Agreement, all third-party hardware and other products included, provided, or sold by PopID, including the Platform, the Service, or any Device, are provided solely according to the warranty and other terms specified by the manufacturer, who is solely responsible for service and support for its product. For service, support, or warranty assistance, you should contact the manufacturer directly. POPID MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

15. Laws & Regulations. You warrant to us that you will comply with all applicable laws, regulations and other legal requirements pertaining to the sale of goods and services and the Authentication of Transactions including, without limitation, laws and regulations regarding banking, financial institutions, payment systems, foreign currency exchange, money transmission, anti-money laundering, anti-terrorist financing, sanctions (such as those administered by the US Department of the Treasury's Office of Foreign Assets Control), privacy and security, consumer protection and trademarks and copyrights.

16. Intellectual Property. For the duration of this Agreement, we each grant to the other a fully paid, non-exclusive, non-transferable, royalty-free, limited license ("Proprietary License") to use each other's proprietary marks (including, without limitation, trademarks, logos, trade names, service marks, trade dress, and other identifying symbols and words) ("Proprietary Marks") for the strict purposes of performing our obligations under this Check In Agreement. We reserve the right to substitute different Proprietary Marks for use in identifying PopID. Further, each of us warrants to the other that they will: (a) not use the other Party's Proprietary Marks to incur any obligation or indebtedness on behalf of that Party; (b) not use the other Party's Proprietary Marks as part of their corporate or other legal name; (c) not contest, either directly or indirectly, the validity or ownership of the other Party's Proprietary Marks nor shall they, directly; (d) not directly or indirectly, seek to or assist any person in the use of or registering of the other Party's Proprietary Marks in any jurisdiction; and (e) promptly notify the other Party of any suspected infringement of the Proprietary Marks, any challenge to the validity thereof or any challenge to the other Party's ownership of or right to use the Proprietary Marks.

17. Ownership of Intellectual Property. Each Party acknowledges and understands that: (a) use of the other Party's Proprietary Marks in no way gives rise to any ownership interest or other interest in or to the Proprietary Marks; (b) the other Party is the exclusive owner of all right, title and interest in and to that Party's Proprietary Marks; (c) the license to use the other Party's Proprietary Marks is revocable, non-transferrable and non-exclusive and is granted subject to the terms and conditions outlined herein; (d) any and all goodwill arising from its use of the other Party's Proprietary Marks shall inure solely and exclusively to the other Party's benefit and upon



expiration or termination of this Agreement and the license granted herein, no monetary amount shall be assigned or attributable to any goodwill associated with its use of the other Party's Proprietary Marks.

18. Marketing and Advertising. You are a merchant of PopID ("Relationship") and in addition to the rights created above, the Proprietary License allows each Party to use the other Party's Proprietary Marks to advertise and market the Relationship provided that such marketing and advertising is not likely to, and does not, directly or indirectly, confuse, mislead, or deceive the public including, without limitation, confusing, misleading or deceiving the public in to thinking that you are associated with us in any manner other than the Relationship.

19. Confidentiality. You acknowledge that we may be required to disclose Confidential Information to you in order to give effect to the terms of this Agreement and you warrant to us that, for the duration of this Agreement and for the maximum period permitted by law thereafter, and no less than a period of five (5) years, you will hold the Confidential Information in the strictest confidence and you will not communicate, disclose, transfer, divulge or otherwise use or deal with ("Disclosure") the Confidential Information, in any manner whatsoever and whether for the benefit of yourself or any other person, partnerships, associations, corporations or other incorporated entities, except where such Disclosure; (a) is required by law; (b) is to your employee, officer, contractor or advisor ("Associated Parties") and you first obtain a covenant, in our favor on the terms outlined in this paragraph, prior to making the Disclosure; or (c) relates to Confidential Information which is already in the public domain by reason other than your or your Associated Parties' Disclosure. For the purposes of this paragraph, "Confidential Information" means any proprietary information of PopID including, without limitation, technical data, software, hardware, trade-secrets, know-how, research, business plans, manuals, information decks, inventions, processes, designs, and engineering configuration, disclosed by us to you either directly or indirectly, in writing, orally or by drawings or observations or otherwise observed by you in your dealings with us.

20. Your Privacy. The information you provide to us when registering for and using your Check In Account will be stored, managed, used, and shared in accordance with the terms of our Privacy Policy which can be located at [www.popid.com/privacy](http://www.popid.com/privacy).

