

Merchant Processing Agreement

Terms and Conditions

THIS DOCUMENT CONTAINS THE TERMS AND CONDITIONS INCORPORATED BY REFERENCE INTO THE ACCOMPANIED MERCHANT PROCESSING AGREEMENT APPLICATION DOCUMENT ("Merchant Application" or "Application"), AND THE TERMS AND CONDITIONS HEREIN, TOGETHER WITH THE MERCHANT APPLICATION, COLLECTIVELY CONSTITUTE THE MERCHANT PROCESSING AGREEMENT (as may be amended from time to time, "Merchant Processing Agreement" or "Agreement" or "MPA").

This Merchant Processing Agreement is for merchant card payment processing services among the merchant that signed the Application ("Merchant"), North American Banking Company ("FI") and eVance, Inc. ("Processor"). The Processor and FI are collectively hereinafter referred to as the "Bank." Bank reserves the right to allocate Bank's duties and obligations amongst themselves as they deem appropriate without notice to Merchant and in their sole and absolute discretion, and Bank may assert or exercise any rights or remedies provided to Bank under this Agreement as well as all applicable Rules, and laws, rules, and regulations. Merchant acknowledges that this Agreement is not and shall not be effective until accepted by Bank, and that the signature of the representative on the Merchant Application only constitutes acknowledgment of the offer made by the representative on behalf of, and contingent upon the approval of Bank as evidenced by Bank's assignment of a merchant identification number to Merchant.

ARTICLE I – DEFINITIONS

- 1.1 **"ACH"** means the Automated Clearing House entry system.
- 1.2 **"Authorization"** means approval by, or on behalf of, the Card Issuer to validate a Card transaction for a merchant or another affiliate bank. An authorization only indicates the availability of the Cardholder's credit limit at the time the Authorization is requested.
- 1.3 **"Address Verification System"** (AVS) allows verification of the cardholder's Zip code and billing address while requesting authorizations for transactions or during a request for address verification only.
- 1.4 **"Card"** means Credit Card or Debit Card.
- 1.5 **"Card Network"** refers to any entity formed to administer and promote Card payment networks, including, without limitation, MasterCard International, Incorporated ("MasterCard"), Visa U.S.A. Inc. and Visa International (collectively, "Visa"), Discover Network, JCB Co., Ltd. ("JCB"), American Express Global Network, and any applicable payment network approved by Bank. Card Network may include Debit Network.
- 1.6 **"Cardholder"** means the person whose name is embossed upon the face of the Card and any authorized user of such card.
- 1.7 **"Cardmember"** means the person whose name is embossed upon the face of the Card and any authorized user of such card, applicable to only those in American Express OptBlue Program.
- 1.8 **"Card Issuer"** means the Financial Institution or Card Network which has provided a Card to an individual or business entity
- 1.9 **"Chargeback"** means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) is returned to Bank by Card Issuer.
- 1.10 **"Credit Card"** means a Card Network-branded Card issued by a Card Issuer authorizing the Cardholder to buy goods or services on credit.
- 1.11 **"Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment credited to a Cardholder account, which must conform to the Rules.

- 1.12 **“Debit Card”** means a Card Network-branded Card issued by a Card Issuer that, when presented for payment, accesses, debits, holds, or settles funds from a consumer’s demand deposit, investment, or other asset account.
- 1.13 **“Debit Network”** is an online data processing system that is accepted by Bank for the processing of certain debit transactions, such as, but not limited to, Accel, AFFN, Interlink, Maestro, NYCE, Pulse, Shazam and Star.
- 1.14 **“Guarantor”** means entity or individual(s), acceptable to Bank, to guarantee Merchant’s obligations under this Agreement.
- 1.15 **“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/dipping/tapping/manually keying a Card through a terminal and electronically printing a Sales Draft.
- 1.16 **“MCC”** means Merchant Category Code and indicates the Merchant’s category classification by Card Networks describing specifically the type of business the Merchant operates.
- 1.17 **“PIN”** is a personal identification number entered by a Cardholder to submit a PIN Debit Card transaction.
- 1.18 **“PIN Debit Card”** is a Debit Card used at a merchant location by means of a Cardholder-entered PIN or PIN entry device on a merchant website or PIN entry on a compliant PCI DSS Standards device in the merchant PIN pad.
- 1.19 **“Reserve Account”** has meaning set forth in ARTICLE IV, Section 4.3.
- 1.20 **“Retrieval”** means a Card Issuer’s or Cardholder’s request of the Transaction receipt.
- 1.21 **“Rules”** or **“Operating Rules”** means the rules, regulations, releases, interpretations, guidelines and other requirements (whether contractual or otherwise) imposed or adopted by any Card Network or other payment network selected for approval by Bank from time to time.
- 1.22 **“Sales Draft”** means evidence of a purchase of goods or services by a Cardholder from Merchant using a Card, regardless of whether such evidence is in paper or electronic form or otherwise, all of which must conform to the Rules.
- 1.23 **“Service Provider”** means any person or entity engaged by Merchant to provide services to Merchant involving or relating to (i) access to Cardholder data, Transaction data or information related to either Cardholder data or Transaction data or (ii) PIN encryption.
- 1.24 **“Settlement Account”** means an account at a banking institution designated by Merchant as the account to be debited and credited by Bank for Card transactions, fees, Chargebacks and other amounts due under this Agreement or in connection with this Agreement.
- 1.25 **“Transaction”** means any sale of goods and services, or credit for such, from Merchant for which the customer makes payment through the use of any Card and which is presented to Bank for collection.

