

**MERCHANT PROCESSING AGREEMENT  
TERMS AND CONDITIONS**

**ARTICLE VII REQUIRES ALL DISPUTES WITH BANK OR COMPANY TO BE RESOLVED IN BINDING INDIVIDUAL ARBITRATION—NOT IN A CLASS ACTION, AND NOT IN COURT BEFORE A JUDGE OR JURY. ARTICLE VI LIMITS BANK'S AND COMPANY'S LIABILITY AND MERCHANT'S REMEDIES. PLEASE READ THEM.**

**SECTIONS 3.5 and 8.2.H PERMIT BANK OR COMPANY TO CHANGE FEES AND CHARGES UPON 30 DAYS' WRITTEN NOTICE, WHICH WILL USUALLY APPEAR IN YOUR MONTHLY STATEMENT MESSAGE. PLEASE REVIEW YOUR STATEMENT EACH MONTH TO ENSURE ALL CHARGES ARE CORRECT AND TO LEARN OF ANY NEW OR AMENDED FEES OR CHARGES.**

THIS DOCUMENT CONTAINS THE TERMS AND CONDITIONS YOU AGREED TO WHEN YOU SIGNED THE MERCHANT APPLICATION ("Merchant Application" or "Application"). THESE TERMS AND CONDITIONS, THE MERCHANT APPLICATION, AND BANK'S AND CARD BRANDS' RULES AND REGULATIONS, AS AMENDED FROM TIME TO TIME, COLLECTIVELY CONSTITUTE THE MERCHANT PROCESSING AGREEMENT (this "Agreement").

This Agreement is entered into among WESTAMERICA BANK ("Bank"), whose principal place of business is 3750 Westwind Blvd, Suite 210, Santa Rosa, CA 95403, SHIFT4 PAYMENTS, LLC doing business as HARBORTOUCH PAYMENTS, FUTUREPOS PAYMENTS, POSITOUCH PAYMENTS, OR RESTAURANT MANAGER PAYMENTS ("Company"), whose principal place of business is 2202 North Irving Street, Allentown, PA 18109, and MERCHANT ("Merchant") whose personal name(s) (if a sole proprietorship or partnership), address, business organization name, and type of business are on the Merchant Application. This Agreement becomes effective only if Bank and Company accept it; Bank's and Company's assignment of a merchant identification number to Merchant constitutes their acceptance. Bank's or Company's representative's signature on the Merchant Application does not constitute acceptance, but denotes only the receipt of Merchant's offer contained in the Merchant Application. This Agreement is effective on the later of the dates Bank and Company accept it ("Effective Date"), but if Merchant submits a Transaction prior to the Effective Date, Merchant will be bound by this Agreement from the time of submission.

**RECITALS**

WHEREAS, Merchant desires to accept Credit Cards, Debit Cards or other Cards, as indicated on the Merchant Application, validly issued by members under license of Discover® Network ("Discover Network"), MasterCard® International, Inc. ("MasterCard"), Visa® U.S.A., Inc. ("Visa"), or a Debit Network;

WHEREAS, Bank and Company desire to provide Card processing services to Merchant.

WHEREAS, Bank is a Member of Visa, Inc. ("Visa") and MasterCard International, Inc. ("Mastercard"), and provides transaction processing and other services and products ("Services") in relation to financial service cards issued by Visa, Mastercard, or other financial service card organizations, including ATM/Debit networks;

WHEREAS, Merchant, in furtherance of its business operations, wishes to accept Cards and have Bank and Company process the resulting transactions ("Sales") pursuant to this Agreement. For purposes of this Agreement, ATM or Debit transactions shall mean those transactions processed on an ATM or Debit network ("Network(s)") in an on-line real time environment requiring the entry of a personal identification number ("PIN");

WHEREAS, Merchant may desire to be sponsored as a participant in certain Networks, under the terms of the rules and regulations of each such Network;

WHEREAS, Card Brands and Bank each have adopted rules and regulations relating to all aspects of Sales and Services, and those rules and regulations, as amended from time to time, ("Rules") are part of this Agreement;

WHEREAS, Merchant understands that this is an agreement for Transaction processing and that fees for the Services (including the fee sometimes called the "discount") are calculated based on certain factors, including without limitation, the term of this Agreement, the number of transactions processed, the business type, the type of goods or services sold, and the method of processing;

THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bank, Company, and Merchant agree as provided in this Agreement.

**DEFINITIONS**

**"Account"** means a bank account maintained by Merchant as set forth in Section 3.1 for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.

**"ACH"** means the Automated Clearing House paperless entry system operated by the Federal Reserve.

**"Agreement"** means these Terms & Conditions, the Merchant Application, Bank's and Card Brands' Rules, as amended from time to time, and any exhibits to this Agreement.

**"Authorization"** means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain credit approval from the Card Issuer.

**"AVS"** (Address Verification System) allows verification of the Cardholder's Zip code and billing address while requesting authorizations for Transactions or during a request for address verification only.

**"Card"** means (i) a valid card in the form issued under license from Visa U.S.A., Inc., Visa International, Inc., or MasterCard International, Inc. ("Bank Card" or "Bankcard") or (ii) any other valid card accepted by Merchant by agreement with Bank, such as those issued by, or under license of, Discover Financial Services, Inc. or (iii) any valid card issued under license of a regional or national Debit Network.

**"Card Association"** means Visa, MasterCard, Discover, and other companies that regulate and manage their respective brands of Cards that are accepted by Merchant by agreement with Bank.

**"Card Brands"** means Visa, Mastercard, ATM or Debit Networks, and the other financial service Card organizations.

**"Cardholder"** means the person whose name is embossed upon the face of the Card presented to Merchant

**"Card Issuer"** means the financial institution or company that provided a Card to a Cardholder.

**"Chargeback"** means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer.

**"Credit Card"** means a plastic or metal card that allows payments to be offset against a special-purpose account associated with a revolving line of credit and requiring some form of installment-based payment.

**"Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment credited to a Cardholder account.

**"Debit Card"** means a plastic or metal card linked to a checking or savings account.

**"Debit Network"** means a network upon which transactions linked to checking or savings accounts are routed. See Section 2.6.A (Debit Networks).

**"Discover"** means Discover Network or Discover Financial Services.

**"Effective Date"** means the later of the dates Bank and Company accept this Agreement.

**"Imprint"** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.

**"MasterCard"** means MasterCard International, Inc. or MasterCard Worldwide, Inc.

**"MCC"** means Merchant Category Code and indicates the Merchant's category classification by Visa and MasterCard describing specifically the type of business the Merchant operates.

**"Retrieval"** means a Card Issuer's or Cardholder's request for a Transaction receipt.

**"Rules"** means the rules and regulations of any Card Association or ATM or Debit Network, as amended from time to time, and includes any rules or rule summaries attached to this Agreement.

**"Services"** means any service described in this Agreement or provided by Company.

**"Sales Draft"** means the paper form, approved in advance by Bank, whether such form is electronically or manually imprinted, evidencing a sale Transaction.

**"Transaction"** means any sale of goods and services, or credit for such, from a Merchant for which Bank makes payment through the use of any Card and which is presented to Bank for collection.

**"Visa"** means Visa U.S.A., Inc. or Visa International, Inc.

**"Voice Authorization"** means a direct phone call to a designated number to obtain credit approval on a Transaction.

**ARTICLE I – GENERAL**

**1.1** As a result of Merchant submitting Sales for processing to Bank, Bank will process such Sales and credit or debit Merchant's Designated Account (see Section 3.1) with the resulting financial proceeds of such Sales, provided, however, that no payment for Sales will take place unless and until Bank has received payment for such Sales from the Card Brands. In addition, when a disputed transaction (Chargeback) occurs, Merchant agrees to provide all requested information to Bank and Bank agrees to forward such information to the Card Brands in accordance with the Rules and the Card Brands' dispute resolution guidelines. Bank is not responsible for the outcome of any Chargeback.

**1.2** The Cards designated herein will be processed under the terms and conditions of this Agreement as long as Bank is contractually permitted to offer such Services by the respective Card Brands and this Agreement has not been terminated.

**1.3** On an exclusive basis, Merchant agrees to submit all Sales for processing from Cards accepted in Merchant's business as described in the Merchant Application to Bank in accordance with the Rules and pursuant to the terms of this Agreement.

**1.4** Merchant agrees to abide by the Rules. Bank and Card Brands may from time to time amend the Rules or operating procedures related to Sales Drafts or Services. Merchant has been supplied with a summary of the Rules and by signing the Merchant Application, acknowledges that it has reviewed them. Merchant agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Merchant agrees to assist Bank and Company in complying in a complete and timely manner with all Laws and Rules now or hereafter applicable to any Sale or this Agreement. Merchant will execute and deliver to Bank all such instruments that Bank may from time to time deem necessary. It is Merchant's

responsibility to know all applicable Laws and the Rules that apply to Merchant's acceptance of Cards and to ensure that Merchant's equipment complies with all Laws and Rules. **Merchant agrees to indemnify, defend, and hold Bank harmless from and against any loss, cost, or damage (including reasonable attorneys' fees and court costs) incurred as a result of Merchant's failure to comply with applicable Laws or Rules.**

**1.5** Merchant agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Bank or Company, including but not limited to the terms of this Agreement, and will safeguard such information and data by using a reasonable degree of care but in no event less than the same degree of care Merchant uses to protect its own confidential information.

#### **1.6 SECURITY STANDARDS**

**A.** Merchant agrees it will not disclose to any third party any Cardholder account information or other personal information except to its agent assisting in completing a Card Transaction, or as required by Laws or Rules. Merchant must not request or use Cardholder account number information for any purpose that Merchant knows or should know to be fraudulent or in violation of the Rules, or for any purpose that the Cardholder did not authorize, except to Merchant's agent assisting in completing a Card Transaction, or as required by law. Merchant must keep all systems and media containing account, Cardholder or Transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must destroy, in a manner that will render the data unreadable, all such media that Merchant no longer deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, Laws or Rules). Further, Merchant must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. Merchant must not store, and must ensure that all of Merchant's third party providers that have access to Cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a Transaction.

**B.** If Merchant uses any third parties who will have access to Cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, Merchant must notify Bank and Company of the identity of the Merchant Provider(s) and the name and version of the payment application(s) or software. In addition, Merchant must: (1) only allow the Merchant Providers access to Cardholder data for purposes authorized by the Rules, (2) have proper security measures in place for the protection of Cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of Cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at [www.visa.com](http://www.visa.com)) and the MasterCard Site Data Protection Program ("SDP") (found at [www.mastercard.com](http://www.mastercard.com)), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. Merchant will immediately notify Bank and Company of any suspected or confirmed loss or theft of any Transaction information, including any loss or theft from a Merchant Provider. Merchant is responsible for demonstrating Merchant's and Merchant Providers' compliance with the CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to Merchant's locations and ensuring Merchant Providers provide reasonable access to their locations to verify Merchant's and Merchant Providers' ability to prevent future security violations. Any fees, fines, or penalties resulting from non-compliance will be passed through to Merchant. Merchant agrees to indemnify Bank, Company, and the Card Brands against all costs, expenses, damages and losses resulting from any breach of security, or loss or theft of information.

**C.** In addition, in the event of a suspected or confirmed loss or theft of information, Merchant agrees, at Merchant's cost, to provide all information requested by Bank, Company, a Card Brand, other financial institutions, or local, state, or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between Merchant, Company, and Bank) be considered Bank's confidential information. Merchant agrees that Bank may release to the Card Brands, other financial institutions, and regulatory, local, state, or federal officials, any information Merchant provides to Bank in connection with a suspected or confirmed loss or theft of Transaction information. The requirements of this section apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether Merchant processes Transactions via Internet, mail, phone, face-to-face, or any other method. Additional information regarding data security may be found at the Card Brands' websites.

**1.7** Submission by Merchant of Sales or participation in Services at any time after seven (7) days from the date of distribution or publication by the Card Brands of amended Rules to Merchant shall be evidence that Merchant was provided with or received access to the amended Rules and has agreed to abide by them.

**1.8** If Merchant is a healthcare provider or other entity covered by the Health Insurance Portability and Accountability Act of 1996, as amended, and the supporting regulations under 45 C.F.R. Part 160 and 164, as amended, Merchant agrees it will not provide Bank with Protected Healthcare Information (as defined in such act).

## **ARTICLE II - CARD ACCEPTANCE**

### **2.1 HONORING CARDS**

**A. Without Discrimination.** Merchant will accept without discrimination, all valid Cards as indicated by Merchant on the Merchant Application when properly presented by Cardholders for payment for goods or services within the Merchant's Category (MCC) of acceptance. Merchant may not discriminate between payment Cards within a payment Card network on the basis of the Issuer that issued the presented payment Card.

**B. Acceptance.** Merchant will elect on the Merchant Application to accept (full acceptance) or not accept (limited acceptance) credit and/or debit cards for payment. A full acceptance Merchant will accept all valid Cards unless Merchant provides 30 days' written notice to Bank and Company requesting limited acceptance and stating Merchant's election of Card types. Limited acceptance is not applicable to non-US issued Cards.

**C. Advertised Price.** Merchant agrees to accept Cards for payment of goods or services without charging any amount over the advertised price as a condition of Card acceptance, unless local law requires Merchant be permitted to engage in such practice.

**D. Minimums and Maximums.** (a) Merchant shall not establish minimum or maximum transaction dollar value for Signature-Debit or PIN-Debit Card sales as a condition for accepting such Debit Cards. (b) Merchant may set a minimum transaction dollar value for the acceptance of a Credit Card, only to the extent that: (i) such minimum dollar value does not exceed \$10; and (ii) such minimum dollar value is the same for all Issuers or payment Card networks. (c) If Merchant is a federal agency or institution of higher education, Merchant may set a maximum dollar value for the acceptance of Credit Cards, to the extent that such maximum dollar value is the same for all Issuers or payment card networks.

