TERMS AND CONDITIONS

This Merchant Processing Agreement is entered into by and among Processor, Bank and You, and it shall have an "Effective Date" as of the earlier of (i) the date You are first assigned a Merchant Identification Number by Processor and/or Bank or (ii) the first date that Processor provides You with one or more card processing Services. The Bank is a principal member of Mastercard International, Inc. ("Mastercard") and Visa USA, Inc. ("Visa"). Processor participates in programs affiliated with the Card Networks. This Agreement contains the terms and conditions under which Processor and Bank will provide card processing Services. Processor will not accept any unilateral alterations of or strike-outs to this Agreement and, if made, any such unilateral alterations or strike-outs shall not apply or be valid.

PLEASE READ THIS AGREEMENT CAREFULLY, PAYING PARTICULAR ATTENTION TO THE FOLLOWING SECTIONS WHICH CONTAIN IMPORTANT TERMS: (I) SECTION 7.I., WHICH REQUIRES YOU TO PROVIDE PROCESSOR WITH WRITTEN NOTIFICATION OF ANY OBJECTIONS, CLAIMS OR DISPUTES RELATING TO ANY FEES, CHARGES, EXPENSES, DEDUCTIONS, SETOFFS, AMOUNTS PAID OR AMOUNTS DUE WITHIN 60 DAYS; (II) SECTION 9, WHICH AUTHORIZES PROCESSOR TO DEBIT YOUR ACCOUNT FUNDS OWED TO IT; (III) SECTION 12.E., WHICH REQUIRES YOU TO COMMENCE ANY ARBITRATION WITHIN ONE YEAR OF THE EVENT GIVING RISE TO THE CLAIM; (IV) SECTION 12, WHICH CONTAINS LIMITATIONS OF OUR LIABILITY TO YOU AND WARRANTY DISCLAIMERS; (V) SECTION 16.E., RELATING TO TERMINATION FEES; AND (VI) SECTION 19, WHICH REQUIRES MANDATORY ARBITRATION OF CLAIMS AND PROHIBITS CLASS ACTIONS.

1. Definitions. The following definitions shall apply throughout this Agreement and any addendum or supplement thereto:

A. "Agreement" refers to these Terms and Conditions, along with any schedules or addenda hereto, including, without limitation, the Rates & Fees and the related Application submitted by You.

B. "Amex" and "American Express" refer to American Express Travel Related Services Company Inc. and its parents, subsidiaries, related companies, and affiliates.

C. "Application" refers to the merchant application You submitted to Processor.

D. "Authorization" refers to approval by, or on behalf of, the Issuer to validate or approve a transaction. Authorization does not guaranty that a transaction is not fraudulent or will not be charged back.

E. "AVS" refers to an address verification service. An AVS match does not guarantee that a transaction is valid.

F. "Bank" refers to Fifth Third Bank, a national banking association, or any other Member Bank that sponsors Processor.

G. "Batch" refers to a single submission to Processor of a group of transactions for settlement.

H. "Card" or "Cards" refer to Credit Cards and Debit Cards, both individually and collectively.

I. "Card Network Fees" refers to those fees, costs and expenses as published by Processor at the time of the applicable transaction, which are available in the addendum to these Terms and Conditions below.

J. "Card Networks" refers to Mastercard, VISA, Discover Network, Amex, and the Other Networks, both individually and collectively.

K. "Card Not Present" transaction refers to a transaction that occurs when the Card is not present at the point-of-sale, including, without limitation, Internet, mail order, and telephone order sales.

L. "Cardholder" refers the person or entity whose name is embossed on a Card and has authority to use that Card, as well as any other authorized user of such Card.

M. "Chargeback" refers to a Card transaction (or portion thereof) that is returned to Processor or Bank by the Issuer for any reason. "Chargeback" includes reversals and disputes under the Visa Rules.

N. "Credit Card" is a card bearing a valid organizational Mark of VISA, Mastercard, Discover Network, Amex or any Other Network and authorizing the Cardholder to buy goods or services on credit. To the extent permitted by this Agreement, "Credit Card" also refers to any other valid device authorizing the Cardholder to buy goods and services on credit and issued by any Card Network specified in this Agreement.

O. "Credit Receipt" shall mean any documentation necessary to reflect a credit granted to a Cardholder.

P. "Data" refers to information about You, Your customers, Your customers' Transactions and/or any financial information covered by this Agreement.