ARTICLE II – MERCHANT’S GENERAL DUTIES

Merchant will comply with this Agreement, as well as the Rules and all applicable laws, rules, and regulations for submitting and processing Sales Drafts and Credit Vouchers with Bank. Bank is responsible to Merchant for processing Card Transactions under the Rules for the Card acceptance services to which Merchant subscribes, which may vary among Card types. Additional information and links to locations where Merchant can see or obtain copies of the Rules are located at <https://usa.visa.com/support/consumer/visa-rules.html> and <https://www.mastercard.us/en-us/business/overview/support/rules.html>. The Mastercard and Visa Rules are subject to change at any time without notice including, without limitation, the hyperlinks in the immediately preceding sentence.

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 Card Issuer that issued the presented payment Card

- B. Acceptance.** Bank may, at its sole option, approve the Merchant to either: (i) accept for payment both Credit Cards and Debit Cards (“Full Acceptance”); or (ii) accept for payment only Debit Cards and not Credit Cards (“Limited Acceptance”). A Full Acceptance Merchant will accept all valid Cards unless Merchant provides 30 days written notice to Bank requesting Limited Acceptance and stating Merchant’s election of Card types or Bank provides notice otherwise to Merchant. 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 allows Merchant to be permitted to engage in such practice.
- D.** (a) Merchant shall not establish minimum or maximum transaction dollar value on signed- Debit or pin entered-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 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 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 Networks. Requirements and limitations include, but not limited to: (i) Merchant may only impose a surcharge if permitted by, and compliant with, state and local law; (ii) Merchant shall notify Bank and Card Networks no less than 30 days in advance of imposing any surcharge; (iii) Merchant shall publicly disclose its surcharge practices to customers 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, additional requirements, limitations and Card Network surcharge registration pages, visit <https://www.mastercard.us/enus/business/overview/support/merchant-surcharge-rules.html> and 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 and other accepted tender types; (iii) does not differentiate on the basis of the Issuer or the Card Network; and (iv) is in accordance with the law and the Rules.
- G. Disputes with Cardholder.** (a) All disputes between Merchant and any Cardholder relating to any Sales Draft will be settled between Merchant and the Cardholder. Bank bears 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, if required on each Card. So long that the transaction is not a recurring transaction, Merchant will not honor any Card if: (i) the Card has expired before the 1st transaction should the Cardholder authorize a recurring transaction; (ii) the signature, if required 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 law and the 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/swipe read/chip read 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 or 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. NOTE: 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 harmless from any claim arising from any injury to person or property, or other breach of the peace in connection with the retention or recovery of a Card.
- K. **Location.** Merchant may honor Cards only at location(s), which shall include websites and any other place in which a Card may be accepted, approved by Bank. Additional locations may be added, subject to Bank's approval. Either Merchant 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 customer as the Cardholder.
- B. **No Guarantees.** Merchant acknowledges that receipt of Authorization: (i) does not guarantee acceptance, payment or settlement of a Transaction; (ii) indicates only the availability of credit at the time of Authorization; (iii) does not warrant that the person presenting the Card is the authorized user of the Card; (iv) is not an unconditional promise or guarantee by Bank that any Transaction will not be subject to Chargeback; and (v) is not a representation or warranty, either express or implied, that the particular Transaction is in fact a valid, authorized or undisputed Transaction entered into by the Cardholder (and 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 or chip on the card, Merchant must obtain a phone authorization (either via voice or automated response service, both carry additional fees) and Merchant must follow terminal instructions and Rules regarding the proper processing of such a transaction. Failure to perform these additional actions may result in the assessment of transaction surcharges or a rejected transaction.

2.1 PRESENTMENT OF SALES DRAFTS

- A. Sales Draft Administration.** 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, if required by the Rules, 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 accord with the Rules. 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 law or Rules) after the date Merchant presents the Transaction and Merchant must preserve records in accordance with ARTICLE III, Section 3.4 of the Agreement.
- D. Electronic Transmission.** If Merchant utilizes electronic authorization and/or data capture equipment and/or services, Merchant will enter the data related to a Transaction or returned Transaction into a computer terminal or magnetic stripe reading/chip-reading terminal and transmit daily transactions to the Bank (or its duly assigned processor) no later than the close of business on the date 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 their own electronic terminal, gateway or similar transaction device to capture transactions and generate Sales Drafts, such devices must meet requirements under applicable law and Bank, Card Networks and PCI Security Standards Council (pursuant to ARTICLE III, Section 3.4 of this Agreement) requirements for processing transactions. Merchant shall complete only those point-of-sale transactions that comply in all respects with the Rules and which have been authorized. Merchant shall comply with all federal, state, and local laws applicable to its participation as contemplated in this Agreement, including without limitation statutes, regulations, and judicial decisions relating to point-of-sale 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 Card Networks harmless against any and all liability or expenses related thereto.
- 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 under this Agreement 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 Settlement 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 Settlement 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 law; (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; or (v) if Bank determines, at its sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Bank may also impose a cap on the volume and/or ticket amount of Sales Drafts that Bank will process for Merchant, as indicated on 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, and/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 regards 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 and 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; (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 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 Settlement 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; and (g) Under no circumstance will Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Bank.

- C. Chargebacks.** Merchant and Guarantor(s) are fully liable for all transactions returned for whatever reason, otherwise known as "Chargebacks." Merchant will pay upon presentation the value of all Chargebacks. Authorization is granted by Merchant to Bank to offset from incoming transactions and to debit the Settlement Account, the Reserve Account or any other account held at Bank 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 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, may be charged a late fee. 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) an authorization has not

been obtained and/or a valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iii) 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; (iv) 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; (v) price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment; (vi) Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction; (vii) Bank reasonably believes, within its sole discretion, that Merchant has violated any provision of this Agreement; (viii) 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; (ix) for whatever reason pertaining to not complying with the Rules. Notwithstanding any authorization or request from a Cardholder, Merchant shall not initiate a Transaction in an attempt to collect a Chargeback. Merchant and 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). In the event the Settlement Account is closed or is otherwise unavailable to Bank to debit from the Settlement Account, Merchant and/or Guarantors consent to Bank locating additional deposit accounts or assets by using any means available. In this event Merchant and/or 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. 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. 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 cause for immediate termination of this Agreement. 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. "Excessive Activity" means, during any monthly period for any one of Merchant's terminal identification numbers or merchant identification numbers: (i) the dollar amount and/or number of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount and/or number of Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 3% of the average monthly dollar amount of Merchant's Card transactions.