**E. Surcharges.** If Merchant chooses to impose a surcharge on Card payments, Merchant may do so only after meeting specific considerations, limitations, and requirements as defined by the Card Associations. Requirements and limitations include: (i) Merchant may impose a surcharge only if permitted by, and is compliant with, state and local law; (ii) Merchant shall notify Bank, Company, and Card Associations no less than 30 days in advance of imposing any surcharge; (iii) Merchant shall publicly disclose its surcharge practices at the store entry point and point of sale; and (iv) Any surcharge imposed by Merchant shall not exceed 4% of the underlying Transaction amount. For information on, and further links to, surcharge considerations, requirements, limitations, and Card Association surcharge registration pages, visit [www.mastercard.us/merchants/support/surcharge-rules.html](http://www.mastercard.us/merchants/support/surcharge-rules.html) and [www.visa.com/merchantsurcharging](http://www.visa.com/merchantsurcharging).

**F. Discounts.** Merchant may offer a discount or in-kind incentive as an inducement for a Cardholder to use a means of payment that the Merchant prefers, provided that the discount: (i) is clearly disclosed as a discount from the standard price; (ii) is non-discriminatory, by providing the same discount for all Cards accepted; (iii) does not differentiate on the basis of the Issuer or the Card Association; and (iv) is in accordance with Laws and the Rules.

**G. Disputes with Cardholder.** (a) All disputes between Merchant and any Cardholder relating to any Card Transaction will be settled between Merchant and the Cardholder. Bank and Company bear no responsibility for such Transactions. (b) Merchant must not require a Cardholder, as a condition for honoring a Card, to sign a statement that waives the Cardholder's right to dispute the Transaction with the Card Issuer.

**H. Cardholder Identification.** Merchant will identify the Cardholder and check the expiration date and signature on each Card. Merchant will not honor any Card if: (i) the Card has expired; (ii) the signature on the Sales Draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form); (iv) the Card was declined as a result of an Authorization attempt. Merchant may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver license number as a condition for honoring a Card unless permitted by Laws and the Card Association Rules.

**I. Non-presentment.** Merchant shall not accept a Card as payment (other than for mail order, Internet sale, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an imprint or otherwise use the physical Card to complete the Transaction.

**J. Card Recovery.** Merchant will use reasonable, best efforts and peaceful means to recover any Card if: (i) Merchant is advised by Bank, Company, the issuer of the Card, or the designated voice authorization center to retain it; or (ii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent, or stolen, or not authorized by the Cardholder. The obligation of Merchant imposed by this section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property and Merchant will hold Bank and Company harmless from any claim arising from any injury to person or property or breach of the peace in connection with the retention or recovery of a Card.

**K. Location.** Merchant may honor Cards only at location(s) approved by Bank and Company. Additional locations may be added, subject to Bank's and Company's approval. Merchant, Company, or Bank may delete location(s) by providing notice as provided in this Agreement.

### **2.2 AUTHORIZATIONS**

**A. Required on all Transactions.** Merchant will obtain prior Authorization for the total amount of a Transaction via electronic terminal, gateway, or other compliant and certified device before completing any Transaction, and Merchant will not process any Transaction that has not been authorized. Merchant will follow all instructions received during the Authorization process. Upon receipt of an Authorization approval Merchant may consummate only the

Transaction authorized and must note on the Sales Draft the Authorization number. Where Authorization is obtained, Merchant will be deemed to warrant the true and matching identity of the Cardholder.

**B. No Guarantees.** Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired or otherwise invalid Card.

**C. Unreadable Magnetic Stripes.** When presenting Card Transactions for Authorization electronically, and Merchant's terminal is unable to read the magnetic stripe on the Card, Merchant must obtain a Phone Authorization (either via Voice or Automated Response Service, **both carry additional fees**) and Merchant must obtain an imprint of the Card and also obtain the Cardholder's signature on the imprinted Sales Draft before presenting the Sales Draft to Bank for processing. Failure to perform these additional actions may result in the assessment of Transaction surcharges or a rejected Transaction.

**D. Fees.** Unless otherwise approved in writing by Bank, **Merchant agrees to pay \$0.75 for each Voice Authorization and \$1.00 for each Voice Authorization for AVS.**

### 2.3 PRESENTMENT OF SALES DRAFTS

**A. Sales Draft Administration.** Unless the Sales Draft is electronically generated from a swiped Transaction or is the result of an Internet, mail, phone or preauthorized sales order, Merchant must use a Sales Draft or other form approved by Bank to document each Card Transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, location, and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated if electronic); (iii) the date of the Transaction; (iv) a brief description of the goods or services involved; (v) the Transaction authorization number; (vi) the total amount of the Sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all Sales are final, if applicable.

**B. Signatures.** Sales Drafts must be signed by the Cardholder unless the Card Transaction is a valid mail/telephone/Internet order Card Transaction, or PIN-based Debit Card Transaction, which fully complies with the requirements set forth in this Agreement. Merchant may not require the Cardholder to sign the Sales Draft before Merchant enters the final Transaction amount in the Sales Draft.

**C. Delivery and Retention of Sales Drafts.** Merchant will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the Transaction. In addition to any records routinely furnished to Bank under this Agreement, Merchant shall preserve a paper or microfilm copy of all actual paper Sales Drafts and Credit Vouchers and if a mail, phone order or preauthorized order is involved, the Cardholder's signed Authorization for the Transaction for at least eighteen (18) months (or longer if required by Laws or Rules) after the date Merchant presents the Transaction. Merchant must follow Section 3.4 (Safeguarding Payment Card Information) to protect information it retains and may not retain information that section prohibits.

**D. Electronic Transmission.** If Merchant utilizes electronic authorization or data capture equipment or services, Merchant will enter the data related to a Sales or Return Transaction into a computer terminal or magnetic stripe reading terminal and transmit daily Transactions to Bank (or its duly assigned processor) no later than the close of business on the day the Transactions are completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of Transaction penalties.

**E. Compliance.** If Merchant provides or uses its own electronic terminal, gateway or similar Transaction device to capture Transactions and generate Sales Drafts, such devices must meet Bank, Card Associations, PCI Security Standards Council (pursuant to Section 3.4), and government requirements for processing Transactions.

**F. Inspection.** If Bank requests a copy of a Sales Draft, credit voucher, or other Transaction evidence, Merchant will provide it within 24 hours following the request.

**G. Multiple Transaction Records.** Merchant shall not prepare more than one Sales Draft for a single sale or for a single item and shall include all items or goods and services purchased in a single Transaction in the total amount on a single Sales Draft except: (i) for purchases in separate departments of a multiple department store; (ii) for installment payments; or (iii) for delayed or amended charges governed by the Rules for travel and entertainment merchants and Transactions.

**H. Forms.** Merchant shall only use forms or modes of transmission of Sales Drafts and Credit Vouchers as provided or approved by Bank. Merchant shall not use forms provided by Bank other than in connection with Card Transactions without Bank's prior written consent.

**I. Endorsement.** The presentment of Sales Drafts to Bank for collection and payment is Merchant's agreement to sell and assign its right, title, and interest in each Sales Draft completed in conformity with Bank's acceptance procedures and shall constitute an endorsement by Merchant to Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of Bankruptcy Code (11 U.S.C. § 365) as amended from time to time. Merchant acknowledges that its obligation to Bank for all amounts owed under this Agreement arise out of the same Transaction as Bank's obligation to deposit funds to the Account.

### 2.4 DEPOSIT OF SALES DRAFTS AND FUNDS DUE MERCHANT

**A. Presentment and Acceptance.** Bank shall accept from Merchant all valid Sales Drafts presented by Merchant under the terms of this Agreement and shall present the same to the appropriate Card issuers for collection against Cardholder accounts. All presentment and assignment of Sales Drafts, collection therefor and re-assignment or rejection of such Sales Drafts are subject to this Agreement and the Rules. Bank shall be the only entity that will provisionally

credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, fines and penalties, late submission charges, and items for which Bank did not receive final payment. Bank may refuse to accept or withhold payment of any Sales Draft without notice until the expiration of any Chargeback period, or revoke its prior acceptance of a Sales Draft, in the following circumstances: (i) Bank reasonably suspects that the Sales Draft was not made in compliance with this Agreement, Rules, or applicable Laws; (ii) the Cardholder disputes its liability to Bank for any reason, including but not limited to Cardholder chargeback rights enumerated in the Rules; (iii) the Transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder; (iv) the Transaction is outside the parameters indicated on the Merchant Application; (v) if Bank determines, at its sole and reasonable discretion, that a Transaction or batch of Transactions poses a risk of loss; (vi) Bank may impose a cap on the volume and ticket amount of Sales Drafts that Bank will process for Merchant, as indicated on the Merchant Application or imposed otherwise by Bank. This limit may be modified by Bank upon written notice to Merchant. If Merchant exceeds the limit established by this Agreement, Bank may suspend processing, charge over limit fees, hold deposits over the cap, or return all Sales Drafts evidencing funds over the cap to Merchant or terminate this Agreement. Merchant will pay Bank, as appropriate, any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by Bank. Merchant agrees that Bank has no liability for any delay in funding and that Bank is not responsible for any losses Merchant may incur, including but not limited to NSF fees, due to delayed deposit of funds.

**B. Returns and Adjustments: Credit Vouchers.** Merchant agrees that it will conduct business in regard to returns as follows: (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. Merchant agrees to disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; or (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms). (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale. (c) If Merchant does not make these disclosures and Cardholder requests a refund, a full refund in the form of a credit to the Cardholder's Card account must be given. Merchant shall not refund cash to a Cardholder who originally paid for the item by Card. (d) Credits must be made to the same Card account number on which the original sale Transaction was processed. (e) If Merchant accepts any goods for return, any services are terminated or canceled in conjunction with each such Transaction. Merchant shall have sufficient funds in its account available to Bank to cover the amount of the Transaction and any related fees. (f) Merchant warrants that any Credit Voucher it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted. (g) Under no circumstance will Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by processor and Bank.

**C. Chargebacks.** Merchant and Guarantor(s) are fully liable for all Transactions returned for whatever reason (Chargebacks). Merchant will pay upon presentation the value of all Chargebacks. Authorization is granted by Merchant to Bank and Company to offset from incoming Transactions and to debit the Designated Account, the Reserve Account, or any other account held at Bank, Company, or at any other financial institution the amount of all Chargebacks. Merchant will fully cooperate in complying with the Rules regarding Chargebacks. Merchant agrees that: (a) failure to pay a Chargeback upon such presentation shall be considered a material breach of this Agreement and Merchant, in addition to any other remedies which may be exercised by Bank or Company, shall be charged a late fee of (i) the maximum allowed by Laws; or (ii) one and one half percent (1.5%) per month or portion thereof on all unpaid Chargebacks, whichever is greater; (b) Merchant agrees to accept for Chargeback any sale for which the Cardholder disputes the validity of the sale according to the Rules, or Bank determines that Merchant has in any way failed to comply with the Rules or Bank procedures, including but not limited to the following: (i) Sales Draft is illegible, not signed by the Cardholder, or has not been or cannot be presented to Bank within the required time frame(s); (ii) Sales Draft does not contain the Imprint of a valid unexpired Card; (iii) an Authorization has not been obtained or a valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iv) Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated on one Card for a single sale; (v) 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 Sales Draft differs from the amount which Merchant presents for payment; (vii) Transaction results from an Internet, mail, phone, or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number; (viii) Bank reasonably believes that Merchant has violated any provision of this Agreement; (ix) Bank reasonably determines that the Transaction record is fraudulent or that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees; (a) for whatever reason pertaining to not complying with the Rules. (b) Notwithstanding any authorization or request from a Cardholder, Merchant shall not initiate a sale Transaction in an attempt to collect a Chargeback. (c) Guarantors are personally liable for all Chargebacks. In the event Merchant sells its business and a new owner incurs Chargebacks, the original Merchant and all Guarantors will be held personally liable for the Chargebacks and

any other liabilities of the new owner(s). (d) In the event the Account is closed or is otherwise unavailable to Bank for ACH debit, Merchant and Guarantors consent to Bank locating additional deposit accounts or assets by using any means available. In this event Merchant and Guarantors waive all rights to their privacy in favor of Bank until such time as all unpaid Chargebacks and fees owed to Bank have been paid in full. (e) Merchant agrees to pay Chargeback fees as indicated on the Merchant Application for Chargebacks received by Bank regardless of outcome of a Merchant dispute of such Chargeback. (f) Merchant has the right to follow procedures outlined by the Rules to dispute a Chargeback, but such Merchant dispute procedure does not guarantee to relieve Merchant from the responsibilities in respect to Chargebacks outlined in this section.

**D. Excessive Activity.** Merchant's presentation to Bank of Excessive Activity will be a breach of this Agreement and may result in immediate termination of this Agreement. "Excessive Activity" means, during any monthly period for any one of Merchant's terminal identification numbers or merchant identification numbers: (i) the dollar amount or number of chargebacks and retrieval requests in excess of 1% of the average monthly dollar amount or number of Card Transactions; (ii) sales activity that exceeds by 25% or more the dollar volume indicated on the Merchant Application; or (iii) the dollar amount of returns equals 3% of the average monthly dollar amount of Card Transactions. Merchant authorizes, upon the occurrence of Excessive Activity, Bank to take any action deemed necessary including but not limited to suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

**E. Fees. Unless otherwise approved in writing by Bank, Merchant agrees to pay \$15 for each Retrieval request.**

## 2.5 OTHER TYPES OF TRANSACTIONS

**A. Recurring Transactions.** For recurring transactions, Merchant must be approved by Bank to accept recurring transactions and obtain a written request from the Cardholder for the goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. Merchant will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from Bank, or (iii) a response that the Card is not to be honored. Merchant must print legibly on the Sales Draft the words "Recurring Transaction".