Q. "Data Privacy Laws" refers to the California Consumer Privacy Act and Privacy Rights Act, Colorado Privacy Act, Connecticut Data Privacy Act, Utah Consumer Privacy Act, Virginia Consumer Data Privacy Act and any other similar laws.

R. "Data Security Regulations" refers to, both individually and collectively, the Payment Card Industry Data Security Standard ("PCI-DSS"), the Visa Cardholder Information Security Program ("CISP"), the Mastercard Site Date Protection Program ("SDP"), the Discover Networks' Discover Information Security and Compliance ("DISC"), and any other similar program mandated by a Card Network.

S. "Debit Card" refers to a Non-PIN or PIN Debit Card. A Non-PIN Debit Card is a device with a Visa, Mastercard, Discover Network Mark or Other Networks that is tied to a Cardholder's bank account or a prepaid account and which is processed without the benefit of a PIN. A PIN Debit Card is a device bearing the mark of any ATM networks used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN pad.

T. "Discover" and "Discover Network" refer to DFS Services, LLC, d/b/a Discover Network and its parents, subsidiaries, related companies, and affiliates, along with any card issuer whose Cards are processed and settled through the Discover Network.

U. "Dispute" and "Disputes" for the purpose of this Agreement shall be broadly interpreted to include any claims, disputes, disagreements or controversies that You, Bank and/or Processor (or any subset thereof), had, have, or may in the future have against each other, whether based in contract, tort or on a statute or regulation or any other legal theory, including, without limitation, all claims, disputes, disagreements, or controversies arising out of or in any way related to (i) this Agreement; (ii) the Operation Regulations or Data Security Regulations; (iii) any transaction processed by or with the assistance of Processor or Bank; (iv) any fee, charge, cost, expense, chargeback, setoff, deduction, payment, or payment relating to or arising out of this Agreement; (v) any product or service offered by Processor; (vi) the Merchant Account or Reserve Account; (vii) any action or inaction by Processor or Bank relating to or arising out of this Agreement; (viii) any advertisement, statement, representation, marketing or sales efforts by Processor; (ix) whether a claim is subject to arbitration; or (x) any aspect of the relationship between You and Processor. For the avoidance of doubt, Disputes, under this Agreement, are not limited to "Disputes" as defined under the Visa Rules and Regulations.

V. "Factoring" refers to the submission of authorization requests and/or Sales Drafts by a Merchant for Card sales or cash advances transacted by another business. Factoring is prohibited.

W. "Interchange" shall mean the fee charged to an acquiring bank by the issuing bank in connection with a Card transaction, which are generally published by the Card Networks.

X. "Issuer" refers to the financial institution or Card Network which has issued a Card to a person or entity.

Y. "Law" and "Laws" refer to all applicable international, federal, state, and local laws, statutes, regulations, and ordinances, including, without limitation, all requirements of the U.S. Patriot Act and all other similar laws.

Z. "Mark" or "Marks" refer to the names, logos, emblems, brands, service marks, trademarks, trade names, or other proprietary designations.

AA. "Mastercard" refers to Mastercard International, Inc. and its parents, subsidiaries, affiliates, and related companies.

BB. "Merchant" and "You" refer to the person or entity that executes this Agreement and is to receive Services pursuant to this Agreement.

CC. "Operating Regulations" refers to all the certificates of incorporation, by-laws, operating regulations and any other rules, policies, practices, protocols, instructions, directives, or procedures of the Card Networks, including, without limitation, manuals, guides, rules, regulations, and bulletins, as amended from time to time. You may review copies of the Operating Regulations for Visa and Mastercard at respectively, https://usa.visa.com/support/consumer/visa-rules.html, https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/mastercard-rules.pdf and/or through each entity's website.

DD. "Other Networks" refers to any other card or similar network supported by Processor, including, without limitation, debit networks.

EE. "Processor" refers to Payroc Payment Systems, LLC, along with its parents, subsidiaries, predecessors, successors, assigns, affiliates, and related companies.

FF. "Processor Assessment" shall mean the Processor Assessment amount set forth in the first table in Section 6 of the Application.

GG. "Personally Identifiable Information" is information whose confidentiality is protected pursuant to the Operating Regulations or applicable Law.