2.5. OTHER TYPES OF TRANSACTIONS

- A. Recurring Transactions.** For recurring transactions, Merchant must be approved by Bank to accept recurring transactions and obtain permission from the Cardholder for the goods and services to be charged to the Cardholders 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 indicating as such, or (iii) a response that the Card is not to be honored. Merchant must print legibly on the Sales Draft a description of the 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, Telephone Orders and Internet Orders.** As used herein, "MO" is in reference to mail orders, "TO" is in reference to telephone orders and "IO" is in reference to internet orders. (a) Unless Merchant has been explicitly 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 the Merchant of liability for Chargeback 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 Card Networks' web sites) and Merchant understands that there is a higher risk of customer 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 their 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 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 inherent to the lodging and vehicle rental MCCs in order to qualify for special interchange pricing incentives for lodging and vehicle rental merchants. Card Network Rules may be obtained from each Card Network's respective web site.
- 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 of Bank will be deemed a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the law or Rules. (c) 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) 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

- A. Debit Networks.** This Section 2.6 pertains only to transactions authorized, captured and settled through such Debit Network, and, for such transactions, Merchant is bound under the terms and conditions set forth in this Section (in addition to other sections of this Agreement).
- B. Participation.** Merchant agrees to become a sponsored member in each Debit Network that Bank is able to facilitate.
- C. Compliance.** Merchant agrees to comply with all Debit Network rules, regulations, procedures, fees, assessments, penalties, other membership duties, obligations, and costs of each such Debit Network, which are applicable to Merchant during the term of this Agreement.
- D. Honoring Cards.** Merchant shall honor all valid cards when presented for payment of debit transaction 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 law.

- E. Authorizations.** Bank will provide a transaction authorization service, which will enable the Merchant to offer its Cardholders a method of payment using Debit Network 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 Settlement Account using ACH.
- G. Access.** Bank may immediately cease to provide to Merchant and its Cardholders, access to such Debit Network upon receipt of written instructions to such effect from any Debit Network to which Bank is providing access hereunder,. 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 attorney's 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 stipulated under law 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 updates to the 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 point-of-sale transactions; and (ii) function with a minimum of error and in a reliable manner and meet all applicable standards contained in the Rules 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/chip reader and pin-pad that meets the standards contained in ARTICLE III, Section 3.4. The requirements of this paragraph shall not apply to point-of-sale 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 point-of-sale transaction involving a transfer of funds, Merchant shall make available to each cardholder a written receipt that complies fully with all applicable state and federal laws and regulations, 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 point-of-sale transaction; (ii) the transaction date; (iii) the type of point-of-sale 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 point-of-sale transaction, or the cardholder's account, or the card used to initiate the point-of-sale transaction; (v) location of the POS Terminal at which the point-of-sale transaction was initiated; and (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. The 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 Bank 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 Networks, the Debit Networks and the PCISSC. (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. (g) 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) otherwise specifically required by law, any information related to point-of-sale 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 \$100 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 point-of-sale transaction; and (ii) whether the point-of-sale 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 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. 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 attorney's 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 point-of-sale transaction; (ii) permits the amount debited in a point-of-sale 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 point-of-sale transactions by dual submissions for the same point-of-sale transaction; (iv) otherwise permits the use of any Card in any manner in violation of the Rules; (v) completes any declined point-of-sale transactions; or (vi) otherwise participates in any fraud resulting in loss.

2.7. PROHIBITED HIGH RISK TRANSACTIONS

IMPORTANT: FAILURE TO COMPLY IN FULL WITH THIS SECTION OF THE AGREEMENT MAY RESULT IN THE TERMINATION OF THIS AGREEMENT, AND MERCHANT IDENTIFICATION NUMBER PRIVILEGES AND MERCHANT MAY BE ADDED TO THE MASTERCARD ALERT TO CONTROL HIGH RISK(MATCH) OR OTHER SIMILAR CARD NETWORK DATABASE.

- 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 circumstance, engage in any Transaction, or use Card acceptance and Transaction capabilities for selling goods and/or providing services prohibited by local, hyper-local, state, federal, international and other applicable laws included, but not limited to, the USA PATRIOT Act, Bank Secrecy Act, Consumer Protection Laws and the U.S. Tax Code. Merchant will not submit any Transactions prohibited by the Rules. Perpetrators of fraud or fraudulent Transactions will be referred to state and/or federal 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 Settlement Account. Merchant agrees that any such deposit or transaction shall be grounds for immediate termination.
- F. **Refinancing Existing Debt.** Merchant will not accept a Card to collect or refinance an existing debt as defined by Rules.
- G. **Merchant Category.** Merchant may not accept Card payments for products and/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

execution of this Agreement, Merchant shall not submit, deposit or process any Transactions until receiving Bank's written approval of MCC change. Merchant understands that accepting payments for goods and/or services not directly relating to the approved MCC will result in termination of this Agreement.