21. Your Customers' Privacy. You acknowledge that your Customers will be required to provide to us, and you, information of a personal nature ("Personal Information" which includes, but is not limited to, name, contact information, including phone number, photographs, including for registration and each use, as well as biometric information) and a non-personal nature ("Non-Personal Information" which by nature, is aggregate and anonymous information). You warrant to us that you will: (a) use the Non-Personal Information and Personal Information for the strict and limited purposes as stated in this Agreement and agreed to by your Customer; (b) use all reasonable efforts to protect and safeguard the confidentiality of the Personal Information which at a minimum, shall be the same degree of protection afforded by our Privacy Policy; (c) not share, transfer or otherwise distribute or disseminate the Personal Information to any third (3rd) party without the prior written consent of both us and your Customer. Further, You grant to us a non-exclusive, worldwide, royalty free, transferable, sublicensable, perpetual, irrevocably license to: (a) copy, display, transfer, share with third (3rd) parties and otherwise use or deal with the Non-



Personal Information; (b) copy, display, transfer, share with third parties and otherwise use or deal with the Personal Information in accordance with the terms of our Privacy Policy or as otherwise agreed to between us and your Customer. You agree to transfer the Non-Personal Information and Personal Information to us, upon our request.

## 22. Our Rights

a. Our suspension and termination rights. We or our partners, in our sole discretion, reserve the right to suspend or terminate this Check In Agreement, access to or use of any Device, the Service, and/or the Platform or any portion thereof, including our websites, software, systems (including any networks and servers used to provide any part of the Service or the Platform) operated by us, or by our partners, for any reason and at any time without advanced notice to you. This suspension may be for a period of time as determined to be reasonable by us, including to investigate suspicious or unusual activity. We and our partners shall have no liability for any losses you may attribute to any such suspension or termination.

b. Security interest. As security for the performance of your obligations under this Check In Agreement, you grant to us a lien on, and security interest in and to, money in your PopPay Merchant Account (as that term is defined in the PopPay Standard Merchant Agreement), if any, or any other account you have with us as well as any other funds held in our possession.

c. Amounts owed to us. We may deduct amounts owed to us, in whole or in part, from money that is sent to your Merchant Account, if any, either by you or from payments sent to you. While you owe amounts to us, we may:

- reverse payments you have sent;
- engage in collection and other efforts to recover such amounts from you, including, but not limited to, making attempts on your linked payment methods to cover the amounts; and
- place a limitation or take other action on any of your account with us as outlined under Restricted Activities and Holds.
- charge interest at the rate of one and a half per centum (1.5) per month or the maximum rate permitted by California law, whichever is lower, on outstanding payments due under this Agreement from the date the payments were due until the date the payments are paid in full. The entitlement of such interest shall be in addition to any other remedies that the Company may have at law.

If you have more than one account with us, even if you have those accounts without our authorization or in breach of this Agreement, we may offset amounts owed to us in one account (including a Check In Account) against money in or money sent to your other account(s), including any PopPay Account (as that term is defined in the PopPay User Agreement) or PopPay Merchant Accounts.

d. Insolvency proceedings. If any proceeding by or against you is commenced under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, we will be entitled to recover all reasonable costs or expenses (including reasonable legal fees and expenses) incurred in connection with the enforcement of this Agreement.



e. No waiver. Our failure to act with respect to a breach of any of your obligations under this Check In Agreement by you or others does not waive our right to act with respect to subsequent or similar breaches.

23. Non-Compete. For the duration of this Agreement, you warrant to us that PopID will be the sole and exclusive biometric authentication provider for you and your business, except if we have a separate written agreement that provides otherwise. In addition, for the duration of the Term, you warrant to us that you will not use, offer, display, promote, or otherwise deal with any other biometric authentication provider without our prior written consent. Such consent may be withheld in our sole and absolute discretion.

24. Non-Disparagement. For the duration of this Agreement and for a period of two (2) years thereafter, you warrant to us that neither you nor any of your representatives, agents, Customers, or affiliates will, either directly or indirectly, make any statement, comment, or communication, whether oral or written, that is disparaging, derogatory or defamatory towards us or any PopID product, including without limitation, any Device, the Platform, or the Check In Service.

25. Termination. This Agreement will expire at the end of the Term, unless we sooner terminate this Agreement or your Check In Account, for any reason or no reason, in our sole discretion. Upon the termination of this Agreement, all rights, privileges, and licenses granted to you in this Agreement will immediately terminate, without notice or liability. You will remain liable to us for all amounts you owe us.