**B. Multiple Sales Drafts.** (a) Merchant will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or Transaction record, unless (i) partial payment is entered on the Sales Draft or Transaction record and the balance of the Transaction amount is paid in cash or by check at the time of Transaction, or (ii) a Sales Draft represents an advance deposit in a Card Transaction completed in accordance with this Agreement and the Rules. (b) Merchant shall not submit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any Chargebacks resulting from duplicate Transactions.

**C. Mail Orders "MO", Telephone Orders "TO", and Internet Orders "IO."** (a) Unless Merchant has been approved by Bank to accept mail orders, telephone orders, or Internet orders, Merchant warrants that it is a walk-in trade business, located in a retail business place conducting face-to-face Transactions. If Merchant is found to be submitting Card Transactions for mail orders, telephone orders, or Internet orders without Bank approval, this Agreement may be terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds thereof may be held pursuant to Article IV of this Agreement. (b) If Merchant is authorized by Bank to accept payment by mail order, telephone order, or Internet order, the Sales Draft may be completed without the Cardholder's signature or an imprint, but in such case Merchant shall create a Sales Draft containing Cardholder account number, expiration date, transaction date, an authorization number, the sale amount and the letters "MO", "TO", or "IO" as appropriate. In addition, the Merchant's business name, city, and state must be included. Receiving an Authorization shall not relieve Merchant of liability for Chargebacks on any MO, TO, or IO Transaction. (c) For Approved MO, TO, and IO Merchants, performing AVS (Address Verification System) is required. AVS is not a guarantee for payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction. (d) In the event the Merchant is approved to conduct MO, TO, or IO Transactions, Merchant is cautioned to apply fraud protection measures (as described on the Visa and MasterCard websites) and Merchant understand that there is a higher risk of Bank disputes and/or fraud associated with these types of Transactions. (e) If Merchant's Retail/Mail Order/Telephone Order, Internet mix changes from the percentages represented to Bank in the Merchant Application, Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase its fees, or terminate this Agreement, or impose a Reserve Account, unless prior written approval has been obtained from Bank. (g) Merchant may not deposit a MO, TO, or IO Sales Draft before the product is shipped.

**D. Lodging and Vehicle Rental Transactions.** (a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental and the Cardholder must be informed of the dollar amount Merchant intends to pre-authorize. Additional Authorization(s) must be obtained and recorded for charges actually incurred in excess of the estimated amount. (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction. (c) It is the responsibility of the Merchant to comply with the Rules applicable to the Lodging and Vehicle Rental MCCs in order to

qualify for special Interchange pricing incentives for Lodging and Vehicle Rental merchants. Card Association Rules may be obtained from each Card Association's website.

**E. Future Delivery.** (a) Merchant will not present for processing, whether by electronic means or otherwise, any Sales Draft or other memorandum, to Bank representing a payment, partial payment, or deposit for goods or services to be delivered in the future, without the prior written consent of Bank. Such consent will be subject to Bank's final approval. (b) The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and may result in immediate termination in addition to any other remedies available under the Laws or Rules. (c) If Bank has given such consent, Merchant represents and warrants to Bank that Merchant will not rely on any proceeds or credit resulting from such Transactions to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery Transactions. (d) If Merchant has obtained prior written consent, Merchant will complete such Card Transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. Merchant will note upon the Sales Draft the words "deposit" or "balance" as appropriate. Merchant will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or Merchant has fully performed the services.

## 2.6 DEBIT CARD PROCESSING

If Merchant indicated on Merchant Application its intent to become a sponsored participant in the Debit Networks in order to accept Debit Network Transactions, Merchant is bound under the terms and conditions set forth in this section (in addition to the other sections of this Agreement), as follows:

**A. Debit Networks.** "Debit Networks" refers to those regional and national Debit Card networks accepted by Bank, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, Maestro and Money Station. This Section (2.6) pertains only to Transactions authorized, captured, and settled through such Debit Network.

**B. Participation.** Merchant agrees to become a participant in each Debit Network Bank is able to facilitate.

**C. Compliance.** Merchant agrees to comply with all Debit Network rules, regulations, procedures, fees, assessments, penalties, and other membership duties, obligations, and costs of each such Debit Network, which are applicable to Merchant during the term of this Agreement. Merchant shall complete only those POS Transactions that comply in all respects with the Rules and which have been authorized. Merchant shall comply with the Graphics Standards Manual, the Security Manual, all federal, state, and local laws applicable to its participation in the system, including without limitation statutes, regulations, and judicial decisions relating to POS Transactions, POS Terminals sharing, consumer credit, consumer protection, electronic funds transfers, antitrust, franchise, and other trade regulation matters, and shall indemnify and hold Bank and Debit Network harmless against any and all liability or expenses related thereto.

**D. Honoring Cards.** Merchant shall honor all valid Cards when presented for payment of Debit Transactions when such Transactions can be initiated and completed electronically. If a technical malfunction prevents electronic initiation and completion of a Transaction, Merchant is not obligated to complete such Debit Transaction. Merchant shall treat Transactions by any Debit Network Cardholders in the same manner as Transactions by any other Cardholders as permitted by the Rules and Laws. Merchant may not require or ask for the Cardholder's signature or any other means of verifying the Cardholder's identity.

**E. Authorizations.** Bank will provide a Transaction authorization service, which will enable the Merchant to offer its Cardholders a method of payment using PIN-Debit Cards. Merchant will be permitted to accept certain PIN-Debit Cards and access Bank's contracted data center facilities to perform authorization requests.

**F. Funds.** Bank will facilitate the transfer of funds received from the Debit Networks as a result of Merchant's Transaction activity. Funds will be transferred to Merchant's Designated Account using the Automated Clearing House (ACH) of the Federal Reserve Bank, on a two-three (2-3) day delayed basis contingent upon receipt of funds by the Bank and method of Merchant statement reconciliation.

**G. Access.** Upon receipt of written instructions from any Debit Network to which Bank is providing access hereunder, Bank may immediately cease to provide to Merchant and its Cardholders, access to such Debit Network. Bank shall use reasonable efforts to promptly notify Merchant of such interruption in network access. Merchant shall indemnify and hold Bank harmless from any claims, liabilities, or losses, including costs and attorneys' fees, resulting from Bank's compliance with the written instructions of any Debit Network.

**H. No Discrimination.** Merchant shall treat Transactions by any Debit Network Cardholders in the same manner as Transactions by any other Cardholders, unless otherwise permitted under Laws and the Rules.

**I. Equipment.** (a) Merchant shall, at its own expense, obtain and install POS Terminals, together with PIN-Pads and other facilities necessary to support the Debit Network Transactions at Merchant location(s). Merchant shall provide Bank and the Debit Network with a list of all Merchant locations currently with compliant POS Terminals capable of accepting cards and shall provide a list as applicable. All POS Terminals shall accept cards. Merchant at all times shall maintain and operate the POS Terminals in accordance with the Operating Rules. (b) Merchant shall take all reasonable steps necessary to ensure that all POS Terminals and PIN-Pads operated at Merchant locations shall: (i) be available for use by cardholders of all provided Debit Networks for POS Transactions; and (ii) function with a minimum of error and in a reliable manner and meet all applicable standards contained in the Technical Specifications and the Security Manual for Debit Network. (c) Merchant shall have at, or in proximity to, any POS Terminal where a

card is accepted, an operating Track 2 magnetic stripe reader and PIN-Pad that meets the standards contained in Section 3.4. The requirements of this paragraph shall not apply to POS Transactions not involving the transfer of funds such as balance inquiries. Merchant shall be responsible for connecting the POS terminals at each Merchant location.

**J. Receipts.** At the time of any POS Transaction involving a transfer of funds, Merchant shall make available to each cardholder a written receipt that complies fully with all applicable Laws, including, but not limited to, Regulation E (12 C.F.R. § 205), and includes, but is not limited to, the following information: (i) the amount of the POS Transaction; (ii) the Transaction date; (iii) the type of POS Transaction and, if more than one type of account may be accessed at the POS Terminal by the cardholder, the type of account (checking, savings, etc.) and, if more than one account of the same type may be accessed at the POS Terminal by the cardholder the specific account accessed must be uniquely identified; (iv) a number or code that uniquely identifies the cardholder initiating the POS Transaction, or the cardholder's account, or the card used to initiate the POS Transaction; (v) location of the POS terminal at which the POS Transaction was initiated; (vi) the name of the Merchant providing the goods, services or money to the cardholder; and the trace number.

**K. Dispute Resolution.** Merchant will attempt to settle in good faith any dispute with a Cardholder involving a Transaction. Merchant will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. Except as the Debit Networks may permit, Merchant will not make any cash refunds or payments for returns or adjustments on Debit Card Transactions but will instead complete an adjustment form provided or approved by Bank. Any Debit Card Sales Draft for which no refund or return will be accepted by Merchant must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules. Merchant will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. Merchant will cooperate with each processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to Transactions. Merchant will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.

**L. Personal Identification Numbers.** (a) For each PIN-based Debit Card sale, Cardholder must enter a Personal Identification Number ("PIN") through a PIN-pad located at the point of sale. (b) PIN-pad(s) must be situated to permit Cardholders to input PINs without a chance of revealing it to another individual, including Merchant or its employee(s). (c) Merchant will instruct employees not to ask any Cardholder to disclose a PIN and in the event Merchant or employee(s) nevertheless becomes aware of any Cardholder's PIN, Merchant or employee(s) will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person. (d) Merchant must ensure the PIN message is encrypted, using a compliant encryption method, from the PIN-pad to the POS Terminal, and from the POS Terminal to the Debit Network and back (end-to-end). (e) The PIN encryption method considered compliant is the method mandated by the Card Associations, the Debit Networks and the PCI-SSC. (f) Merchant may only use a PIN entry device certified by Bank and listed as compliant by the PCI-SSC (including PTS and PCI-PED) for submitting PIN-Debit Transactions. Merchant will comply with any other requirements relating to PIN security as required by Bank or by any Debit Network, inclusive of PIN encryption method.

**M. Inquiries.** Balance inquiries may be performed only at Cardholder-operated terminals and shall at all times require entry of the Cardholder's PIN and use of the magnetic stripe reader.

**N. Confidentiality.** Merchant shall not disclose to third parties, other than: (a) the Debit Network or Bank or (b) as otherwise specifically required by law, any information related to POS Transactions (including, but not limited to, Cardholder account information) without the prior written consent of the Cardholder and the Card-issuing bank.

**O. Cashback.** (a) Cashback Transactions shall be limited to the maximum of \$200 per Cardholder on any Transaction date. If Merchant allows Cardholders to initiate cashback Transactions, Merchant must transmit to the Debit Network for each cashback Transaction initiated at Merchant's location, the following information in its Transaction message: (i) the amount of cashback given to the Cardholder pursuant to the POS Transaction; and (ii) Whether the POS Transactions involved the issuance of scrip to the Cardholder. For purposes of cashback reporting required under this paragraph, the full amount debited from Cardholder's account during a Debit Transaction initiated at terminal that issues scrip shall be reported as the cashback amount, regardless of the amount used by the Cardholder to purchase goods or services at the Merchant's location. (b) If Merchant receives, in response to a request for authorization for a cashback Transaction involving the purchase of goods and services, a denial code indicating that a cashback Transaction has been denied solely because the cashback portion of the Debit Transaction would cause the Cardholder to exceed a limit on cash withdrawals imposed on the Cardholder by the Card issuing bank, Merchant shall inform Cardholder that the Transaction was denied because it would cause the Cardholder to exceed such limit on cash withdrawals, but that a new Debit Transaction in the amount of the purchase alone may be approved.

**P. Indemnity.** Merchant shall be responsible for and shall indemnify and hold Debit Network and Bank harmless against any and all liability or expense relating to the payment of federal, state, and local sales, use, and other taxes (other than such taxes based in whole or in part on income attributed to fees for services), when due or deemed to be due, as well as all other expenses, fees and charges imposed by a government, arising out of or incidental to its participation in the system.

**Q. Insurance.** Merchant is responsible for obtaining all insurance that may be required by reasonable prudent business practices.

**R. Inspection.** Merchant agrees that, upon request, it will promptly provide to Debit Network or Bank any information reasonably requested by it to aid in determining whether Merchant is in compliance with the Operating Rules and the Graphics Standards Manual, the Security Manual, and this Agreement between Merchant and Bank or Debit Network.

**S. Reimbursements.** Merchant shall promptly reimburse within three (3) business days of the event giving rise to any loss for the amount of all losses resulting from any of the following actions, including without limitation reasonable attorneys' fees and court costs, in the event that Merchant or any of its agents or employees or any of the operators of its POS Terminals at Merchant locations or the employees or agents of any such operators: (i) knowingly permits anyone other than the Cardholder, or a person expressly authorized by the Cardholder, to use the Card and to initiate any POS Transaction; (ii) permits the amount debited in a POS Transaction by use of a Card to exceed the actual amount of goods or services and cashback, if any, provided to such Cardholder at the time in respect to such Transaction; (iii) circumvents the limit imposed by a Merchant on POS Transactions by dual submissions for the same POS Transaction; (iv) otherwise permits the use of any Card in any manner in violation of the Operating Rules or the Security Manual; (v) completes any declined POS Transactions; or (vi) otherwise participates in any fraud resulting in loss.

**T. Records.** Merchant shall retain records for each POS Transaction for at least seven (7) years or for such longer period as is required by applicable Laws, but may not retain information that the Rules or Section 3.4 (Safeguarding Payment Information) forbid or limit.

**U. Investigation.** Merchant is responsible for investigation of any complaints regarding POS Transactions in accordance with the requirements of the Operating Rules.

**V. Security.** Debit Networks, Bank or its designated agent, on behalf of itself or others, shall have the right to inspect Merchant security systems and procedures from time to time after reasonable notice to Merchant.