- H. **Card Network Rules.** Merchant shall comply with the Card Network Rules, as amended from time to time. Merchant is required to review the latest versions of Card Network Rules, as applicable to Merchant's obligations under this Agreement, which may be available online at each Card Network's respective web site.
- I. **Cooperation.** Merchant will fully cooperate with Bank and each Card Network in the event that Bank or any Card Network 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 Networks reasonably deem necessary in order to protect Bank, Card Networks, its members and Cardholders. Neither the Bank nor the Card Networks and 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 Networks 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 only be obtained from Bank and cannot be granted by Bank's agents, affiliates, processors, MSPs or other non-Bank entities. Merchant may be subject to Card Network 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 – ADDITIONAL OBLIGATIONS

3.1. SETTLEMENT ACCOUNT

- A. **Notification of Business Changes.** Merchant shall provide Bank with immediate notice if Merchant intends to (collectively known as "Business Changes"): (i) transfer, sell or liquidate any substantial part of its total assets and/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 and/or average ticket size as approved by Bank. Notice to Bank should be made to in accordance with Article VI, Section 6.2. Failure or neglecting to provide notice of Business Changes may be grounds for termination of this Agreement. In event of Business Changes, Bank may at its sole discretion act to terminate this Agreement or, if deemed acceptable by Bank, Bank may opt to initiate a new Agreement with Merchant. In the event Bank suffers a monetary loss caused by neglect to comply with this Section, Bank has the right to recover such losses by means of exercising its Security Interests per ARTICLE IV of the Agreement.
- B. **Financial Condition.** (a) Merchant will notify Bank, within one (1) 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 or other similar proceedings if Merchant has funds due to Bank for any reason including fees, chargebacks or ACH rejects. (c) In event of any Financial Condition Change, or if Merchant is aware of 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 Financial Condition Change, Merchant will not sell, transfer, or disclose any Cardholder information, inclusive of Card account numbers or personal information to agent, vendors or any other parties.

- C. **Separate Notification.** Separate notification regarding changes to account information, including those to Settlement Account, must be made to outside services used by Merchant including but not limited to American Express and any leasing company.
- D. **Request for Copy.** Within three (3) calendar days of receipt of any written or verbal 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 law (including its obligations under the Fair Credit Billing Act, 15 U.S.C. § 1601 et seq.) or otherwise to respond to questions concerning Cardholder accounts

3.3. CREDIT INQUIRIES, FINANCIAL EXAMINATION, AND INSPECTIONS

- A. **Credit Inquiries.** Merchant authorizes Bank to make credit inquiries considered necessary in order to review the acceptance and continuation of this Agreement. This authority is granted to Bank at any time during which Merchant owes any obligation to Bank and may survive the term of the 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, Merchant shall provide written consent of any individual for which an inquiry has been or is to be made if such individual did not execute this Agreement.
- 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 to occasionally inspect 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 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 to audit Merchant's records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. Merchants will cooperate with Bank in performing annual financial reviews by presenting up-to-date financial statements, tax returns and bank statements in order to assure Bank 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.

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, point-of-sale system, point-of-sale 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 Networks. Merchant must ensure that any software or system updates of Third-party Payment System(s) satisfies 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 and/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 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 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.
- F. PCI-DSS Compliance.** Merchant shall be in full compliance with rules, regulations, guidelines and procedures adopted by any Card Network 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 the aforementioned requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements may be found on the Card Network's respective web sites.
- G. Merchant Responsibility.** (a) MERCHANT SHALL BE LIABLE FOR ALL FINES, CHARGES AND PENALTIES THAT MAY BE ASSESSED BY ANY CARD NETWORK OR PAYMENT NETWORK AS A RESULT OF TRANSACTIONS MADE BY MERCHANT OR MERCHANT'S NONCOMPLIANCE WITH THIS AGREEMENT. (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 be subject to an audit to verify Merchant's compliance with the foregoing 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 the security requirements set forth herein. (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 Network; 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) which mandate 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 web site must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer transaction data.
- J. **Privacy Policy.** If Merchant sells goods or services on the Internet, Merchant's web site must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer transaction data.

3.5. FEES AND OTHER AMOUNTS OWED BANK

- A. **Fees and Taxes.** Merchant will pay Bank fees for services, forms and equipment in accordance with the fees and rates set forth on the Application. Such fees will be calculated and debited from the Settlement Account once each business day for the previous business day's activity and/or monthly for the previous month's activity or will be deducted from funds due Merchant attributable to Sales Drafts presented to Bank. Bank reserves the right to adjust the fees set forth on the Application, including adding fees for additional services utilized by Merchant, provided that Bank must approve, and notify Merchant in advance of, any fee to or obligation of Merchant arising from or related to performance of this Agreement. Merchant is obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement.
- B. **Other Amounts Owed.** Merchant will immediately pay Bank any amount incurred by Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Card Networks, non-sufficient funds fees and other fees related to ACH debits that overdraw the Settlement Account, Reserve Account or are otherwise dishonored. Merchant authorizes Bank to debit via ACH the Settlement Account, Reserve Account, or any other account Merchant has at Bank or at any other affiliate or subsidiary of Bank or other financial institution for any amount Merchant owes 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 Bank, whether Merchant obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Bank demands funds due or such ACH does not fully reimburse Bank for the amount owed, Merchant will immediately pay Bank such amount. Merchant acknowledges and agrees that Bank will impose a 24% per annum interest rate charged to Merchant on the balance of any overdue funds due to Bank, or the greatest amount allowed by law, whichever is lower.
- C. **Pass-Through Fees.** Each Card Network assesses additional fees and costs to merchants in connection with transactions, such as dues & assessments, fixed acquirer network fees, international/cross-border transaction fees, network access and data usage charges. Pass-through fees and costs are charged at cost to Merchant.

ARTICLE IV - ACCOUNTS; SECURITY INTERESTS; INDEMNIFICATION

4.1. ACCOUNT MONITORING

Merchant acknowledges that Bank will monitor Merchant's daily Transaction activity. Merchant agrees that Bank may suspend, within its sole discretion, the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual activity. Bank will make commercially reasonable efforts to notify Merchant promptly following suspension. Bank shall not have any liability for any losses or claims, either direct or indirect, which Merchant may attribute to any suspension of funds.