26. Indemnity. Merchant will defend, hold harmless, and indemnify PopID from any third-party claim or action brought against PopID relating to (a) Merchant's or its Customer's willful misconduct, gross negligence, or negligence, (b) Merchant's or its Customer's breach of this Agreement, or any other terms of our Policies that apply to you or them, and Merchant will pay (i) any settlements entered into between PopID and the third party claimant or (ii) final judgments awarded to the third party claimant by a court of competent jurisdiction. PopID shall (a) provide Merchant with prompt written notice of any claim, (b) grant Merchant sole control of the defense and settlement of the claim, and (c) provide reasonable information and assistance to Merchant in the defense or settlement of the claim at Merchant's expense.

27. Disclaimers and Limits of Liability. Except as expressly stated in this Agreement and to the maximum extent permitted by Law, PopID and our officers, directors, agents and affiliates (collectively, the "Indemnified Parties") make no representations or warranties, of any kind, whether express or implied, with respect to your Check In Account, the Platform, the Service, any Device, or any matter contemplated by this Agreement including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, title or non- infringement, or any warranty or representation arising by usage of trade, course of dealing or course of performance. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, EACH DEVICE, THE SERVICE, THE PLATFORM, AND YOUR CHECK IN ACCOUNT, ARE PROVIDED ON AN "AS IS" BASIS AND THE COMPANY MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND DISCLAIM ALL



OTHER WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES AND INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OR ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. THE COMPANY DOES NOT REPRESENT OR WARRANT THAT THE MODULES OR THE POPID SOFTWARE WILL BE ERROR FREE, UNINTERRUPTED OR FREE OF HARMFUL COMPONENTS OR THAT THE CUSTOMER OR THE AUTHORIZED USER'S DATA OR MATERIALS, WILL BE SECURE OR NOT LOST OR DAMAGED. THE COMPANY SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE ITS REASONABLE CONTROL, INCLUDING ANY HARM OR DAMAGES CAUSED BY THE CERTIFIED INSTALLERS OR THIRD-PARTY HOSTING PROVIDERS. THE LIMITED WARRANTY EXPRESSLY PROVIDED IN THIS AGREEMENT REGARDING EACH DEVICE IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED TO MERCHANT IN CONNECTION WITH THIS AGREEMENT.

Furthermore, in no event shall PopID or any of the Indemnified Parties have any liability for any mistake or activity resulting from circumstances beyond our reasonable control. In the event that PopID or the Indemnified Parties are found liable to you, you shall only be entitled to recover actual and direct damages and in any event, such damages shall not exceed the amount You have paid to us is Fixed Fees and Variable Fees in the 12 months prior to the making of the claim, or \$5,000, whichever is less. To the maximum extent permitted by law, in no event shall PopID or its Indemnified Parties have any liability for any incidental, indirect, or consequential damages including, without limitation, loss of profit or revenue or use, or any punitive or exemplary damages arising out of or in relation to this Agreement or your Check In Account, whether in contract, warranty, tort, product liability, strict liability or other theory.

28. Governing Law. This Agreement shall be governed in accordance with the laws of the State of California without reference to choose of law or conflict of law principles, except the section titled arbitration below is governed as specified in that section.

29. ARBITRATION. PLEASE READ THIS PARAGRAPH CAREFULLY AS IT CONTAINS IMPORTANT INFORMATION PERTAINING TO YOUR RIGHTS. IT PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. This paragraph shall be interpreted broadly and any and all disputes, suits, claims and similar actions (except those which fall within the jurisdiction of a small claims court) ("Claim(s)"), of whatsoever nature (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory), between you and we, or otherwise arising out of or in relation to this Agreement or your Check In Agreement, shall be resolved by binding arbitration. You and we agree that this Agreement evidences a transaction in interstate commerce. You and we agree that this arbitration provision is governed by, and will be interpreted and enforced in accordance with, the substantive provisions of the U.S. Federal Arbitration Act ("FAA"). You and we further agree that agree that this arbitration provision is governed by, and will be interpreted and enforced in accordance with, the procedural provisions of the Sections 2 and 3 of the FAA (9 U.S.C. §§ 2 & 3), and by the procedural provisions of sections 1280 through 1294.4 of the California Code of Civil Procedure (with the exception of



subsection (c) of CCP § 1281.2, the final two paragraphs of section 1281.2, CCP § 1281.3, and CCP § 1284.3, which are specifically excluded and shall not apply or have any effect on any arbitration pursuant to this Agreement), which are not in conflict or inconsistent with Section 2 or 3 of the FAA.