## 2.7 PROHIBITED AND HIGH-RISK TRANSACTIONS

**IMPORTANT: FAILURE TO COMPLY IN FULL WITH THIS SECTION OF THE AGREEMENT MAY RESULT IN THE TERMINATION OF THIS AGREEMENT, WITHHOLDING OF MERCHANT FUNDS, TERMINATION OF MERCHANT ACCOUNT PRIVILEGES AND MERCHANT MAY BE ADDED TO THE CONSOLIDATED TERMINATED MERCHANT FILE (MATCH).**

**A. Fraud Transactions.** Merchant will not, under any circumstances, present for processing of Sale or Credit, directly or indirectly, any Transaction or any Transaction Merchant knows or should know to be fraudulent or not authorized by the Cardholder. Merchant must not request or use a Card account number for any purpose other than as payment for goods and services.

**B. Factoring.** Merchant will not, under any circumstances, present for processing of Sale or Credit, directly or indirectly, any Transaction not originated as a result of a bona-fide Card Transaction directly between Merchant and Cardholder. Merchant will not present any Sales Drafts on behalf of another company, person, source or entity.

**C. Lawful Purposes.** Merchant will not, under any circumstances, engage in any Transaction, or use Card Acceptance and Transaction capabilities, for selling goods or providing services prohibited by applicable Laws, including but not limited to, the USA PATRIOT Act, Bank Secrecy Act, consumer protection laws, or the U.S. Internal Revenue Code. Merchant will not submit any Transactions prohibited by the Rules. Perpetrators of fraud or fraudulent Transactions will be referred to law enforcement agencies.

**D. Cash Payments.** Merchant will not, under any circumstances, accept cash, checks or other negotiable items from any Cardholder and forward a Credit Transaction as a purported payment or deposit to an account maintained by the Cardholder.

**E. Cash Advances.** Merchant will not submit, deposit or process any Transaction for the purpose of obtaining or providing a cash advance. Merchant will not submit any Transaction that involves a Card owned or controlled by Merchant for the purpose of obtaining a cash advance or deposit of funds into Merchant's own Designated Account. Merchant agrees that any such deposit or Transaction may result in immediate termination.

**F. Refinancing Existing Debt.** Merchant will not accept a Card to collect or refinance an existing debt that: (i) has been deemed uncollectible by the Merchant providing the associated goods or services; (ii) represents any other pre-existing indebtedness by Cardholder, including collection of delinquent accounts on behalf of other parties; (iii) represents the collection of a dishonored check. Further, Merchant must not accept Cardholder payments for previous Card charges.

**G. Merchant Category.** Merchant may not accept Card payments for products or services delivered to Cardholder that are not directly applicable to the Merchant Category Code (MCC) entered on the Merchant Application for which Merchant was approved. Should Merchant's MCC change after the Effective Date of this Agreement, Merchant shall not submit, deposit, or process any Transactions until receiving Bank's written approval of an MCC change. Merchant understands that accepting payments for goods and/or services not directly relating to the approved MCC may result in termination of this Agreement.

**H. Card Association Rules.** Merchant shall comply with the Card Association Rules, as amended from time to time. Merchant is required to review the latest versions of Card Association Rules, as applicable to Merchant's obligations under this Agreement, available online at each Card Association's website.

**I. Cooperation.** Merchant will fully cooperate with Bank and each Card Association in the event that Bank or any Card Association determines that there is a substantial risk of fraud arising from Merchant's access to Card processing networks. Merchant will take whatever action(s) Bank or Card Associations reasonably require to protect Bank, Card Associations, or their members or

Cardholders. Neither the Bank nor the Card Associations nor any of their respective personnel will have any liability to Merchant for any action taken in good faith.

**J. Prohibited Transactions.** Merchant will not submit any telemarketing (inbound or outbound) sales Transactions or any other Transactions that Bank or Card Associations deem to be High Risk unless Merchant obtains Bank's prior written consent. Such consent will be subject to Bank's final approval and may be revoked by Bank without prior notice. Consent can be obtained only from Bank and cannot be granted by Bank's agents, affiliates, Independent Sales Organizations (ISOs), Merchant Service Providers (MSPs) or other non-Bank entities. Merchant may be subject to Card Association registration and reporting requirements. If Merchant processes any such Transactions without Bank's prior approval, Merchant may be terminated immediately and Bank may suspend funds and/or require Merchant to establish a Reserve Account.

## **ARTICLE III – MUTUAL OBLIGATIONS**

### **3.1 DESIGNATED ACCOUNT**

**A. Establishment and Authority.** Merchant will establish and maintain a demand deposit account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations to Bank and Company, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank and Company to debit the Designated Account for Chargebacks, fees, and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least two (2) years after termination of this Agreement whether or not Merchant has notified Company and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Company to change the Designated Account. If Merchant does not obtain that consent, Company and Bank may immediately terminate this Agreement and may take other action necessary, as determined by them in their sole discretion.

**B. Deposit.** Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Article IV upon receipt of funds from Visa, MasterCard, Discover, or a Debit Network. Typically, the deposit will be initiated three (3) business days following Bank's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce Transactions, which may be initiated five (5) business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Bank will be the only entity to deposit Sales Drafts to the Account subject to Section 2.4. Merchant authorizes Bank and Company to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank or Company, in its sole discretion, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all Chargebacks.

**C. Merchant's Duty to Report Asserted Errors or Claims.** Merchant must promptly examine all statements relating to the Designated Account, and all statements from Bank or Company, and immediately notify Bank or Company at the address in Section 8.2.G (Notice) of this Agreement in writing of any asserted errors or claims. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error or claim, (iii) a description of the asserted error or claim; and (iv) an explanation of why Merchant believes an error or claim exists and the cause of it, if known. That written notice must be received by Bank or Company within 30 calendar days after Merchant receives the periodic statement containing the asserted error or claim. **Merchant's failure to notify Bank or Company of any error or claim within thirty (30) days constitutes a waiver of any claim relating to that error or claim.** Merchant may not make any claim against Bank or Company relating to any asserted error or claim for 60 calendar days immediately following Bank's receipt of Merchant's written notice. During that 60-day period, Bank and Company will be entitled to investigate the asserted error or claim.

**D. Indemnity.** Merchant will indemnify and hold Bank, and Company harmless for any action either takes against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

**E. ACH Authorization.** Merchant authorizes Bank and Company to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by Merchant at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event Merchant changes the Designated Account, this authorization will apply to the new account.

**F. Fees. Unless otherwise approved in writing by Bank, Merchant agrees to pay \$25 for each debit or credit rejected or returned from the Designated Account and \$50 for each DDA change submitted to Bank during the term of this Agreement.**

### **3.2 MERCHANT OBLIGATIONS**

**A. Notification of Business Changes.** Merchant shall provide Bank with immediate notice if Merchant intends to: (i) transfer, sell, or liquidate any substantial part of its total assets or equity; (ii) change the basic nature of its business affecting Merchant's MCC; (iii) change 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 Merchant's business; or (v) modify Merchant's monthly processing volume or average ticket size as approved by Bank (collectively known as "Business Changes"). Notice to Bank must be made in accordance with Section 8.2.G (Notice). Failure to provide notice of Business Changes may result in termination of this Agreement. In event of Business Changes, Bank may, in its sole discretion, terminate this Agreement. In its sole discretion, Bank may or may not offer Merchant a new Agreement. If Bank suffers a monetary loss caused by Merchant's failure to comply with this section, Bank has the right to recover such losses by means of enforcing its

Security Interests per Section 4.1 of the Agreement along with its other remedies.

**B. Financial Condition.** (a) Merchant will notify Bank, within one business day, in event of bankruptcy, receivership, insolvency, or similar condition or action initiated by or against Merchant or any of its principals (collectively referred to as a "Financial Condition Change"). (b) Merchant will include Bank as a creditor in Merchant's bankruptcy proceedings if Merchant has funds due to Bank for any reason including fees, Chargebacks, or ACH rejects. (c) In event of a Financial Condition Change, or if Merchant is aware of a future or imminent Financial Condition Change, Merchant will cease all Card acceptance at once and will no longer accept and submit Card Transactions until Bank has given Merchant permission to do so after receiving notice of Financial Condition Change. (d) In the event of a Financial Condition Change, Merchant will not sell, transfer, or disclose any Cardholder information, inclusive of Card account numbers or personal information, to agents, vendors, or any other persons or entities.

**C. Separate Notification.** Separate notification regarding changes to account information, including those to the Designated Account, must be made to outside services used by Merchant including but not limited to American Express and any leasing company.

**D. Equipment.** If Merchant enters into a lease agreement to obtain POS equipment from Bank: (a) Merchant is required to verify the terms of the Lease agreement by way of a telephone conference call between Merchant, Bank, and the leasing company. For each Lease agreement Merchant will have a scheduled appointment date and time to complete this verification. If Merchant does not verify Lease on the scheduled appointment date and time, a Bank representative will make two (2) additional attempts to contact Merchant and complete the verification. If the Lease cannot be successfully verified after these additional attempts, an ACH debit will be made to the Merchant's Account to recover cost of equipment, shipping and handling. Merchant may contact Bank to reschedule the appointment prior to the initial appointment date and time. The rescheduled appointment cannot be set more than five (5) business days from the original appointment date. (c) Merchant cannot return equipment after 30 days from receipt. Merchant agrees that any and all equipment returns are assessed a twenty percent (20%) restocking fee.

**E. Request for Copy.** Within three (3) calendar days of receipt of any written or oral request by Bank, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof, in size comparable to the actual Sales Draft, and any other documentary evidence available to Merchant and reasonably requested by Bank to meet Bank's obligations under Laws (including its obligations under the Fair Credit Billing Act, 15 U.S.C. § 1601) or otherwise to respond to questions concerning Cardholder accounts. **Unless otherwise approved by Bank, Merchant will be assessed a \$15 fee for each request for copy.**

### **3.3 CREDIT INQUIRIES FINANCIAL EXAMINATION AND INSPECTIONS.**

**A. Credit Inquiries.** Merchant, its signing officers, owners, partners, and principals, and any Guarantors, authorize BANK, and its agents or assigns, to make, from time to time, any business and personal credit and other inquiries Bank considers necessary to review the acceptance and continuation of this Agreement. Merchant authorizes persons or entities contacted by Bank or any of its affiliates, in relation to this Agreement, to release the credit information requested by Bank or any affiliate. By executing this Agreement, Merchant, its signing officer/owner/partner/principal and any Personal Guarantor acknowledge that BANK has a legitimate business need for the information contained in any personal credit report that may be obtained in connection with this Agreement, and that this Agreement is a business Transaction that was initiated by the Merchant and any Personal Guarantor identified in the Merchant Application. Merchant authorizes Bank and Company to make credit inquiries Bank considers necessary, in its sole discretion, to review the acceptance and continuation of this Agreement. This authority is granted to Bank and Company at any time during which Merchant owes any obligation to Bank or Company and survives the termination of this Agreement. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, principal owners, or officers. If requested to do so by Bank or Company, Merchant shall provide written consent of any individual for whom an inquiry has been or is to be made if such individual did not sign the Merchant Application.

**B. OFAC.** Merchant, its principal owner(s) and Guarantor(s), acknowledge that Bank is required by federal law (Section 326, USA PATRIOT Act of 2001) to inquire with the Office of Foreign Asset Control (OFAC) of the U.S. Treasury Department if Merchant, its principal owner(s), proprietor(s), officer(s) or Guarantor(s) are present on any lists maintained by OFAC prior to accepting Merchant.

**C. Inspections.** Merchant agrees to permit Bank and Company to inspect at reasonable times locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records, and license(s) or permit(s) (where necessary) to conduct its business. However, nothing in this paragraph shall be interpreted as a waiver of Merchant's obligation to comply in all respects with the terms of this Agreement.

**D. Audits and Reviews.** Merchant authorizes Bank and Company to audit Merchant's records, systems, processes, or procedures to confirm compliance with this Agreement, as amended from time to time. Merchants processing dollar volumes in excess of \$100,000 per month will cooperate with Bank and Company in performing annual financial reviews by presenting up-to-date financial statements, tax returns, and bank statements in order to assure Bank and Company that Merchant maintains a favorable capital position, liquidity, stability, business practices, and general financial condition to fulfill the responsibilities tied to high volume Card processing.

**E. USA PATRIOT ACT Requirements.** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each

person (including business entities) who opens an account. What this means: When Merchant opens an account, Bank will ask for the applicant's name, physical address, date of birth, taxpayer identification number, and other information that will allow Bank to identify the applicant. Bank may also ask to see the applicant's driver's license or other identifying documents. Bank will advise Merchant if additional information is required.

**F. Monitoring.** Merchant understands and agrees that any telephone conversation between Merchant and Bank, or Merchant and Company, may be monitored and recorded.

### 3.4 SAFEGUARDING PAYMENT CARD INFORMATION

**A. Release of Payment Card Information.** Merchant will not, under any circumstance, disclose, copy, distribute, release, make public, or transmit payment card information including account number, expiration date, CVV2/CVC2 or other Card security codes, or any data element relating to the payment Card to any third party, person, company, recipient, or entity other than Bank or its authorized processing agent.

**B. Storing Card Data.** If Merchant is inclined to retain paper or electronic Sales Drafts or Credit Vouchers, Merchant may only do so if (i) Sales Drafts or Credit Vouchers contain only Cardholder account information permitted to be retained by Merchant as mandated by the Rules; (ii) any type of electronic storage is maintained in strict accordance with the PCI-DSS on a PA-DSS certified system; (iii) Sales Drafts or Credit Vouchers which no longer bear an importance are properly destroyed in a manner which renders the data unreadable and unrecoverable.

**C. Prohibited Data Storage.** Neither Merchant nor any type of software system used by Merchant, shall store, save, or retain, in whole or in part, either electronically, on paper or any other type of media, payment card magnetic stripe information, track data, or Card security codes (e.g. CVV, CVC, CID, CVV2 or CVC2) appearing or stored on the payment Card.