HH. "POS Device" shall mean a Card reading terminal, mobile device, computer, software, gateway or other similar device or software used for the purpose of gathering and transmitting data related to Card transactions.

II. "Rates & Fees" refers to all fees, costs, and charges provided for, in or required or arising under this Agreement, including, without limitation, Section 6 of the Application, the fees set forth in Section 11A hereof, all schedules, Addendum and exhibits thereto.

JJ. "Rules" refers to the rules promulgated or mandated by Processor and Bank regarding the processing of Card Transactions, both individually and collectively.

KK. "Sales Draft" refers to paper or electronic evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Merchant using a Card. It includes preauthorization orders and recurring transactions (unless the context requires otherwise). The Sales Draft must conform to the terms of this Agreement, as well as all Rules, Laws, and Operating Regulations.

LL. "Services" refers to the services of Processor and Bank will provide, either directly or through a third-party provider, to Merchant pursuant to this Agreement relating to the authorization, processing and settlement of Visa, Mastercard, Discover Network an Amex transactions undertaken by Cardholders at Merchant's location(s), and all other activities necessary for Processor and Bank to perform the functions required by this Agreement.

MM. "Transaction Fee" means the Transaction Fee set forth in the first table in Section 6 of the Application.

NN. "Visa" refers to Visa USA, Inc. and its parents, subsidiaries, affiliates, and related companies.

2. Rules, Regulations and Laws.

A. Regulations. You hereby agree to comply with the Operating Regulations. You acknowledge and agree that You are solely responsible for obtaining copies of the Operating Regulations. You agree that you will take all steps necessary to review the Operating Regulations and to ensure that You and your employees are knowledgeable of and up to date on the applicable Operating Regulations, including, without limitation, reviewing all information available on the Card Network websites. You agree that You assume the risk of complying with all of the Operating

Regulations, regardless of whether You have possession of or have reviewed the Operating Regulations. While this Agreement may provide You with guidelines or principles for a sound Card program, You agree to consult with the Operating Regulations for complete information and to ensure full compliance with them.

B. Laws. You hereby agree to comply with all Laws.

C. Rules. You hereby agree to comply with the Rules, including, without limitation, those rules set forth in the welcome letter. Both the Processor and Bank shall be permitted, in their sole and absolute discretion, to amend the Rules from time to time. If the Rules are amended, this Agreement and Addendum thereto will automatically be amended to conform to and incorporate herein the revised Rules. Further, by processing any transaction through Processor or with Processor's assistance after any Rule change, You will be deemed to have agreed to and accepted the Rule change. If You do not want to accept or agree to any Rule change, You should not process any payments through or with Processor's assistance after such change occurs.

D. Incorporation of Operating Regulations, Data Security Regulations, Rules and Laws. The Operating Regulations, Data Security Regulations, Rules, and Laws are incorporated in this Agreement as if fully set forth herein.

3. Data Security and Data Privacy. THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA AND OTHER DATA. PLEASE REVIEW CAREFULLY AS FAILURE TO COMPLY CAN RESULT IN SUBSTANTIAL FINES, LIABILTY FOR UNAUTHORIZED DISCLOSURE, AND/OR TERMINATION OF THIS AGREEMENT.

A. Compliance. You agree to comply with all Data Security Regulations and all Data Privacy Laws.

B. Cardholder Data. You shall not sell, purchase, provide, or exchange with any third party any Cardholder names, addresses, account numbers, track-2 data, EMV data, hip data, security verification codes, expiration dates, Personally Identifiable Information or any other Cardholder information ("Cardholder Data"); provided, however, that You may provide Cardholder Data to the Card Networks for the purpose of completing a lawful sales transaction. You agree that under no circumstances will You or your employees, representative, third-party vendors, or agents store Cardholder Data in violation of the Operating Regulations, Data Security Regulations, Rules or Law. You agree that You, your employees, agents, representatives and third-party vendors will not retain Cardholder Data after completion of the authorization process.

C. Use of Cardholder Data. You agree that Cardholder Data may only be used for assisting in completing a lawful Card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by Card Networks or as required by Law.