4.2. REQUESTS FOR INFORMATION

Within three days of receipt of any request by Bank, Merchant shall provide a copy of all Transaction records and any other documentary evidence available to Merchant. Bank may require additional information about Merchant or Merchant's procedures for accepting Cards. Merchant's failure to provide Bank with this information shall be deemed a material breach of this Agreement.

4.3. RESERVE ACCOUNT, SECURITY INTERESTS, RECOUPMENT, AND SET-OFF.

Merchant hereby authorizes Bank to establish and maintain a non-interest bearing account at Bank ("Reserve Account") in Bank's name with sums provided by Merchant that are sufficient to satisfy Merchant's current or future obligations as determined by Bank related to the Transactions processed under this Agreement, or otherwise incurred or anticipated to be incurred by Bank on Merchant's behalf under this Agreement, applicable law or Rules, including amounts owed to cover any Chargebacks, refunds, assessments, fees, fines, actual or potential losses, or risks, (collectively the "Liabilities"). The amount of funds retained in such Reserve Account will be determined by Bank and may be adjusted from time to time, in Bank's sole and absolute discretion, based upon Merchant's processing history and any potential risk of loss to Bank. All funds held in the Reserve Account shall be the sole and exclusive property of Bank, and Bank shall have sole control of the Reserve Account. FI, but not Processor, shall have the right to initiate a debit to the Settlement Account or any other account at any institution held by Bank or any of its affiliates, at any financial institution maintained in Merchant's name, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, if Bank determines such action is reasonably necessary to protect its interests. Bank 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. Funds in the Reserve Account will remain in the Reserve Account for the greater of 18 months following termination of this Agreement or as is consistent with liability for Transactions and Chargebacks in accordance with the Rules. Bank shall then direct payment of all surplus funds remaining in the Reserve Account, if any should exist, to Merchant. If, after Bank's reasonable efforts to locate Merchant, Bank is unable to locate Merchant to distribute any such surplus funds in the Reserve Account following termination, Bank shall charge Merchant a \$100.00 per month reserve maintenance fee which will be deducted from the surplus funds. Merchant acknowledges and agrees that Merchant's interest in the Reserve Account is strictly limited to surplus funds in the Reserve Account, if any should exist, after satisfaction of all Liabilities. In the event that a court for any reason determines at any time that Bank is not the sole and exclusive owner of the funds in the Reserve Account, then Merchant also grants to Bank a security interest in and lien to all funds held in the Reserve Account, regardless of source, as part of a security agreement within the meaning of the Uniform Commercial Code. Merchant also grants to Bank a security interest in and lien

upon: (a) the Settlement Account (as set forth in ARTICLE III) and all funds at any time in the Settlement Account, whatever the source of such funds; (b) future Transactions; and (c) all Merchant's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Bank, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant authorizes and appoints Bank as its attorney in fact to sign its name to any financing statement used for the perfection of any security interest or lien granted in this Agreement. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements between Merchant and Bank. 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. In the event of a bankruptcy or other similar proceeding, Bank may exercise the rights under this Agreement to debit the Reserve Account for amounts due to Bank regardless of the pre-petition or post-petition nature of the amount due Bank, and Merchant promises not to contest any motion for relief from automatic stay that Bank may decide to file to debit the Reserve Account. Further, Bank does not consent to the assumption of this Agreement in the event of a bankruptcy or other similar proceeding. Nevertheless, if this Agreement is assumed, Merchant agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. Sec. 365, as amended from time to time, merchant must establish or maintain a Reserve Account in an amount satisfactory to Bank. Bank has the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from any amounts they would otherwise be obligated to deposit into the Settlement Account, and any other amounts Bank may owe Merchant under this Agreement or any other agreement. The rights conferred upon Bank in this Section are not intended to be exclusive of each other or of any other rights and remedies of Bank under this Agreement, at law or in equity. Rather, each and every right of Bank at law or in equity will be cumulative and concurrent and in addition to every other right.

4.4. SERVICE PROVIDERS

Merchant warrants that it has disclosed all Service Providers (other than Processor) on the Merchant Application that are in use as of the effective date of this Agreement. Merchant will cause all of its Service Providers to comply with the PCI DSS, AISP, DISC, SDP, and EMV requirements at all times and will report any non-compliance to Bank. Merchant is responsible for ensuring Service Provider's compliance with this Agreement and the Rules. Merchant will notify Bank immediately if Merchant decides to use a Service Provider that is not disclosed on the Merchant Application. Merchant agrees that its Service Providers will be Merchant's agent in the delivery of Transactions to Bank via an approved processing system or network and will assume full responsibility and liability for any failure of that Service Provider to comply with the Rules or this Agreement. Merchant assumes all liability and responsibility for its Service Providers.

4.5. MODIFICATIONS TO AGREEMENT

This Agreement will automatically be deemed to be amended to conform to the Rules as the Rules may be amended from time to time (and Bank may provide notice of the automatic amendments from time to time). With respect to all other amendments, the following shall apply: (a) Merchant may not amend this Agreement without the written agreement of Bank. (b) Bank may amend any provision of this Agreement, including without limitation those relating to the discount rate or to other fees and charges payable by Merchant by providing written notice to Merchant of the amendment at least 30 days before the effective date of the amendment. (c) subject to part (e) of this Section 4.5, Merchant may terminate this Agreement without

penalty upon receiving notice of an amendment from the Bank to which Merchant does not consent to, but otherwise Merchant shall be deemed to have consented to such amendments upon its submission of a Transaction to Bank at any time after the effective date of the amendment. (d) Amendments made by Bank due to changes in any law (including any judicial decision) may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable law. (e) If Bank's amendment to the Agreement is to provide additional pass through of the Card Brand's fees, interchange fees, or assessments, Bank will provide Merchant 30 days' notice before the effective date of the amendment, provided that Merchant shall not be permitted to terminate this Agreement without penalty.