**D. Payment Applications.** Merchant may be using special services, hardware or software provided by a third party ("Third Party Payment System") to assist Merchant in processing Transactions, including Authorizations, batch settlement, or accounting functions. In the event Merchant uses a Third Party Payment System including, but not limited to, a POS terminal, POS system, POS software, payment software, payment gateway, virtual terminal, Cardholder activated terminal or automated fuel dispenser, Merchant is responsible for assuring third party system is PA-DSS certified and complies with the PABP (Payment Application Best Practices) as set forth by the Payment Card Industry Security Standards Council (PCI-SSC) and the Card Associations. Merchant must ensure that any software or system updates of Third Party Payment System(s) satisfy all security standards required under the Rules (including PABP, PA-DSS and PCI-DSS). All electronic commerce Merchants must provide Cardholders with a secure and encrypted transaction method, utilizing a valid Secure Sockets Layer (SSL) certificate or 3D Secure. Bank has no responsibility for any Transaction until that point in time Bank receives data about the Transaction. Merchant must notify Bank of its use of any Third Party Payment System that will have access to or stores Cardholder or Payment Card information.

**E. Electronic Terminals.** If Merchant provides its own Point-of-Sale electronic terminal or similar device ("POS Terminal"), such POS Terminals must comply with, and meet all requirements set forth by, Bank, any applicable processor, and directives set forth by the PCI-SSC, as amended from time to time, in order to submit Transactions. Information regarding a sales or credit Transaction transmitted with a POS Terminal will be transmitted by Merchant to Bank or applicable Processing Host in the format Bank from time to time specifies or is required under the Rules. If Bank requests a copy of a Sales Draft, credit voucher, or other Transaction evidence, Merchant will provide it within three (3) business days following the request. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided Bank with at least thirty (30) days' prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to Bank or Processing Host.

**F. PCI-DSS Compliance.** Merchant shall be in full compliance with rules, regulations, guidelines, and procedures adopted by any Card Association or Payment Network relating to the privacy and security of Cardholder and Card Transaction data, including without limitation the most up-to-date version of the Payment Card Industry Data Security Standard (PCI-DSS), as amended from time to time by the Payment Card Industry Security Standards Council. Detailed information pertaining to these requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements may be found on the Card Associations' websites.

**G. Merchant Responsibility.** (a) MERCHANT SHALL BE LIABLE FOR ALL FINES, CHARGES, AND PENALTIES THAT MAY BE ASSESSED BY ANY CARD ASSOCIATION OR PAYMENT NETWORK AS A RESULT OF TRANSACTIONS MADE BY MERCHANT OR MERCHANT'S NONCOMPLIANCE WITH ARTICLE III'S REQUIREMENTS. (b) Merchant acknowledges that it may be prohibited from participating in payment network programs if it is determined that Merchant is non-compliant. (c) Merchant acknowledges that Bank may cause Merchant to subject to an audit to verify Merchant's compliance with security requirements. (d) Merchant must notify Bank within twenty-four (24) hours after becoming aware of: (i) any suspected or actual data security breach; or (ii) any noncompliance by Merchant with security requirements. (e) Merchant shall, at its own expense: (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data by an authorized assessor acceptable to Bank; (ii) take all such remedial actions recommended by such investigation, Bank, or Card Association; and (iii) cooperate with Bank in the investigation and resolution of any security breach.

**H. Truncation.** Merchant must comply and adhere to the security provisions set forth in the Fair and Accurate Credit Transactions Act of 2003 (FACTA), 15 U.S.C. § 1681c(g), which mandates that Card receipts given to the Cardholder

may not contain: (i) more than the last five digits of the credit card account number; and (ii) that the Card receipt may not contain the expiration date.

**I. Privacy Policy.** If Merchant sells goods or services on the Internet, Merchant's website must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer Transaction data.

**J. Passwords.** If Merchant receives a password from Bank to access a transaction system or gateway, Merchant shall: (i) keep the password confidential; (ii) not allow any other entity or individual to use the password or gain access to Bank's systems; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Bank if Merchant believes the confidentiality of Bank's system or Merchant's information has been compromised by use of such password.

### 3.5 FEES AND OTHER AMOUNTS OWED BANK OR COMPANY; FEE CHANGES

**A. Fees and Taxes.** Merchant will pay Bank and Company fees for services, forms, and equipment in accordance with the fees and rates set forth on the Merchant Application and all other sums owed to Bank and Company for sales and Services set forth in this Agreement, as applicable. Merchant agrees that it is jointly and severally liable for all fees, charges, and other sums owed to Bank or Company by any affiliated entities of Merchant and permits Bank or Company to withhold funds from any affiliated entity to satisfy an obligation of Merchant. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day or month's activity, or will be deducted from funds due Merchant attributable to Sales Drafts presented to Bank. **Bank and Company reserve the right, with thirty (30) days' written notice, to change the fees and charges set forth on the Merchant Application, including adding fees for additional services utilized by Merchant. But Company or Bank may change fees in response to changes in Card Brand fees with less than thirty (30) days' notice.** Merchant is obligated to pay all taxes, and other charges imposed by any governmental authority on the Services provided under this Agreement. **MERCHANT AUTHORIZES BANK AND COMPANY TO INITIATE DEBIT AND CREDIT ENTRIES TO THE DESIGNATED ACCOUNT FOR THE PURPOSES OF THE PAYMENT OF FEES AND ANY OTHER SUMS DUE UNDER THIS AGREEMENT.**

**B. Other Amounts Owed.** Merchant will immediately pay Company and Bank any amount incurred by Company or Bank attributable to this Agreement including but not limited to Chargebacks, fines imposed by Card Associations, insufficient funds fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. Merchant authorizes Company and Bank to debit via ACH the Designated Account, Reserve Account, or any other account Merchant has at Bank, Company, or at any affiliate of Bank or other financial institution for any amount Merchant owes Company or Bank under this Agreement or under any other contract, note, guaranty, instrument, or dealing of any kind now existing or later entered into between Merchant and Company or Bank, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. If funds acquired do not fully reimburse Company and Bank for the amounts owed, Merchant will immediately pay Company or Bank such amounts. Merchant agrees to pay an interest rate of the lesser of 18% per annum or the maximum lawful rate on any overdue funds to Bank, or the greatest amount allowed by law, whichever is greater.

**C. Pass-Through Fees.** Each card organization (Visa, MasterCard and Discover Network) assess fees to merchants in connection with transactions that are outside the control of Bank, such as, dues & assessments, fixed acquirer network fees, international/cross-border transaction fees, network access and data usage charges. Because these fees are frequently modified by the card organizations, a detailed list of these fees has been posted online at [www.lighthouse-network.com/cardassociationfees](http://www.lighthouse-network.com/cardassociationfees) where these fees are kept up to date. Pass-through fees are charged at cost to Merchant.

### ARTICLE IV – SECURITY INTERESTS, RESERVE ACCOUNT, RECOURSEMENT AND SET-OFF

#### 4.1 SECURITY INTERESTS

**A. Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; (iv) Merchant's electronic terminal, printer, imprinter and imprinter plate; (v) all accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor(s), including any affiliated companies of Merchant and/or Guarantor(s), whether established or designated and maintained pursuant to this Agreement or not; and (vi) any and all amounts which may be due to Merchant under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other collateral or security to Bank to secure your obligations under this Agreement upon Bank's request. These security interests and liens will secure all Merchant obligations under this Agreement and any other agreements now existing or later entered into between Merchant and Bank. This security interest may be exercised by Bank without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.

**B. Perfection.** Upon request of Bank, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant will represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Bank is not required to file a motion for relief from a bankruptcy action automatic stay for Bank to realize

on any of its collateral (including any Reserve Account). Nevertheless Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Bank. Merchant authorizes Bank to appoint Bank as Merchant's attorney-in-fact to sign Merchant's name to any financing statement used for the perfection of any security interest or lien granted hereunder.

**C. Guaranty.** As a primary inducement to Bank and Company to enter into this Agreement with Merchant, the undersigned Guarantor(s), whether by signing the Merchant Application or by acknowledging consent by electronic means, jointly and severally, unconditionally and irrevocably, guarantees the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Bank and Company pursuant to this Agreement, any other agreements entered into by Guarantor and/or Merchant, as they now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Bank or Company may proceed directly against Guarantor(s) without first exhausting its remedies against any other individual or entity responsible to it or any security held by Bank, Company or Merchant. This Guaranty will not be discharged or affected by the death of Merchant or the Guarantor(s), will bind all heirs, administrators, representatives and assigns of Merchant and Guarantor(s) and may be enforced by or for the benefit of any successor of Bank or Company. Guarantor(s) understand that the inducement to Bank and Company to enter into this Agreement is consideration for this Guaranty, and that this Guaranty remains in full force and effect even if Guarantor(s) receives no additional benefit from the Guaranty.

## 4.2 RESERVE ACCOUNT

**A. Establishment.** Merchant will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank and/or Company initially or at any time in the future as requested by Bank or Company, with sums sufficient to satisfy Merchant's current and future obligations as determined by Bank or Company. Merchant authorizes Bank and Company to debit the Designated Account or any other account Merchant has at Bank, Company, or any other financial institution to establish or maintain funds in the Reserve Account. At any time Bank or Company may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this section, if Bank or Company determines such action is reasonably necessary to protect its interests.

**B. Use of Reserve Account.** Bank or Company may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and Bank or Company. Further, Bank or Company may exercise its rights under this Agreement against the Reserve Account to collect any amounts due to Bank or Company including, without limitation, rights of set-off and recoupment. Bank and Company's rights to outstanding amounts owed it by Merchant pursuant to this Agreement shall in no way be limited to the balance or existence of the Reserve Account. Rights granted to Bank and Company with respect to the Reserve Account, as well as the security interest under this Agreement, shall survive the termination of this Agreement.

**C. Funds.** Funds in the Reserve Account will remain in the Reserve Account until one (1) year following the latest of termination of this Agreement, Merchant's last transmission of a Sales Draft or Credit Voucher to Bank, or a Chargeback submitted by Cardholder, provided, however, that Merchant will remain liable to Bank and Company for all liabilities occurring beyond such one-year period. After the expiration of such one-year period Merchant may request, in writing, that Bank or Company (depending upon which holds a Reserve Account) release any funds remaining in the Reserve Account. Merchant agrees that Merchant will not use funds in the Reserve Account for any purpose, including but not limited to paying Chargebacks, fees, fines, or other amounts Merchant owes Bank or Company under this Agreement. Bank or Company will have sole control of the funds in the Reserve Account.

**D. Assurance.** In the event of a bankruptcy proceeding, Bank and Company do not consent to assumption of this Agreement. Nevertheless, in the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under the Bankruptcy Code (11 U.S.C. § 365), as amended from time to time, Merchant must establish or maintain a Reserve Account in an amount satisfactory to Bank. Assumption will be made under terms and conditions that are acceptable to Bank and Company and comply with applicable Laws governing such assumption.

**E. Recoupment and Set-Off.** Bank and Company have the right of recoupment and set-off. Specifically, Bank and Company may offset or recoup any outstanding and uncollected amounts owed by Merchant from: (i) any amounts Bank would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Company may owe Merchant under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under the Bankruptcy Code to Bank or Company, Merchant must create or maintain the Reserve Account as required by Bank or Company, and Bank and Company must have the right to offset against the Reserve Account any and all obligations Merchant may owe to Bank or Company, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

**F. Recoupment of Chargebacks.** In the event of Merchant's default in payment of Chargebacks, Merchant and Guarantor(s) agree: (i) that all personal bank accounts standing in their names shall be subject to this Agreement and ACH debits; (ii) all ACH debits, whether made against Merchant's Account or a Guarantor's personal account, shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system; and (iii) Merchant and Guarantor(s) irrevocably consent to Bank and Company utilizing any means

available to locate such deposit accounts until such time when all amounts due have been satisfied. Bank and Company may enforce this security interest as applicable by: (a) making an immediate debit/charge via the ACH system (code CCD) to any deposit account standing in the name or names of Merchant or Guarantor(s), without notice or demand of any kind; and interrupting the electronic transmission of funds to any account through the ACH system; (b) freezing the Designated Account and Reserve Account, without notice or demand of any kind; (c) taking possession of any or all of Merchant's Sales Drafts; (d) taking possession of any and all of Merchant's electronic terminals, printers, imprinters, and imprinter plates; (e) placing a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to Bank or Company arising under this Agreement has been satisfied in full; (f) obtaining a writ of attachment or a writ of possession without bond pertaining to Merchant or Guarantor(s)'s personal property upon a showing of reasonable ground to believe that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that Bank or Company determines to be necessary to preserve and protect this security interest. The granting of this security interest by Merchant and Guarantor(s) in no way limits Merchant's liabilities to Bank and Company under this Agreement.

**G. Account Monitoring.** (a) Merchant acknowledges that Bank and Company will monitor Merchant's daily deposit activity. The deposit activity must remain consistent with the monthly volume and average ticket amount approved or adjusted by Bank ("Risk Parameters"). If Merchant should exceed Risk Parameters, Merchant agrees to provide all documentation Bank or Company may require. **Merchant agrees that Bank or Company may decline to deposit total Sales Draft dollar volume in excess of the approved monthly volume, and that Merchant may be subject to a 5% fee on all funds processed over the approved monthly volume. Merchant agrees that Bank or Company may, in its sole discretion, suspend Merchant's Transaction deposits for any reasonable period of time required to investigate suspicious or unusual Transaction activity. Bank and Company shall make a good faith effort to notify Merchant promptly upon discovering that deposit activity exceeds the approved monthly volume or average ticket amount. Merchant agrees to pay \$25.00 for each release of funds suspended by Bank or Company.** Bank and Company shall have no liability for any losses, direct or indirect, that Merchant may attribute to any suspension of funds disbursement. (b) **In the event of suspension of Transaction deposits by Bank or Company, Merchant agrees that a Security Processing Fee not to exceed 110% of the Transaction activity may be assessed.** (c) If a batch is suspended by Bank or Company, Merchant acknowledges that the consumer's product or service must be delivered just as if the Merchant has been paid. Further, if a batch or a Transaction is suspended, Merchant acknowledges that fees, including security fees, will be assessed by Bank or Company. (d) If Bank or Company, in its sole discretion, deems Merchant's type of business a compliance risk to Bank or Company, Bank or Company may enroll Merchant in a third-party risk monitoring service ("Monitoring Service") at Merchant's sole expense. Merchant will either be notified in advance of underwriting approval of enrollment in a Monitoring Service and related expenses, or notified no less than 30 days in advance if Merchant has an open merchant account with Bank. Merchant's refusal to enroll in a Monitoring Service when mandated by Bank or Company may result in termination of this Agreement.