D. Reporting Cardholder Data Compromises. In the event of a breach, intrusion of, theft of, or any other unauthorized access to Cardholder Data stored at your location or stored for You by any person or entity, You shall notify Processor in writing as soon as possible (but in no event any later than twenty-four (24) hours after learning of the breach, intrusion, or unauthorized access) in the manner required in the Data Security Regulations. You further agree to provide the Card Networks, the Bank, Processor, and their respective designees full access to your premises, facilities, computer hardware and software (including, without limitation, all computers, servers, and cloud-based storage, wherever located), and all pertinent records to conduct a thorough review of your compliance with the Data Security Regulations. You shall fully and timely cooperate with any such reviews or investigations.

E. Investigation. In the event of a breach, intrusion, theft, or other unauthorized access of Cardholder Data, if requested, You shall, at your own expense, (i) perform or cause to be performed an independent investigation, including a forensic analysis performed by a certified forensic vendor acceptable to Processor; (ii) provide a copy of the certified forensic vendor's final report regarding the incident to Processor (and Processor shall be permitted to provide it to the Card Networks and/or Bank); (iii) perform or cause to be performed any remedial actions recommended by such audit; and (iv) fully cooperate with Processor in the investigation. Notwithstanding anything in this Section, if required by a Card Network, Processor will engage a forensic vendor approved by a Card Network at your expense. You must cooperate with the forensic vendor so that it may immediately conduct an examination of your equipment, policies, procedures, and protocols, and provide a report to Processor.

F. Backup Systems. You warrant and represent that You currently maintain, and will continue to maintain, commercially reasonable business continuity procedure and systems to ensure security of Cardholder Data in the event of a disruption, disaster, or other failure of Processor's or Merchant's primary data systems.

G. Compliance with Data Security Regulations Post-Termination. You and your successors and assigns shall continue to comply with the Data Security Regulations after termination of this Agreement.

H. Compliance with Data Security Regulations does not Prevent Liability. You agree that compliance with the Data Security Regulations does not relieve You of financial or other responsibly for any loss, injury, harm, or damage that may result from a breach, intrusion, theft, or other unauthorized access of Cardholder Data held by You or on your behalf by a third party. You acknowledge and agree that You are solely liable for any damage or injury caused by any breach, theft, or any other unauthorized access of Cardholder Data held by You or on your behalf by a third party.

I. PCI Compliance. You agree to take all steps and perform all acts required by the data security vendor ("DSV") retained by Processor or Bank necessary to validate you full compliance with the Data Security Regulations. Compliance with the requirement of the program established by the DSV (which program may be identified by Processor, DSV or) will require at least the accurate

completion of a self-assessment questionnaire and may require, at Processor's or Bank's sole discretion, a vulnerability scan and/or the satisfaction of other requirements imposed by the Operating Regulations or the Data Security Regulations. Under certain circumstances as set for in the Date Security Regulations, You may be required to re-validate your compliance. If re-validation becomes necessary, You agree that You will take all steps deemed necessary by the DSV to re-validate your compliance with the Data Security Regulations. In return for, among other things, the services performed by the DSV, You agree to pay to Processor the PCI Compliance Fee contained in the fee scheduled that is part of this Agreement. To the extent that Processor's losses are covered and paid to Processor by insurance obtained by DSV, Processor will waive up to $100,000 in damages related to mandatory forensic audits, card replacement costs, and fines levied by Card Networks. For more information regarding terms, exclusions and limits of insurance program obtained by DSV for the benefit of Processor, please refer tohttps://royalgroupservices.com/securetrustpci/. This waiver only applies while You are (i) fully compliant with PCI DSS, (ii) fully compliant with the requirements of DSV program, and (iii) You are a Merchant of Processor.

J. Use of Third Parties. Your use of services, equipment, software, servers, systems, materials, suppliers or resources of third parties will not affect or limit your obligations under this Agreement. Any third party You retain, engage, pay, or in any use in connection with any transactions arising out of or relating to this Agreement are solely your responsibility. Thus, if any third party You engage, retain or use violates any Operating Regulation or Data Security Regulation while performing any service, taking any action, or failing to take any action arising out of or relating to this Agreement or any transaction contemplated by this Agreement, You are fully and solely responsible for that violation.

K. Processor Use of Data. You consent to Processor retaining, using, combining, disclosing or sharing Data (i) to provide, develop, improve, modify or offer Processor's services or other similar services to You or to other merchants, (ii) for analytics, and/or (iii) for fraud prevention. Processor may continue retaining, using, combining, disclosing or sharing Data for these purposes following termination of this Agreement, and Processor may use a consumer's Data as agreed to by such consumer. Processor may also continue using, combining, disclosing or sharing aggregated unidentified Data for any purpose.