4.6. LIMITATION OF LIABILITY; INDEMNITY

- A. Limitation of Liability.** THE LIABILITY, IF ANY, OF FI AND PROCESSOR UNDER THIS AGREEMENT, WHETHER TO MERCHANT OR TO ANY OTHER PARTY, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID BY MERCHANT TO BANK DURING THE MONTH IN WHICH THE CLAIM OUT OF WHICH THE LIABILITY IS FOUND AROSE.

IN THE EVENT MORE THAN ONE MONTH IS INVOLVED, THE AGGREGATE AMOUNT OF FI'S AND PROCESSOR'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL FI, PROCESSOR, NOR THEIR OFFICERS,

AGENTS, DIRECTORS, OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, RELIANCE,

EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION, INCLUDING, BUT NOT LIMITED TO,

DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OR OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS, EVEN IF SUCH FI OR PROCESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- B. Indemnity** MERCHANT HEREBY AGREES TO INDEMNIFY AND HOLD FI, PROCESSOR, AND THEIR RESPECTIVE EMPLOYEES AND AGENTS HARMLESS FROM ANY CLAIM RELATING TO A DISPUTE BETWEEN MERCHANT AND A CARDHOLDER, AND/OR ANY TRANSACTION PAID FOR AS MAY BE MADE BY ANYONE BY WAY OF DEFENSE, DISPUTE, OFFSET, COUNTERCLAIM OR AFFIRMATIVE ACTION. MERCHANT AGREES TO INDEMNIFY FI AND PROCESSOR, AND THEIR RESPECTIVE EMPLOYEES AND AGENTS FOR LOSSES THAT ANY OF THEM MAY INCUR AS A RESULT OF (I) MERCHANT'S BREACH OF ANY REPRESENTATION, WARRANTY, OR OBLIGATION IN THIS AGREEMENT; (II) A BREACH OF THE SECURITY OF THE SYSTEM SAFEGUARDING CARDHOLDER INFORMATION; (III) MERCHANT'S FAILURE TO COMPLY WITH PCI, AISP, EMV, AND/OR SDP; (IV) MERCHANT'S NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT; (V) ANY VIOLATION OF THE RULES; AND (VI) ALL THIRD-PARTY CLAIMS ARISING FROM THE FOREGOING.

4.7. WARRANTY DISCLAIMER

FI AND PROCESSOR MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO EITHER PARTY'S PERFORMANCE

UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND FI AND PROCESSOR EXPRESSLY DISCLAIM ALL IMPLIED

REPRESENTATIONS OR WARRANTIES, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE). THE BANK SERVICES ARE PROVIDED BY BANK "AS IS".

4.8. FORCE MAJEURE

No party will be liable to the other parties for any failure or delay in its performance of this Agreement where such failure occurs by reason of any act beyond such party's reasonable control and without the fault or negligence of such party (such act, a "Force Majeure Event"). The party suffering a Force Majeure Event shall give notice within 30 days of the Force Majeure Event to the other parties, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the impacted party's failure or delay remains uncured for a period of 30 days following written notice given by it under this Section the other parties may thereafter terminate this Agreement upon written notice.

ARTICLE V - TERMINATION AND EFFECT OF TERMINATION

- 5.1.** This Agreement shall not become effective until the Merchant Application is approved by Bank. This Agreement shall remain in full force and in effect for an initial term of two (2) years following the date of such approval. This Agreement shall be automatically extended for successive one (1) year periods on the same terms and conditions expressed herein, or as may be amended in accordance with the terms hereof, unless Merchant gives written notice of termination at least sixty (60) days prior to the expiration of the initial term or any extension or renewals thereof, in which case this Agreement will terminate at the end of the then-current term. (a) Any party may terminate this Agreement, or one or more services delivered under this Agreement at any time with or without cause by providing written notice to the other parties and such termination will become effective on the date specified by such notice. If Merchant terminates this Agreement, Bank shall have thirty (30) days from date of receipt of the notice to close Merchant's Settlement Account. (b) Bank may terminate this Agreement for any reason immediately without prior notice, including, without limitation, if (i) it has reason to believe that fraudulent Card transactions or other activities prohibited by this Agreement are occurring at any Merchant location, (ii) such action is taken to prevent loss to Bank or Card Issuers, (iii) Merchant appears on any Card Network's security reporting, (iv) Bank's merchant acceptance criteria changes, (v) Merchant breaches this Agreement, (vi) Merchant violates the Rules, (vi) Merchant engages in conduct that creates harm to or loss of goodwill to any Card Network, or (vii) Merchant fails over a consecutive one hundred eighty (180) day period to process Card transactions at or above the anticipated annualized volume and/or average transaction levels as contemplated by published industry volume and transaction levels associated with the Merchant's MCC. (c) If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank under this Agreement shall become immediately due and payable, without the necessity of any notice, declaration or other act by Bank. Notwithstanding such termination, Bank, in its sole discretion, may determine that consent to Merchant's subsequent assumption of this Agreement is in Bank's best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Bank and comply with the applicable federal or state laws governing such assumption. (d) Merchant acknowledges and agrees that a Card Network can limit or terminate processing in the Card Network's sole discretion and at any time.

5.2 EFFECTS OF TERMINATION

The termination of this Agreement for any reason shall not affect any of Merchant's obligations or liabilities accrued or incurred before the date of termination (including any obligations of Merchant to pay Fees and other amounts accrued and owing pursuant to this Agreement) and all provisions regarding indemnification, warranty and liability and limits, and any provisions which expressly or by their nature are required to survive termination in order to achieve their purpose, shall so survive until it shall no longer be necessary for them to survive in order to achieve their purpose.