a. Process. For each Claim, the Parties must first send written notice to the other Party as provided in the section of this Agreement titled Notices and allow the other Party sixty (60) days to attempt to resolve the Claim.

b. Arbitration of All Disputes. If the Parties are unable to resolve a Claim within sixty (60) days following notice as provided above, then either Party may initiate arbitration by making a demand for arbitration to AAA. The arbitration will be administered by the American Arbitration Association (“AAA”). Except as otherwise provided by this Agreement, the Expedited Procedures of the Commercial Arbitration Rules of the AAA then in effect (“Rules”), will govern the arbitration. The Rules as well as information about AAA can be found at [www.adr.org](http://www.adr.org). JAMS All disputes, including without limitation, threshold, or gateway issues, including the arbitrability of the Claim and the proper interpretation of the arbitration provision in this Agreement, shall be decided exclusively by the arbitrator, and not by a Court. If for any reason, AAA is unable or unwilling to administer the arbitration, then it will be administered by JAMS pursuant to the Rules. Notwithstanding any other provision, either Party may reject arbitration and may proceed to court if the cost to administer the arbitration (including the arbitrator fees) exceeds, or the cost to administer the arbitration (including the arbitrator fees) is likely to exceed, the amount in dispute for any Claim or any crossclaim or counterclaim arising from the same nucleolus of operative facts, brought in the same arbitration, and a determination as to whether this exception applies shall be determined by a court of competent jurisdiction and not the arbitrator.

c. Conflict with Rules. If there is any conflict or inconsistency between any term of this Agreement and the Rules, the term of this Agreement will prevail and govern, except where AAA (or JAMS, if applicable), refuses to administer the arbitration, in which case, the Rules will prevail and govern as to that limited issue.

d. Provisional Relief. Nothing in this arbitration agreement prevents either Party for seeking provisional relief in a Court of competent jurisdiction pursuant to California Code of Civil Procedure section 1281.8.

e. Costs. The filing fee for any arbitration Claim must be paid by the Party initiating the arbitration. Further, each Party agrees to bear their own fees, costs, and expenses associated with the arbitration including, without limitation, those for their attorneys, experts, witnesses, and the preparation and presentation of evidence for the Claim. To the maximum extent permitted by law, Each Party will also be responsible for paying one-half of the costs and fees for the arbitration, including the arbitrator’s fees. If either Party fails to pay their portion of the fees or costs required by AAA (or JAMS if applicable), the arbitrator may preclude the party from asserting claims, submitting evidence, or may enter the Party’s default and enter a default judgment following a prove-up hearing. The Parties agree, however, that a Party that fails to pay their portion of the arbitration fees or costs cannot elect to have the dispute resolved in Court due to the termination or suspension of the arbitration by AAA (or JAMS if applicable). But rather, the other Party, so long as they have paid their portion of the fees and costs, has the right to select an alternative arbitrator pursuant to Code of Civil Procedure section 1281.6, who will proceed with the arbitration pursuant to the terms of this Agreement and this arbitration provision.



f. Award. The arbitrator must issue a written award within thirty (30) days of the completion of the arbitration. The arbitrator must make a ruling based on the facts and applicable law. The arbitrator's award shall be final, binding, and conclusive upon You and the Firm with no right to any appeal. The arbitrator shall follow the substantive laws of California and may not invoke any other basis (including, but not limited to, notions of "just cause" or "fairness") to rule on the Claims.

g. Judgment. The arbitrator's award is final and may be entered as a judgment in any court having competent jurisdiction.

h. Confidentiality. To the maximum extent permitted by law, the arbitration and related proceedings will be confidential and neither party will disclose any information about the Arbitration or its results to any third-party except as required by law and on prior notice to the other party.

i. Miscellaneous. The arbitration will be conducted in English and will be conducted in Los Angeles, or at another mutually agreeable location. To the maximum extent permitted by law, the arbitration will be deemed confidential and neither you nor we may disclose the existence, content, or results of the arbitration, except as may be required by law or for the purposes of enforcing any judgement.

j. No Class, Representative, or Consolidated Action. You and we agree that any Claim, will be conducted on an individual basis and not in a class, consolidated, or representative action. You waive all rights to be a class representative, class member, or otherwise participate in a class, consolidated, or representative action or proceeding without first having timely complied with the opt-out procedure provided below. If you timely opt-out of the arbitration provision as provided below, then this paragraph will not apply to you. The arbitrator shall only have jurisdiction and authority to hear a Claim on an individual basis. The arbitrator shall not have jurisdiction or authority to hear or allow any Claim on class, consolidated, or representative basis. You and we agree that the arbitrator lacks fundamental jurisdiction to hear or decide any class, consolidated, or representative claim or action. You and we agree that the arbitrator lacks fundamental jurisdiction to make any award to any person, entity, or group of people and/or entities, other than you and us.