L. PCI Non-Compliance Fee. In the event You do not fully and timely comply with the PCI DSS requirements, Processor shall be entitled to impose and collect from You a PCI non-compliance fee in the amount set forth in Section 6 of the Application as the "PCI Non-Compliance" fee until such time as You are in full compliance with the PCI requirements. You are required to pay the entire PCI non-compliance fee if you are not in compliance for any period of time during a calendar month.

4. Honoring Cards.

A. Card Acceptance.

i. You will honor, without discrimination and in accordance with the Rules and Operating Regulations, any Card, as indicated on the Application, properly tendered by a Cardholder, without imposing any conditions that are prohibited by the Laws, Rules or Operating Regulations. You acknowledge that if You accept Cards bearing the Visa or Mastercard logo, the Visa and Mastercard Operating Regulations require You to accept any Cards issued by non-U.S. members. You shall not do any of the following: (i) add any tax to a transaction, unless applicable Law expressly requires Merchant to impose a tax, and in such event the tax amount must be included in the transaction amount and not collected separately; (ii) request or use an account number for any purpose other than as payment for goods or services, except as permitted by the Operating Regulations or Laws; (iii) disburse funds in the form of travelers checks, if the sole purpose is to allow Cardholder to make a cash purchase of goods or services from You; (iv) permit a Cardholder to purchase travelers checks, or any other similar item, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from You; (v) accept a Card to collect or refinance an existing debt that had been deemed uncollectible or if the funds are being provided to or sent to a collection agency; (vi) enter into interchange a transaction that represents collection of a dishonored check; (vii) require a Cardholder to waive his/her rights to dispute a transaction as a condition of sale; (viii) accept Cardholder payments for previous Card charges incurred at the Merchant location; (ix) submit for payment into interchange any transaction that may in the sole discretion of a Card Network damage the goodwill of such Card Network or reflect negatively on a Card Network's brands; (x) enter into interchange any transaction for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval; (xi) accept a Card for the purchase of Scrip; (xii) accept a Visa Electron Card or a Visa Travel Money Card for manual cash disbursement; or (xiii) accept a Card for any reason prohibited by the Law, Rules, or Operating Regulations. Merchant may establish a minimum sale amount as a condition for to the extent permitted by applicable Operating Regulations. Unless otherwise set forth below or otherwise allowed by applicable Law or the Operating Regulations, Merchant may not establish a maximum sale amount as a condition for honoring Cards.

ii. You have the option to elect to be a Limited Acceptance Provider and only accept certain Visa, Mastercard or other Card Network Card types ("Limited Acceptance"). Processor, Bank and their designated vendors have no obligations with regard to Limited Acceptance except those expressly stated in the Rules, Laws, or Operating Regulations. Processor, Bank and their vendors have no obligation to monitor, review, or oversee Card types accepted by You at the point of sale. If You elect to be a Limited Acceptance Provider, You are solely

responsible for implementing your Limited Acceptance and for paying all costs related thereto. Should You submit a transaction involving a Card type You have indicated You do not wish to accept, Processor, Bank and/or their designated vendors may process that transaction and You will be solely responsible for all fees, charges and assessments related to that transaction. A general description for Visa/Mastercard Card types are: (i) Consumer Credit: a consumer Credit Card issued by a U.S. Issuer or a commercial Credit Card issued by a non-U.S. Issuer, this category does not include Visa or Mastercard branded signature-based Debit Cards; (ii) Consumer Debit: a Visa or Mastercard branded signature-based Debit Card (including certain stored-value and prepaid cards); and (iii) Business Credit: a Visa or Mastercard branded Credit Card issued by a U.S. Issuer that bears the descriptive term "Business Card," "Corporate Card," "Purchasing Card," "Fleet Card," or similar descriptive term indicated pursuant to the Rules. If You elected to be a Limited Acceptance Provider on the Merchant Application, You will be deemed as such by Processor and shall accept only the Visa and/or Mastercard types indicated on the Merchant Application.

B. Cardholder Identification. Unless permitted under the Operating Regulations, Laws and Rules, You will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number, as a condition for honoring a Card. You shall not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed. You should not request the Card Verification Value 2 (CVV2) data on any paper order form.