ARTICLE VI – MISCELLANEOUS

6.1. USE OF TRADEMARKS AND CONFIDENTIALITY

- A. Card Signage.** Merchants will prominently display Card signage provided by Bank in its place(s) of business and, if applicable on its websites and the type of signage displayed will be in accordance with the Card Networks accepted by Merchant and if Merchant participates in Full Acceptance or Limited Acceptance.
- B. Use of Trademarks.** (a) Use of trade name, trademark, service mark or logotype ("Marks") associated with any of the Card Networks 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 Networks and Debit Networks in any way that implies that the Card Networks or Debit Networks endorse any goods or services other than their own. Merchant may not use any of the Bank's Marks or initiate publicity relating to this Agreement without the prior written approval of Bank, except that Merchant may make disclosures required by requirements of law or Rules.
- 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, systems, forms, logos, manuals, and related materials (collectively the "Materials"), which constitute property of great value and trade secrets, and that disclosure to others of such Materials may result in loss and/or irreparable damage. Merchant further acknowledges that such Materials and the Bank's system in their entirety constitute 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 such Materials and system in strict 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, nor permit any of its employees, agents, or representatives to do so, except as expressly permitted in writing by the Bank. The Merchant further agrees that upon termination of this Agreement for any reason, Merchant will immediately return all such Materials and all Confidential Information to Bank. Merchant has sole responsibility for the custody, control and use of all Materials provided to it. Merchant must ensure that no person or entity will be allowed to initiate a request or other instruction contemplated in this Agreement or to have access to any Materials without proper supervision and strict security controls to ensure that the Materials are only used in accordance with this Agreement. If the services hereunder require use of user identification codes or passwords, Bank will be entitled to rely on the correct user identification codes and passwords and shall not be responsible for any losses resulting from Bank's correct use of such data. Merchant acknowledges that this Agreement, Bank's pricing information, and the Materials shall be considered to be Bank's Confidential Information. Merchant also acknowledges Bank's claim to proprietary rights in the Materials and Bank's Confidential Information and that the Materials and Bank's Confidential Information constitute Bank's "trade secrets". In respect of Bank's Confidential Information, Merchant will (i) safeguard the Confidential Information at all times; (ii) establish and maintain procedures to

assure the confidentiality of the Confidential Information and any password or code; (iii) use the Confidential Information only for the purposes for which provided; and (iv) notify Bank promptly by telephone, confirmed in writing or in writing, if any Confidential Information is lost or its confidentiality is compromised, or is suspected by Merchant to be lost or its confidentiality compromised. Merchant will not, nor will allow anyone else to, do any of the following without the Bank's prior written consent: (i) disclose any Confidential Information of Bank to any person or entity, except to Merchant's employees and agents with a need to know the Confidential Information for the sole purpose of fulfilling Merchant's obligations or exercising any of Merchant's rights under this Agreement; (ii) make any copies, in whole or in part, of Confidential Information of the Bank in whatever form or medium (electronic, printed or otherwise) in which they may exist from time to time, except as provided in this Agreement; or (iii) translate, reverse engineer, disassemble or decompile any security devices of the Bank. This Section does not limit Merchant's ability to disclose information: (i) that Bank has approved by prior writing for disclosure; (ii) that becomes public other than through a breach of these confidentiality obligations; (iii) that was in its possession or available to it from a third party prior to its receipt of it in connection with the Agreement; (iv) that is obtained by it from a third party who is not known by it to be bound by a confidentiality agreement with respect to that information; (v) as required or requested by any securities exchange or regulatory authority to which Merchant is subject or submits, or (vi) as otherwise required to be disclosed by law or by legal or governmental process. This Section also does not limit Bank's ability, or that of Bank's, to access, analyze, and use, for any lawful purpose (including, without limitation, research, relationship management, marketing, analyzing market trends, data analysis and audits, and developing or providing products and services to other persons), information about Merchant, transactions submitted by Merchant, or any other information that Bank obtains in connection with providing products and services to Merchant in accordance with this Agreement. In addition, Bank and Merchant may disclose to its respective offices, affiliates, officers, employees and agents (and those offices, affiliates, officers, employees and agents may disclose) such information as permitted under this Section or to otherwise carry out its duties or exercise its rights under this Agreement. This Section does not limit Bank's ability or that of Bank's affiliates to access and use transaction data related to services provided hereunder in connection with the management of Bank or any of Bank's affiliate's business, including making reports to credit bureaus. Merchant acknowledges that damages may not be an adequate remedy to protect Bank against breach of this Section. Merchant agrees that Bank may seek injunctive or other equitable relief in respect of a breach of this section. As used in this Agreement, "Confidential Information" means all information concerning or relating to Bank or any of its affiliates, employees, agents, service providers, or representatives, including business practices and strategies or information concerning business practices or strategies, and any other information which is manifestly confidential by virtue of its nature or description or which Bank expressly designates as being confidential.

6.2. GENERAL PROVISIONS

- A. Entire Agreement.** This Agreement, including the Merchant Application, 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 copies of this Agreement or any amendments are to be signed, this Agreement may be executed and delivered in several counterparts and transmitted electronically or 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 Venue.** Bank, Merchant and Guarantor(s) agree that all performances and transactions under this Agreement will be deemed to have occurred in Minnesota and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of Minnesota. This Agreement will be governed by Minnesota law, without regard to its conflicts-of-law principles, and applicable federal law. Bank, Merchant and Guarantor(s) hereby consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in Ramsey County, Minnesota. The parties

consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the State of Minnesota or United States federal law.