## ARTICLE V – TERM, TERMINATION EVENTS, AND FEES

### 5.1 TERM AND TERMINATION

**A. Term.** This Agreement will remain in effect for a period of three (3) years ("Initial Term") and will renew for successive two- (2) year terms ("Renewal Term") from the Effective Date unless terminated earlier as set forth in this Agreement.

**B. Termination.** This Agreement may be terminated by Bank, Company, or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement. Merchant may also terminate this Agreement as follows: (a) Upon Bank's or Company's default of any material obligation to Merchant hereunder and the failure of Bank or Company to cure such default within thirty (30) days after written notice of such default is received; (b) Upon written notice of non-renewal at least ninety (90) days prior to the commencement of any Renewal Term; or (c) On thirty (30) days' notice of termination accompanied by payment of the Account Closure Fee. See Section 5.2.C (Early Termination with Account Closure Fee).

**C. Debit Termination.** Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Bank's or Merchant's access to such Debit Network whether caused by termination or expiration of Bank's agreement with such Debit Network or otherwise. In addition, in the event that Bank's participation in such Debit Network is suspended for any reason, processing through such Debit Network by Merchant will be suspended for the period of time of such suspension and Bank will notify Merchant of that event. **Neither Bank nor any Debit Network will have any liability to Merchant as a result of any such suspension or termination.**

**D. Terminated Merchant File.** Merchant acknowledges that MATCH (formerly known as the Combined Terminated Merchant Files or "CTMF") is a file maintained by MasterCard and accessed by Card Associations and banks containing the business names and the identification of principals of merchants that have been terminated for one or more reasons specified in the Rules. Merchant acknowledges that Bank is required to report the business name of Merchant and the names and identification of its principals to MATCH when Merchant is terminated for such reasons. **Merchant consents to such reporting to the Card Associations by Bank. Further, Merchant waives and will hold**



**harmless Bank and Company from any claims Merchant may raise as a result of such reporting.**

**E. Designated Account.** All Merchant obligations regarding accepted Sales Drafts will survive termination. Merchant must maintain in the Designated Account and the Reserve Account enough funds to cover all Chargebacks, deposit charges, refunds and fees incurred by Merchant for a reasonable time, but in any event not less than the time specified in this Agreement. Merchant authorizes Bank and Company to charge those accounts, or any other account maintained under or specified in this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, Merchant will pay Bank and Company the amount owed to Bank and Company upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

**F. Reason to Terminate.** Bank or Company may terminate this Agreement immediately without prior notice if (i) Bank or Company reasonably believes that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) Bank or Company is required to take action to prevent loss to Bank, Company, or Card Issuers, (iii) any significant circumstances that do or could create harm or loss of goodwill to any Card Association occur; (iv) Merchant appears on any Card Association's security or termination reporting; (v) Bank's Merchant acceptance criteria or Laws relating to Merchant's business change; (vi) Merchant fails to pay any fees or charges when due; (vii) Merchant has misrepresented or omitted any material information provided to Bank; (viii) Merchant is in breach of this Agreement or the Rules; (ix) Merchant, after Bank's or Company's request, fails to send copies of Sales Drafts to Bank or Company; (x) Merchant submits for processing Sales that were not originated as a result of a direct Sale Transaction between a Cardholder and Merchant in the normal course of business ("Laundering"); (xi) a material change of Merchant's business as described in the Merchant Application ("Business") occurs; (xii) one of the Card Brands identifies Merchant, its principal(s), Guarantor(s), or associated persons or entities under any program designed to monitor merchants, or Merchant creates circumstances that cause harm or loss of goodwill to Bank or a Card Brand; (xiii) Merchant is inactive for ninety (90) days and is not a seasonal Merchant; (xiv) A Guarantor (if designated) gives notice of its intention to withdraw its Guaranty; or (xv) due to insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any Merchant's assets for the benefit of Merchant's creditors, or if any part of Merchant's assets is or becomes subject to any levy, seizure, assignment, or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter.

**G. Bankruptcy.** If any case or proceeding is commenced by or against Merchant under any Laws dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank and Company shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by Bank or Company. Upon filing voluntary or involuntary bankruptcy proceedings by or against Merchant, Merchant must notify Bank in writing within five (5) days. Notification must be sent by certified mail, return receipt requested, to Bank at the address in Section 8.2.G (Notices). Credits to Merchant's Designated Account and other payments to Merchant are provisional. Bank, Company, and Merchant acknowledge this Agreement is an agreement whereby Bank is extending financial accommodations to Merchant within the meaning of 11 U.S.C. § 365(c)(2) of the Bankruptcy Code, as amended from time to time. The right of Merchant to receive any amounts due or to become due from Bank or Company is expressly subject and subordinate to the Chargeback, recoupment, setoff, lien, and security interest rights of Bank and Company under this Agreement without regard to whether such Chargebacks, recoupment, setoff, lien, or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

## **5.2 ACTION TAKEN UPON TERMINATION; ACCOUNT CLOSURE FEE**

**A. Discontinuation of Services.** In the event of termination for any reason, Merchant authorizes Bank and Company to withhold and discontinue the disbursement for all Cards and other payment Transactions of Merchant in the process of being collected and deposited. Upon termination for any reason, Merchant will immediately cease requesting and will cease transmitting Sales Drafts to Bank. In the event Merchant obtains any Authorization after termination, Merchant acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement.

**B. Maintaining Reserves.** Collected funds will be placed in a Reserve Account until Merchant pays any equipment and processing cancellation fees and any outstanding charges, losses, or amounts for which Merchant is liable under this Agreement (including other Merchant Processing Agreements entered into by Merchant with Bank or Company). Further, Bank and Company reserve the right to require Merchant to deposit additional amounts based upon Merchant's processing history or anticipated risk of loss to Bank or Company into the Reserve Account. The Reserve Account shall be maintained for a minimum of one year after the termination date and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Bank or Company terminates the Reserve Account. Any remaining balance after Chargeback rights have expired and all other expenses, losses, and damages have been paid will be disbursed to Merchant upon written request.

**C. Early Termination with Account Closure Fee.** If Merchant terminates this Agreement before the end of the Initial Term or any Renewal Term, Merchant will immediately pay Company, as deconversion costs, an

Account Closure Fee equal to \$60 multiplied by the remaining months of the term of this Agreement or \$ whichever is greater. Merchant agrees that the Account Closure Fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Other remedies Bank and Company may have under this Agreement still apply. The Early Termination Fee will be debited within three (3) business days of termination of the Agreement.

**D. Records.** Following termination, Merchant shall retain and, upon request, provide Bank or Company with all original and microfilm copies of Sales Drafts and Credit Vouchers as of the date of termination.

**E. Return to Bank and Company.** All promotional materials, advertising displays, signage, emblems, Sales Draft forms, credit memoranda, and other forms supplied to Merchant or Company and not purchased by Merchant or consumed in use will remain the property of Bank or Company and will be immediately returned to Bank or Company upon termination of this Agreement. Merchant is fully liable for all loss, cost, and expense suffered or incurred by Bank or Company arising out of the failure to return or destroy such materials following termination.

## **ARTICLE VI – INDEMNIFICATION, LIMITATION OF LIABILITY, NO WARRANTIES**

### **6.1 LIMITATION OF LIABILITY**

**A. Limitation of Liability.** Any liability of Bank or Company under this Agreement, whether to Merchant or to any other person or entity, whatever the basis of liability, shall not exceed in the aggregate the difference between: (i) the amount of fees paid by Merchant to Bank or Company, as applicable, during the first month in which the event out of which the liability arose occurred; and (ii) assessments, Chargebacks, and any offsets authorized under this Agreement against such fees which arose during such month. In the event more than one month was involved, the aggregate amount of Bank's and Company's liability shall not exceed the lowest amount determined in accordance with the foregoing calculation for any one month involved. In no event will Bank, Company, or their respective officers, agents, directors, affiliates, predecessors, successors, or employees, be liable for any indirect, special, or consequential damages including lost profits, revenues, or business opportunities. **IN NO EVENT SHALL BANK, COMPANY, OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES OR OTHER MALWARE, BUSINESS OR PROFITS, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE BANK, COMPANY, AND MERCHANT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MERCHANT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY ACCOUNT CLOSURE FEE AS PROVIDED IN SECTION 5.2.C SHALL NOT BE PROHIBITED BY THIS SECTION.**

**B. Indemnification.** Merchant shall hold harmless and indemnify the Card Associations, Bank, Company, affiliates, officers, directors, agents, representatives and their employees harmless from: (i) any claim relating to a dispute between Merchant and a Cardholder; (ii) all claims by third parties arising out of this Agreement; (iii) any Sales Draft paid for by Bank or Company as may be made by anyone by way of defense, dispute, off-set, counterclaim or affirmative action, or for any damages of, or losses that Bank or Company may incur as a result of Merchant's breach of this Agreement; (iv) any act or omission by Merchant which violates any Laws, the Rules, or the rights of another person or otherwise injures any third party; and (v) for all attorneys' fees and other costs and expenses paid or incurred by Bank or Company in the enforcement of this Agreement, including but not limited to those resulting from any breach by Merchant of this Agreement and those related to any bankruptcy proceeding. Merchant shall be solely responsible for losses and Chargebacks incurred as a result of, or arising out of, any fraud including Laundering, negligence, or willful misconduct on the part of Merchant, or Merchant's employee(s) or agent(s). Merchant is responsible for any electronic virus or other malware that may be encountered and is responsible for routinely scanning its computers and storage media using a reliable antivirus product to detect and remove any viruses or other malware found.

**C. Service Agreement.** **THIS AGREEMENT IS A SERVICE AGREEMENT. BANK AND COMPANY DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER INDIVIDUAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.**

THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY BANK, COMPANY, THE CARD BRANDS, AND THE CARD BRANDS' CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. BANK AND COMPANY ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF ARTICLE TWO THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY. For avoidance of doubt, Merchant may enter into a point of sale system service agreement with Company. Bank is not a party to such point of sale system service agreements, and they are not governed by this Agreement.

**6.2 LEGAL ACTION MUST BE BROUGHT WITHIN ONE YEAR.** All legal action (including arbitration) between Merchant and Bank or Company must be

commenced within one (1) year of the date the error or incident giving rise to such action occurred. OTHERWISE SUCH ACTION IS PERMANENTLY BARRED.

### 6.3 REPRESENTATIONS AND WARRANTIES

**A. Performance.** Bank and Company will perform all Services in accordance with this Agreement. Bank and Company make no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty.

Merchant understands that Bank and Company merely provide processing services for Sales or Services and neither is a partner in Merchant's business operations nor a guarantor of Merchant's receipt of the proceeds of Sales or Services. Bank and Company do not guarantee that Sales or Services will not be subject to Chargebacks.

**B. Terminals not Provided by Bank or Company.** Merchant will notify Bank and Company immediately if Merchant decides to use electronic authorization or data capture terminals or software provided by any entity other than Bank, Company, or their authorized designees ("Third-Party Terminals") to process Transactions. If Merchant elects to use Third-Party Terminal(s), Merchant agrees: (i) the third party providing the terminals or software will be Merchant's agent in the delivery of Transactions to Bank via a 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, including but not limited to Section 3.4 (Safeguarding Payment Card Information). Neither Bank nor Company will be responsible for any losses or additional fees Merchant incurs as a result of any error by a third party or a malfunction in a third party's software or terminal.

**C. Warranties of Merchant.** Merchant represents and warrants to Bank and Company at the time of execution and during the term of this Agreement the following: (a) All information contained in the Merchant Application or any other documents delivered to Bank or Company is true and complete and properly reflects Merchant's business, financial condition, and principal partners, owners, or officers. (b) Merchant is a Corporation, Limited Liability Company, Partnership, Sole Proprietorship, or other legitimate and legally organized organization validly existing and organized in the United States. (c) Merchant and individuals signing the Merchant Application (and thus this Agreement) have the power and authority to execute, deliver, and perform this Agreement, and this Agreement is duly authorized, and will not violate any Laws, or conflict with any other agreement to which Merchant is subject. (d) Individuals signing this agreement ("Signers") are duly authorized by the legal entity represented by Signers in the Merchant Application to bind Merchant into this Agreement on behalf of Merchant. (e) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so. (f) Merchant is not engaged or affiliated with any businesses, products, or methods of selling other than those set forth on the Merchant Application, unless Merchant obtains the prior written consent of Bank. (g) There is no action, suit, or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations. (h) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby. (i) Merchant has complied with Bank and Company procedures for accepting Cards, and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset, or counterclaim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 U.S.C. § 1601) or other relevant Laws. (j) Merchant warrants that any Credit Voucher it issues represents a bona fide refund or adjustment on a Card Sale by Merchant with respect to which a Sales Draft has been accepted. (k) Unless Merchant notifies Bank and Company in writing, either on the Merchant Application or otherwise, no other processing relationship exists between Merchant and any other Bankcard processing institution, for this business, or any other business managed or owned by Merchant. (l) All Transactions are bona fide. No Transaction involves the use of a Card for any purpose other than the purchase of goods or services from Merchant. (m) Merchant and Guarantor(s) acknowledge that all documents submitted in conjunction with this Agreement are being submitted in order to induce a federally insured financial institution to extend them credit, and that submission of any false information may subject them to criminal prosecution, fine, and imprisonment. (n) Merchant has supplied its true and correct taxpayer identification number on the Merchant Application. (o) Merchant, and its principals or sales agents, have not been terminated from depositing Sales with any member of the Card Brands, have never been placed on the MasterCard Match system, or on the Combined Terminated Merchant File except as disclosed in writing to Bank. (p) Merchant: (1) has the right to assign such Sales to Bank and does by this reference assign all its rights, title, and interest to payment for such Sales to Bank and Company so that Bank may process Sales under this Agreement; (ii) it has no knowledge of any fact that would impair the collectability of the Sales; and (iii) each Sale represents a valid obligation of the Cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the Cardholder by the Merchant; and (c) it does not involve any element of credit for any other purpose.