C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) if You are advised by Bank (or its designee), the issuer of the Card, or the designated void authorization center to retain it; (ii) if You have reasonable grounds to believe the Card is counterfeit, fraudulent, or stolen, or use of the Card has not been authorized by the Cardholder; or (iii) the Card does not have a Visa or Mastercard hologram or other designated Mark on the Card face. All Card recovery, including Discover Network Card recovery, must occur reasonably, lawfully and in accordance with the Operating Regulations, Laws and Rules, including, without limitation, Section 14.2.3 of the Discover Network operating regulations.

D. Surcharges. You will not add any amount to the posted/published price of goods or services You offer as a condition of paying with the Card, unless permitted by the Law or Operating Regulations. This paragraph does not prohibit You from offering a discount to induce a person to pay by cash, check, or similar means rather than by using a Card, so long as such discounts are permitted by the Law and Operating Regulations.

E. Return Policy. You will properly disclose to the Cardholder in writing, at the time of the Card transaction and in accordance with the Operating Regulations, Laws and Rules, your return policy and any limitation You have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against, or right to receive payment from, a Cardholder unless Bank or Processor refuses to accept the Sales Draft or revokes its prior acceptance of the Sale Draft (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if You receive such payments, You will promptly remit them to Processor. You may not reimburse a Cardholder in cash or check for any Card transaction.

G. Disputes with Cardholders. All Disputes between You and any Cardholder, relating to any Card transaction, will be settled between You and the Cardholder. Neither Bank nor Processor bears any responsibility, liability, duties or obligations for such transactions or disputes.

H. Employee/Agent/Vendor Actions. You are solely responsible for your employees, agents, vendors, and representatives' actions while in your employ or when they are taking actions for or on your behalf.

I. Responsibility for Transactions. You will ensure that the Cardholder is easily able to understand that You are responsible for the transaction, including, without limitation, delivery of the goods or provision of the services that are the subject of the transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the transaction. You will not deposit a transaction until the transaction is completed or the merchandise or services are shipped or provided, unless the Cardholder has paid a partial or full prepayment. You will only operate and accept transactions in the United States.

J. Cash Advances. Merchant shall no make cash advances on Credit Cards to Cardholders without the prior written consent of Processor and Bank.

5. <u>Authorization.</u>

A. Required on All Transactions. You will obtain a prior authorization via electronic terminal, gateway, mobile device or other similar device before completing any transaction. You will follow any instructions received during the authorization process. Upon receipt of authorization, You shall consummate only the transaction authorized and must note on the Sales Draft the authorization number. If You receive a negative response to your request for authorization, You shall not complete the Sale and You may be requested to recover the Card. Transactions will be deemed invalid on, and You shall not process or accept, Cards that are expired, whether or not an Authorization has been obtained. For electronic commerce transactions, You must attempt to obtain the Card expiration date and forward it as part of the authorization request.

B. Effect/Liability. AN AUTHORIZATION IS PROVISIONAL AND ONLY INDICATES THE AVAILABILITY OF A CARDHOLDER'S CREDIT AT THE TIME OF THE TRANSACTION. IT DOES NOT WARRANT, REPRESENT OR GUARANTEE THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER, THE CHARGE IS IN FACT VALID

OR BONA FIDE, NOR IS IT A PROMISE OR GUARANTEE THAT YOU WILL BE PAID FOR THE CHARGE OR THAT IT WILL NOT BE SUBJECT TO A CHARGEBACK. FOR THAT REASON, AN AUTHORIZATION WILL NOT WAIVE ANY PROVISION OF THIS AGREEMENT OR VALIDATE A FRAUDULENT TRANSACTION OR A TRANSACTION INVOLVING THE USE OF AN EXPIRED CARD. Notwithstanding any authorization You may receive, You are and remain fully liable for all Chargebacks. You acknowledge and agree that You are fully liable for all claims, causes of action, liabilities, injuries and damage arising out of or relating to any Chargebacks.

C. Unreadable Magnetic Stripes, EMV Chips and/or Manually Keyed Transactions. If You authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe of EMV chip on the Card.