- C. 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. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.
- D. Assignability.** This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Bank. If Merchant nevertheless assigns this Agreement without such consent of Bank, 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.
- E. Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors, and assigns. Bank may assign this Agreement.
- F. Notices; Consent to Electronic Communications.** By applying for services and confirming that it has read the Merchant Processing Agreement, Merchant is confirming to Bank 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 at one or more of FI's or Processor's sponsored web sites, such as "www.NABANKCO.com". Such communications may pertain to the services delivered by Bank, the use of information Merchant may submit to Bank, changes in laws or Rules impacting the service or other reasons, such as amendment of the Merchant Processing Agreement. In addition, all notices and other communications required or permitted under this Agreement by Bank to Merchant may also be delivered by Bank to Merchant either by fax, overnight carrier or first-class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to Bank shall be delivered by Merchant to Bank by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted 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 first business day after mailing or delivery to the carrier. Following are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section: (a) If to Processor, addressed and transmitted as follows: [REDACTED] (b) 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;(c) if to Bank, addressed and transmitted as follows: **North American Banking Company, 2230 Albert St, Roseville, MN 55113 ATTN: Merchant Card Services.**
- G. Delays by Bank.** Any delay in or failure of performance by Bank under this Agreement will not be considered a breach of this Agreement.
- H. Severability and Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Bank to exercise, or partial exercise of 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 signed in writing by the waiving party.
- I. Remedies Cumulative.** All rights and remedies conferred upon Bank in this Agreement, at law or in equity, are not intended to be exclusive of one another. Rather, each and every right of Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

- J. Relationship of Parties.** The parties are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other party.
- K. Employee and Agent Actions.** Merchant is responsible for its employee's and agent's actions.
- L. Survival.** All provisions 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 and limitations of liability.
- M. Further Assurances.** At any time or from time to time, upon the request of Bank, Merchant will execute and deliver further documents as Bank may reasonably request in order to effectuate fully the purposes of this Agreement.
- N. 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 amount 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 with the correct name and TIN that it uses when filing Merchant's tax return that includes the transactions for its business.
- O. Inspection.** Merchant agrees that, upon request, it will promptly provide to Bank or Card Network any information reasonably requested by it to aid in determining whether Merchant is in compliance with the Operating Rules and this Agreement.
- P. Records.** Merchant shall retain records for each point-of-sale transaction for at least seven (7) years or for such longer period as is required by applicable federal or state law or regulation and/or in accordance with Rules and in an accordance with ARTICLE III, Section 3.4 of the Agreement.
- Q. Investigation.** Merchant is responsible for investigation of any complaints regarding point-of-sale transactions in accordance with the requirements of the Operating Rules.
- R. Security.** Card Networks or 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.

ARTICLE VII – AMERICAN EXPRESS CARD ACCEPTANCE

- 7.1. Applicability of this Article.** The following Terms and Conditions in this ARTICLE VII apply to Merchant's participation in the American Express OptBlueSM Program (the "Program"). Merchant's participation in Program is subject to the approval of American Express. All capitalized terms under this ARTICLE VII that are not defined in this Agreement shall be given the definition assigned by American Express. For the purposes of this ARTICLE VII, any conflict between defined terms and those terms defined by American Express, the definition by American Express shall control.
- 7.2. American Express Merchant Operating Guide.** Merchant shall be bound by the American Express Merchant Operating Guide: https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf which is incorporated by reference into this Agreement and as may be amended from time to time.

- 7.3. General Terms.** Merchant authorizes Bank 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. Merchant agrees that Bank and/or its affiliates may collect and disclose Transaction Data (as defined in the American Express Merchant Operating Guide), Merchant Data, and other information about Merchant to American Express (where “Merchant Data” means the mandatory, conditional, and optional requirements including, but not limited to names, postal and email addresses, tax ID numbers, names and social security numbers of the authorized signer, and similar identifying information about Merchants, as set forth in the American Express Technical Specifications); and (ii) American Express to use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program, and important transactional or relationship communications from American Express. Merchant agrees that American Express may use the information obtained in Merchant’s application at the time of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.
- 7.4. Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Bank. 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.
- 7.5. Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from the Program to a direct relationship with American Express if and when it becomes a High CV Merchant, where a “High CV Merchant” is a Merchant whose payment or purchase volume, less refunds and Chargebacks, is (i) greater than USD \$1,000,000 in a rolling twelve (12) month period or (ii) greater than USD \$100,000 in any three (3) consecutive months (which total shall include the volume from all Merchant’s establishments under the same tax identification number (TIN)). 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 for Card acceptance.
- 7.6. 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 the Program to enforce such terms against Merchant.
- 7.7. American Express Opt-Out.** Merchant may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept Other Payment Products.
- 7.8. Refund Policies.** Merchant’s refund policies for purchases on the American Express Card must be at least as favorable as its refund policy for purchase on any Other Payment Products, and the refund policy must be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law. Merchant may not bill or attempt to collect from any Cardmember for any purchases or payments on the Card unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
- 7.9. Establishment Closing.** Upon termination of this Agreement or Merchant’s participation in the Program, Merchant will cease all use of, and remove all American Express Licensed Marks from the Merchant’s website and wherever else they are displayed. Bank may immediately terminate Merchant’s participation in the Program (i) if Merchant breaches any provision in this Agreement pertaining to the Program, (ii) if Merchant breaches any provision in the American Express Merchant Operating Guide, (iii) for cause or fraudulent or other activity, or (iv) at the request of American Express.
- 7.10. Data Incidents.** Merchant must report all instances of a Data Incident (as defined in the American Express Merchant Operating Guide) immediately to Bank after discovery of the incident. Merchant must ensure data

quality and that Transaction Data and customer information is processed promptly, accurately, and completely, and complies with the

American Express Technical Specifications. Merchant must comply with American Express Data Security Requirements (DSR) and Payment Card Industry Security Standard (PCI DSS). Merchant is responsible for being aware of and adhering to privacy and data protection laws and provide specific and adequate disclosures to Cardmembers of collection, use, and processing of personal data. Merchant will comply with all Applicable Laws, rules, and regulations relating to the conduct of Merchant's business.

- 7.11. Indebtedness.** Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Charges will be for bone fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, Merchant may sell and assign future Transaction receivables to Bank, its affiliated entities and/or other cash advance funding sources that partners with Bank or its affiliated entities, without consent from American Express.