**D. Authorization of Agreement.** Merchant represents and warrants that the individual signing the Merchant Application (and thus this Agreement), physically or by acknowledging consent by electronic means, is duly authorized to bind Merchant to all provisions of this Agreement and that such individual is duly authorized to execute any contract document on behalf of Merchant. Merchant will execute a separate Entity Certification if requested to do so by Bank or Company.

**E. Signature.** Merchant, by its signature, upon its first transmission of Transactions, or first payment of fees, acknowledges receipt,

acceptance and comprehension of this Agreement. If Merchant has not signed the Merchant Application (and thus this Agreement) physically or by electronic means, Merchant agrees that Merchant's first transmission of a Transaction or first payment of fees to Bank or Company constitutes Merchant's acceptance of this Agreement.

**F. Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Bank and Company for all attorneys' fees and other costs and expenses paid or incurred by Bank, Company, or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

## ARTICLE VII – BINDING ARBITRATION AND CLASS ACTION WAIVER

### 7.1 PARTIES BOUND

The term "Merchant" in this Article VII (Binding Arbitration and Class Action Waiver) includes Merchant, its owners, partners, officers, directors, shareholders, principals, and Guarantor(s), including without limitation those listed in the Merchant Application. Article VII binds all of them, Bank, Company, and Company's Independent Sales Representatives (sometimes called "ISOs").

### 7.2 LAWSUIT AND CLASS ACTION WAIVER

Merchant, Bank, and Company waive their rights to sue before a judge or jury and to participate in a class action, class-wide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an "award") will be final except for a limited right of review under the Federal Arbitration Act. The arbitrator may not consolidate proceedings or join them together without the consent of all parties to all proceedings.

### 7.3 ALL CLAIMS AND DISPUTES COVERED

Merchant, Bank, and Company agree to resolve all claims and disputes of every kind between them or their respective owners, partners, shareholders, affiliates (including parents, subsidiaries, and other related entities), predecessors, successors, assigns, or Independent Sales Representatives only through binding individual arbitration before the American Arbitration Association ("AAA"). This arbitration agreement is to be broadly interpreted. It includes:

- (A) all claims or disputes arising out of or relating to any aspect of the relationship between Bank or Company (including its Independent Sales Representatives) and Merchant including, without limitation, this Agreement, the Services provided, any Bank or Company product or service, and any discount, fee, charge, assessment, or payment, whether based in contract, tort, statute, regulation, fraud, misrepresentation, omission, or any other theory;
- (B) all claims or disputes that arose before this Agreement became effective (including claims or disputes relating to advertising);
- (C) all claims or disputes that are the subject of purported class action litigation on the date this Agreement's Effective Date but Merchant is not a member of a certified class on that date; and
- (D) all claims or disputes that arise after the termination of this Agreement but relate to one of the matters this Agreement covers.

### 7.4 NOTICE OF DISPUTE

Before seeking arbitration, Merchant, Bank, or Company must first send to the other(s), by certified mail return receipt requested or a courier service that requires a signature upon delivery, a written Notice of Dispute ("Notice"). A Notice to Merchant must be addressed to its address in Company's records. A Notice to Bank must be addressed to: Westamerica Bank Legal Department, 3750 Westwind Blvd, Suite 210, Santa Rosa, CA 95403. A Notice to Company must be addressed to: Company Legal Department, 2202 N. Irving Street, Allentown, PA 18109. The Notice must: (A) describe the nature and basis of the claim or dispute; and (B) set forth the specific relief sought. If Merchant and Bank or Company do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant, Bank, or Company may commence an arbitration.

### 7.5 SMALL CLAIMS COURT OPTION

Merchant, Bank, or Company may bring an individual suit in a small claims court instead of sending a Notice or arbitrating, if the case meets the court's requirements. Merchant may sue in the small claims court in the county of its principal place of business, or Sonoma County, California (if against Bank), or Lehigh County, Pennsylvania (if against Company); Bank or Company may sue in the small claims court in Merchant's principal place of business.

### 7.6 ARBITRATION PROCEDURE

**A. Rules.** The AAA's Commercial Arbitration Rules, as modified by this Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to Bank or Company at its address in Section 7.4. For information, visit [adr.org](http://adr.org) or call 1-800-778-7879. For disputes involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing. Any in-person hearing will be held in the county of Merchant's principal place of business.

**B. Arbitrator's Authority.** The arbitrator exclusively decides all issues, and has the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim, and has the power to determine the existence or validity of a contract of which an arbitration clause forms a part, except that a court has exclusive authority to enforce the prohibition on class-wide or representative arbitration.

**C. Fees.** For disputes involving \$75,000 or less, Bank or Company will pay all AAA and arbitrator's fees and will promptly refund Merchant's filing fee, unless the arbitrator finds the arbitration frivolous or brought for an improper purpose. For disputes involving more than \$75,000, AAA rules govern fees. Notwithstanding

anything in this Agreement, Bank or Company will not seek their attorney's fees or expenses from Merchant in any arbitration.

**D. Relief.** The arbitrator may award the same relief as a court could but may award declaratory or injunctive relief only to the individual party and only to the extent necessary to provide relief for that party's individual claim. Any court with jurisdiction may enforce the arbitrator's award.

## 7.7 SEVERABILITY

If any part of this Article VII (Binding Arbitration and Class Action Waiver) is found to be illegal or unenforceable, the remainder will remain in effect (with an arbitration award issued before any court proceeding begins), except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, Article VII will be unenforceable in its entirety.

## 7.8 REJECTING FUTURE ARBITRATION CHANGES

Merchant may reject any change Bank or Company makes to Article VII (except address changes) by sending Bank or Company (whichever made the change) notice within 30 days of the change by U.S. Mail to the address in Section 7.4. If Merchant does, the most recent version of Article VII before the change it rejected will apply.

## 7.9 ISOs AS THIRD-PARTY BENEFICIARIES

Company's Independent Sales Representatives are third-party beneficiaries of this Article VII. They agree to do everything it requires Company to do.

## ARTICLE VIII – MISCELLANEOUS

### 8.1 USE OF TRADEMARKS AND CONFIDENTIALITY

**A. Card Signage.** Merchants will prominently display Card signage provided by Bank in its place(s) of business and the type of signage displayed will be in accordance with the Card Brands accepted by Merchant and if Merchant participates in full or limited acceptance.

**B. Use of Trademarks.** (a) Use of trade name, trademark, service mark or logotype ("Marks") associated with any of the Card Associations and their brands shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Bank and must fully comply with the Rules. (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease their use and return any inventory to Bank upon termination thereof. (c) Merchant shall not use any promotional materials or Marks associated with the Card Associations and Debit Networks in any way that implies that the Card Associations or Debit Networks endorse any goods or services other than their own.

**C. Confidentiality.** Merchant acknowledges that Bank through the expenditure of a significant amount of time, effort, cost, and research, developed and secured the right to use various computer programs, forms, logos, manuals, and related materials, including without limitation the Operating Rules, which constitute property of great value and trade secrets, and that disclosure to others of such materials may result in loss and irreparable damage. Merchant further acknowledges that the system in its entirety constitutes a trade secret which is revealed to Merchant in confidence. Accordingly, Merchant agrees to hold and use any and all such property or information regarding the system in confidence, and not to disclose, reveal, copy, sell, transfer, sub-license, assign, or distribute any part of it, in any form, to any individual, firm, corporation, or other entity, or permit any of its employees, agents, or representatives to do so, except as permitted by the Rules, or otherwise expressly permitted in writing by Bank. Merchant further agrees that upon termination of this Agreement for any reason, it will immediately return all such property to Bank.

**D. Communication.** Merchant authorizes Bank, Company, and their affiliates to communicate with, solicit, or market to Merchant via regular mail, telephone, e-mail, and facsimile in connection with the provision of goods or services by Bank and Company, their affiliates, or any third party that Company shares, transfers, exchanges, discloses or provides information with or to pursuant to this Agreement and will hold Company, Bank, their affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, 15 U.S.C. § 7701, the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any and all other Laws relating to transmissions or solicitations by any of the methods described above.

**E. Monitoring.** Merchant understands and agrees that any telephone conversation between Merchant, Company, or Bank may be monitored and recorded.

**F. Non-Disparagement.** Subject to applicable Laws, each of the parties covenants and agrees that during the term (or any renewal term) of this Agreement, neither Merchant nor any of its agents, subsidiaries, affiliates, successors, assigns, officers, principals, key employees, or directors, will in any way publicly disparage, call into disrepute, defame, slander, or otherwise criticize Company or Bank or their subsidiaries, affiliates, predecessors, successors, assigns, directors, or officers (including any officer who no longer serves in such capacity following this Agreement's Effective Date).

### 8.2 GENERAL PROVISIONS

**A. Entire Agreement.** This Agreement, including the Merchant Application, the Rules, and any exhibits to this Agreement, expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, all prior or other agreements or representations, written or oral, are superseded. Reference to "this Agreement" also includes all documents incorporated into this Agreement by reference. If the Merchant Application (and thus this Agreement) or any amendments are physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.

**B. Governing Law and Place to Resolve Disputes.** This Agreement and all claims or disputes arising out of or relating to any aspect of the relationship between Bank or Company (including its Independent Sales Representatives) and Merchant (including without limitation (A) this Agreement, the Services provided, any Bank or Company product or service, and any discount, fee, charge, assessment, or payment, whether based in contract, tort, statute, regulation, fraud, misrepresentation, omission, or any other theory; (B) that arose before this Agreement became effective (including claims or disputes relating to advertising); or (C) that arise after the termination of this Agreement but relate to one of the matters this Agreement covers), will be governed by the laws of the state of Merchant's principal place of business, without regard to its conflict-of-laws principles, and applicable federal law, if brought against Company, except that the Federal Arbitration Act governs everything relating to arbitration. If a claim is brought solely against Bank, it will be governed by the laws of the State of California, without regard to its conflict-of-laws principles, except that the Federal Arbitration Act governs everything relating to arbitration. **Bank, Company, Merchant, and Guarantor(s) consent to the exclusive jurisdiction and venue for any action relating to a claim or dispute that is brought in court (except small claims court or arbitration—see Article VII) in Sonoma County Superior Court, California or the United States District Court for the Northern District of California, if against Bank; or Lehigh County Common Pleas Court, Pennsylvania, or the United States District Court for the Eastern District of Pennsylvania, if against Company or its Independent Sales Representatives (or against both Bank and Company).**

**C. Exclusivity.** During the Initial and any Renewal Term of this Agreement, Merchant shall not enter into an agreement with any other entity that provides Card processing services similar to those provided by Bank as contemplated by this Agreement without Bank's written consent.

**D. Construction.** The typographical headings used in this Agreement are inserted for reading convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement.

**E. Assignability.** This Agreement may not be assigned by Merchant directly or by operation of law without the prior written consent of Bank or Company. If Merchant nevertheless assigns this Agreement without consent, Merchant shall remain liable and the Agreement also shall be binding upon the assignee. Original Merchant and Guarantor(s) shall be held personally liable in the event such assignee incurs Chargebacks, retrievals, ACH rejects, losses, fines, or any other liabilities under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors, and assigns. Bank or Company may assign this Agreement without Merchant's consent.

**F. Notices; Consent to Electronic Communications.** By signing the Merchant Application, Merchant is confirming to Bank and Company that it has the means to access the Internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email or by the posting of such information by Bank or Company at one or more of their sponsored websites, such as [www.redwoodmerchantservice.com](http://www.redwoodmerchantservice.com) or [www.shift4.com](http://www.shift4.com) Such communications may pertain to the Services delivered by Bank or Company, the use of information Merchant may submit to Bank or Company, changes in Laws or Rules impacting the Services or other reasons, including amendment of this Agreement. In addition, all notices and other communications required or permitted under this Agreement by Bank or Company to Merchant may also be delivered by Bank or Company to Merchant by fax, overnight carrier, or first class mail, postage prepaid, addressed as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to Bank or Company (except Notices of Dispute and Demands for Arbitration—see Section 7.4) shall be delivered by Merchant to Bank or Company by overnight carrier or certified mail, return receipt requested, postage prepaid, addressed as set forth below. Notice by fax or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the third business day after mailing or the first business day after delivery to the overnight carrier. Following are the addresses for the purposes of notices and other communications hereunder (except Notices of Dispute and Demands for Arbitration—see Section 7.4), which may be changed by written notice in accordance with this section: (a) If to Bank, addressed and transmitted as follows: (a) If to Bank, **Westamerica Bank, 3750 Westwind Blvd., Suite 210, Santa Rosa, CA 95403, Fax: (707) 578-7055;** (b) If to Company, **Company Legal Department, 2202 N. Irving Street, Allentown, PA 18109, Fax: (973) 630-9029** (c) If to Merchant, at the address provided as the **billing address, or the fax number or e-mail address, and to the contact listed on the Merchant Application.**

**G. Force Majeure.** Any delay in or failure of performance by Bank or Company under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking, ACH, or payment networks not under direct control of Bank or Company.

**H. Amendments.** Bank or Company may amend this Agreement, including by adding new terms or fees or increasing fees—see Section 3.5—upon thirty (30) days' notice to Merchant. Amendments due to changes in Card Associations' fees, interchange, assessments, Rules, or any Laws or judicial decision may become effective on such shorter period of time as Bank or Company may reasonably specify if necessary to comply with the applicable Rule, Laws, or decision. See Section 7.8 for how to reject future arbitration changes. It prevails over this section.