30. Arbitration Opt-Out. Notwithstanding the agreement to arbitrate contained in the section above titled "Arbitration," above, you may choose to pursue any Claim in court, and not by arbitration, if you opt out of the arbitration provision within thirty (30) days of the date you first register for a Check In Account by sending us written Notice, as specified in the paragraph entitled Notices below, to 6800 Owensmouth Avenue, Suite 350, Canoga Park California 91303 addressed to "PopID, Inc. Attn: Legal Department," which identifies your Check In Account and stating that you elect to opt-out of the arbitration provision contained in this Agreement. The Parties agree that this opt-out provision must be strictly complied with, and the doctrine of substantial compliance does not apply.

31. Changes to Check In Agreement. We reserve the right, in our sole and absolute discretion, to amend, revise, or modify the terms and conditions of this Check In Agreement from time to time by posting the updated Check In Agreement on our Site, without further notice. You should visit [www.popid.com](http://www.popid.com) regularly to review the current Check In Agreement and any other agreements, terms, rules, or policies that apply to you. your continued use of your Check In Account, any Device, the Service, or the Platform, will be deemed as irrevocable acceptance of



the revised Check In Agreement and any other agreements, terms, rules, or policies that apply to you. Any changes we make will be effective immediately when we post a revised version of the Check In Agreement. The “Last Updated” date above will tell you when the Check In Agreement was last updated. By continuing to use the Site, your Account, or the Service after that date, you agree to the changes. To the extent that the terms of this Check In Agreement differ from a prior version of the Check In Agreement which you previously agreed to, this version of the Check In Agreement supersedes and governs from the date of posting. If you do not agree to the updated terms, then you must immediately notify us in writing and immediately cease using your Account and the Service. The updated terms will still apply to you, your Check In Account, and your use of the Service from the date of posting to the date you cease using your Account and the Service.

32. Modifications to the Platform or Our Services. We reserve the right, in our sole and absolute discretion, to modify or discontinue, either temporarily or permanently, the Platform including the PopID Check In Service (or any part thereof), for any reason, at any time, and without notice.

33. Survival. Paragraphs 1-5, 7-8, 12-29, and 31-38 inclusive, shall survive termination or expiration of this Agreement, in addition to any provisions that by their nature should, or by their own express terms do, survive or extend beyond termination or expiration of this Agreement.

34. Entire Agreement. This Agreement, including the Privacy Policy and other incorporated terms, contain all the terms in relation to the use of the Platform, the Service, or any device as a Merchant.

35. Notices. Any notice required to be given under this Agreement shall be in writing. Notices from you to us must be sent by registered, U.S. mail, with postage prepaid, to 6800 Owensmouth Avenue, Suite 350, Canoga Park, California 91303. Notices from you to us will be deemed given three (3) business days after actual receipt by us. Notices from us to you may be given by electronic means, including, without limitation, posting such notices in your Check In Account, posted on our website at [www.popid.com](http://www.popid.com), or sent via email to one of the email address(es) registered to your Check In Account. you expressly consent to receive notices by electronic means, including notices posted to your Check In Account, and to the maximum extent permitted by law, you agree that any such electronic notices will satisfy any applicable legal requirements for communications or notices to you.

36. Assignment. You may not assign this Agreement or any of your rights or obligations under this Agreement, in whole or in part, without PopID’s prior written consent. we may assign this Agreement and any of our rights or obligations created hereunder, in whole or in part, at any time and without notice. Upon assignment, you release us from our obligations under this Agreement and agree to indemnify us for any claims arising from or in connection with this Agreement or your Check In Account.

37. Severance. If any provision, or part of any provision, of this Agreement is determined to be void or unenforceable against any Party by any tribunal with jurisdiction, then that provision, or part of the provision, which is void or unenforceable must be severed from this Agreement to



the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect.

38. Further Assurances and Documents. You agree to sign such documentation and do all things reasonably required by us to give effect to the terms of this Agreement.