**I. Severability and Waiver.** If any provision of this Agreement is found to be illegal or unenforceable, the invalidity of that provision will not affect any of the

remaining provisions and this Agreement will be construed as if the illegal or unenforceable provision is not contained in this Agreement. Neither the failure nor delay by Bank or Company to exercise, or partially exercise, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be in writing and signed by the waiving party. See Section 7.7 for what happens if Article VII (Binding Arbitration and Class Action Waiver) is found to be illegal or unenforceable. Section 7.7 prevails over this section.

**J. Remedies Cumulative.** All rights and remedies conferred upon Bank or Company in this Agreement, at law or in equity, are not intended to be exclusive of one another. Rather, each and every right of Bank or Company under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

**K. Relationship of Parties.** The parties are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents, or other representatives of another party.

**L. Employee Actions.** Merchant is responsible for its employee's actions while in its employ.

**M. Survival.** All sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, limitations of liability, arbitration, and dispute resolution, and other matters in Sections 2.4.C, 2.7, 3.1, 3.2, 3.4, 3.5, and Articles IV, V, VI, VII, and VIII.

**N. Further Assurances.** At any time or from time to time, upon the request of Bank or Company, Merchant will execute and deliver further documents as Bank or Company may reasonably request in order to effectuate fully the purposes of this Agreement.

**O. IRS Withholding Regulations.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all payment Card Transactions and third party network Transactions with payees occurring in that calendar year. Accordingly, Merchant will receive a Form 1099-K reporting its gross Transaction amounts for each calendar year. The Merchant's gross Transaction amount refers to the gross dollar amount of the Card Transactions processed through its merchant account with Bank. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors will be required to perform backup withholding by deducting and withholding income tax from reportable Transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provide Bank and Company with the correct name and TIN that it uses when filing its tax return that reflects the Transactions under this Agreement. **MERCHANT AGREES THAT COMPANY AND BANK WILL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM MERCHANT PROVIDING INCORRECT TIN INFORMATION.**

## **AMERICAN EXPRESS CARD ACCEPTANCE**

### **TERMS BELOW ARE ADDITIONALLY APPLICABLE TO ONLY THOSE MERCHANTS WITH. BANK IS NOT A PARTY TO THESE AMERICAN EXPRESS TERMS AND CONDITIONS**

**A9.01 Merchant shall be bound by the American Express Merchant Operating Guide:** [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

**A9.02** With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control.

**A9.03 General Terms.** Merchant authorizes ISO and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Bank on behalf of Merchant.

**A9.04 Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.

**A9.05 Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OptBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

**A9.06 American Express as Third-Party Beneficiary.** Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.

**A9.07 American Express Opt-Out.** Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Brands.

**A9.08 Refund Policies.** Merchant's refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Brand, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

**A9.09 Establishment Closing.** If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services.

when its SALES volumes exceed the eligibility thresholds for AMERICAN EXPRESS CARD ACCEPTANCE. If this occurs, upon such conversion, (i) Merchant will be bound by AMERICAN EXPRESS' then-current Card Acceptance Agreement; and (ii) AMERICAN EXPRESS will set pricing and other fees payable by Merchant.

## American Express OPTBLUE Program Agreement

**[Important Note: Bank is not a party to the American Express OptBlue Program Agreement and has no responsibility under it. Merchant acknowledges and agrees that Bank and their affiliates have no obligation or liability whatsoever for: (1) American Express transactions whether under the American Express OptBlue Program Agreement, the Merchant Transaction Processing Agreement or otherwise; or (2) any actions or omissions of Company or American Express. Merchant agrees that any claims or disputes arising out of the foregoing will be resolved without involving Bank and that Bank is entitled to rely on Merchant's agreements in this paragraph.]**

THIS Agreement ("AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT"), by and between ISO and MERCHANT, shall become effective on the date executed or approved by a duly authorized representative of Company.

Company and Merchant shall be collectively known hereafter as the "Parties."

WHEREAS, TSYS Acquiring Solutions, LLC ("TAS"), Company, and Merchant are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"); and

WHEREAS, TSYS Acquiring Solutions, LLC has a relationship with American Express Travel Related Services Company, Inc. ("AMERICAN EXPRESS"); and

WHEREAS, the PARTIES desire to enter into this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT under which ISO will provide payment processing services as to AMERICAN EXPRESS transactions.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

Terms set forth herein, which are typed in all capitalized letters and not defined herein, shall have the same meaning as set out in the AGREEMENT.

The terms of the AGREEMENT, including the Merchant Application, are hereby incorporated by reference into this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, except that no references to BANK under the AGREEMENT shall apply herein.

MERCHANT agrees to pay Company the FEES related to AMERICAN EXPRESS as set out on the Merchant Application.

The following terms and conditions apply to Merchant's participation in the AMERICAN EXPRESS OptBlue<sup>SM</sup> Program ("AMERICAN EXPRESS CARD ACCEPTANCE"):

Merchant's participation in AMERICAN EXPRESS CARD ACCEPTANCE is subject to the approval of AMERICAN EXPRESS. Merchant authorizes Company and/or its affiliates to submit AMERICAN EXPRESS SALES To, and receive settlement on such SALES from, AMERICAN EXPRESS on behalf of Merchant.

Merchant agrees that Company may disclose to AMERICAN EXPRESS information regarding Merchant and Merchant's SALES to AMERICAN EXPRESS, and that AMERICAN EXPRESS may use such information to perform its responsibilities in connection with AMERICAN EXPRESS CARD ACCEPTANCE, promote AMERICAN EXPRESS, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of AMERICAN EXPRESS CARD ACCEPTANCE, and important transactional or relationship communications from AMERICAN EXPRESS.

AMERICAN EXPRESS may use the information about Merchant obtained in the AGREEMENT at the time of setup to screen and/or monitor Merchant in connection with AMERICAN EXPRESS marketing and administrative purposes. Merchant agrees it may receive messages from AMERICAN EXPRESS, including important information about AMERICAN EXPRESS products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

**Merchant may opt-out of receiving future commercial marketing communications from AMERICAN EXPRESS by contacting ISO. Note that Merchant may continue to receive marketing communications while AMERICAN EXPRESS updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from AMERICAN EXPRESS.**

Merchant acknowledges that it may be converted from AMERICAN EXPRESS CARD ACCEPTANCE to a direct relationship with AMERICAN EXPRESS if and

Merchant shall not assign to any third party any payments due to it under AMERICAN EXPRESS CARD ACCEPTANCE, and all indebtedness arising from SALES will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the Merchant may sell and assign future SALES receivables to Company, its affiliated entities and/or any other cash advance funding source that partners with Company or its affiliated entities, without consent of AMERICAN EXPRESS. Notwithstanding the foregoing, Company prohibits Merchant from selling or assigning future SALES receivables to any third party.

Notwithstanding anything in the AGREEMENT to the contrary, AMERICAN EXPRESS shall have third-party beneficiary rights, but not obligations, to the terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE to enforce such terms against Merchant.

Merchant may opt out of accepting AMERICAN EXPRESS at any time without directly or indirectly affecting its rights to accept other CARD BRANDS.

Company shall have the right to terminate Merchant's participation in AMERICAN EXPRESS CARD ACCEPTANCE immediately upon written notice to Merchant (i) if Merchant breaches any of the provisions of this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT or any other terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE, or (ii) for cause or fraudulent or other activity, or upon AMERICAN EXPRESS' request. In the event Merchant's participation in AMERICAN EXPRESS CARD ACCEPTANCE is terminated for any reason, Merchant must immediately remove all AMERICAN EXPRESS branding and marks from Merchant's website and wherever else they are displayed.

Merchant refund policies for AMERICAN EXPRESS SALES must be at least as favorable as its refund policy for purchase on any other CARD BRAND, and the refund policy must be disclosed to cardholders at the time of purchase and in compliance with LAWS. Merchant may not bill or attempt to collect from any cardholder for any AMERICAN EXPRESS SALE unless a CHARGEBACK has been exercised, Merchant has fully paid for such CHARGEBACK, and it otherwise has the right to do so.

Merchant must accept AMERICAN EXPRESS as payment for goods and services (other than those goods and services prohibited by this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, the AGREEMENT, or the RULES) sold, or (if applicable) for charitable contributions made at all of its business locations and websites, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's business locations and websites under the AGREEMENT.

In the event that Merchant or Company is not able to resolve a Claim against AMERICAN EXPRESS, or a Claim against Company or any other entity that AMERICAN EXPRESS has a right to join in resolving a Claim, this section explains how Claims can be resolved through arbitration. Merchant or AMERICAN EXPRESS may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.

**If arbitration is chosen by any party, neither Merchant nor ISO nor AMERICAN EXPRESS will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, Merchant, Company, and AMERICAN EXPRESS will not have the right to participate in a representative capacity or as a member of any class pertaining or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights Merchant, Company, or AMERICAN EXPRESS would have in court may also not be available in arbitration.**

i. Initiation of Arbitration. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with the AGREEMENT. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that Merchant attends shall take place in New York, New York unless all parties agree to an alternate venue.

ii. Limitations on Arbitration. **If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated.** The arbitrator's authority is limited to Claims between Merchant, Company, and AMERICAN EXPRESS. Claims may not be joined or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Company or AMERICAN EXPRESS and cannot be used in any other case except to enforce the award as between Merchant, Company and AMERICAN EXPRESS. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against AMERICAN EXPRESS.

Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

iii. Previously Filed Claims/No Waiver. Merchant, Company, or AMERICAN EXPRESS may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Company, or AMERICAN EXPRESS may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against AMERICAN EXPRESS prior to the effective date of the AGREEMENT.

iv. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the AGREEMENT or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.

v. Split Proceedings for Equitable Relief. Merchant, Company, or AMERICAN EXPRESS may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.

vi. Small Claims. AMERICAN EXPRESS shall not elect to use arbitration under this section for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, Merchant or AMERICAN EXPRESS may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this AGREEMENT shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where Merchant's headquarters or Merchant's assets are located.

viii. Confidentiality. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non discoverable as a result of its use in the negotiation, mediation, or arbitration.

ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a Claim in court. AMERICAN EXPRESS will be responsible for any additional arbitration fees. At Merchant's written request, AMERICAN EXPRESS will consider in good faith making a temporary advance of Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against AMERICAN EXPRESS for an amount greater than any final settlement offer AMERICAN EXPRESS made before any arbitration award, the arbitrator's award will include: (1) any money to which Merchant is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.

xi. Definitions. For purposes of the above arbitration provisions only, (i) *AMERICAN EXPRESS* includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) *Merchant* includes any of Merchant's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) *Claim* means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against AMERICAN EXPRESS or against Company or any other entity that AMERICAN EXPRESS has the right to join in resolving a Claim, including, a transaction using an AMERICAN EXPRESS product or network or regarding an AMERICAN EXPRESS policy or procedure.

Except as expressly permitted by LAWS, Merchant must not:

- indicate or imply that it prefers, directly or indirectly, any other CARD BRANDS over AMERICAN EXPRESS,
- try to dissuade cardholders from using AMERICAN EXPRESS,
- criticize or mischaracterize AMERICAN EXPRESS or any of its services or programs,
- try to persuade or prompt cardholders to use any other CARD BRANDS or any other method of payment (e.g., payment by check),
- impose any restrictions, conditions, disadvantages or fees when AMERICAN EXPRESS is accepted that are not imposed equally on all other CARD BRANDS, except for electronic funds transfer, or cash and check,
- suggest or require cardholders to waive their right to dispute any SALE,
- engage in activities that harm the AMERICAN EXPRESS business or brand (or both),
- promote any other CARD BRAND (except MERCHANT's own private label card that Merchant issues for use solely at MERCHANT's business locations and websites) more actively than Merchant promotes AMERICAN EXPRESS, or
- convert the currency of the original SALE to another currency when requesting authorization or submitting SALES (or both).

Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by LAWS): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant's customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above.

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of AMERICAN EXPRESS and display AMERICAN EXPRESS' marks (including any AMERICAN EXPRESS card application forms provided to Merchant) as prominently and in the same manner as any other CARD BRANDS. MERCHANT must not use the AMERICAN EXPRESS marks in any way that injures or diminishes the goodwill associated with the mark, nor (without prior written consent from ISO) indicate that AMERICAN EXPRESS endorses Merchant's goods or services. Merchant shall only use the AMERICAN EXPRESS marks as permitted by the AGREEMENT and shall cease using AMERICAN EXPRESS' marks upon termination of the AGREEMENT. For additional guidelines on the use of the AMERICAN EXPRESS marks, contact Company.

Any and all cardholder information is confidential and the sole property of the applicable issuer, AMERICAN EXPRESS or its affiliates. Except as otherwise specified, Merchant must not disclose cardholder information, nor use nor store it, other than to facilitate SALES at Merchant's business locations and websites in accordance with the AGREEMENT.

Merchant must ensure that it and any third parties it enlists to facilitate SALES processing complies with the American Express Technical Specifications (available at [www.tsystransactionssummary.com](http://www.tsystransactionssummary.com)) (valid and accurate data must be provided for all data elements in accordance with the American Express Technical Specifications). Failure to comply with the American Express Technical Specifications may impact Merchant's ability to successfully process SALES. Merchant's may be assessed non-compliance fees if Merchant fails to comply with the Technical Specifications. To ensure compliance with the Technical Specifications, Merchants should work with ISO.

Merchant must comply with and assure that Merchant Providers comply with the American Express Data Security Operating Policy ("DSOP") (found at [www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity)), the American Express Program Merchant Data Security Requirements [www.lighthousenetwork.com/terms/americanexpress](http://www.lighthousenetwork.com/terms/americanexpress) and the American Express Information Protection Contract Requirements (IPCR) [www.lighthousenetwork.com/terms/americanexpress](http://www.lighthousenetwork.com/terms/americanexpress).