6. Presentment of Sales Drafts.

A. Forms. You will use a Sales Draft in a paper or electronic form approved by the Bank and Processor to document each Card transaction. Each Sales Draft shall include the: (i) Merchant's name and account number; (ii) no more than the last four digits of the Card number and shall not include the expiration date; (iii) date of the transaction; (iv) brief description of the goods or services involved; (v) transaction authorization number; (vi) total amount of the sale (including applicable taxes) or credit transaction; and (vii) if applicable, adjacent to the signature line, a credit policy notation that all sales are final and/or that the order will take a period of time, if applicable. You agree to comply with all Fair and Accurate Credit Transactions Act ("FACTA") requirements, and You shall be fully and solely liable for any claims, causes of action, liabilities, damage or injury arising out of or relating to any inaction or action You take that constitutes or causes, directly or indirectly, any breach or violation of FACTA.

B. Signatures. If required by the Rules, Laws, or Operating Regulations, Sales Drafts must be signed by the Cardholder.

C. Delivery and Retention of Sales Drafts. You will deliver a complete and legible copy of the Sales Draft or Credit Receipt or receipt, to the extent required by the Law or Operating Regulations, to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum in a secure and limited access area for the periods set forth in the Operating Regulations for the applicable Card Network.

D. Electronic Transmission. If You utilize electronic authorization and/or data capture services, You will enter the date related to a sales or credit transaction into a computer, electronic point of sale terminal or magnetic stripe/EMV chip reading terminal no later than the close of business on the date the transaction is completed and You will Batch Out your system or terminal every day. "Batch Out" is the process in which all transactions are totaled and settled on each system or terminal and transmitted to Processor or its designated agent. In all cases You must present the record within three (3) business days of the transaction (two (2) business days for Electronic Cards). You will be charged and agree to pay a batch fee for Batch Outs and for batch inquiries. If You provide your own electronic terminal or similar device, or You lease a terminal from a third party, such terminals must meet Processor's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe/EMV chip reading terminal will be transmitted by You to Processor, Bank or its agent in the form Processor specifies or as required under the Laws or Operating Regulations. If Bank or Processor requests a copy of a Sales Draft, credit voucher, or other transaction evidence, You will provide it within twenty-four (24) hours following the request. Processor will not be obligated to settle transactions that are not properly Batched Out by You.

7. Merchant Responsibilities.

A. Exclusivity. During the term of this Agreement, You shall use Processor as your exclusive provider of the Services provided for herein, including, without limitation, the transmission, authorization, and settlement of your customer's Card transactions.

B. Deposit of Sales Drafts. You agree that this Agreement is a contract of financial accommodation within the meaning of, and as defined in, the Bankruptcy Code, 11 U.S.C. § 365, as amended from time to time. Subject to this Section, and the other terms and conditions of this Agreement, Bank will deposit in the Merchant Account (defined in Section 9 below) all Sales Drafts, whether evidenced in writing or by electronic means, that comply with the terms of this Agreement and the Operating Regulations and will provide You with provisional credit for such Sales Drafts (less any credits, adjustments and Chargebacks). You acknowledge and agree that your obligations to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Merchant Account. Notwithstanding the previous sentence, under no circumstances will Bank or Processor be in any way responsible or liable for processing credits or adjustments related to original sales transactions not processed by Bank or Processor. All Sales Drafts and deposits are subject to audit and final checking by Bank and Processor and may be adjusted for inaccuracies. You acknowledge and agree that all credits provided to You are provisional and subject to Chargebacks and other adjustments in accordance with the Operating Regulations, Rules and this Agreement. Bank and Processor may elect to grant conditional credit for individual or groups of any Sales Drafts. Final credit for those conditional Sales Drafts will be granted within Bank or Processor's sole and absolute discretion.

C. Chargebacks. You are solely and fully liable to Processor and Bank for all transactions returned to Processor and Bank for whatever reason, including, without limitation, Chargebacks. YOU ARE SOLELY AND FULLY LIABLE FOR ANY CLAIMS, CAUSES OF ACTION, LIABLITIES, DAMAGES, OR HARM CAUSED BY ANY CHARGEBACKS. You will pay Processor and Bank on demand the amount, value and costs arising out of or relating to all Chargebacks, including, without limitation, any sale for which the

Cardholder disputes the validity of the sale. You authorize Processor and Bank to offset, setoff and/or deduct from any funds owed to You the full amount of all Chargebacks. You further authorize Processor and Bank to offset, setoff and/or deduct from incoming transactions and to debit the Merchant Account, the Reserve Account (as defined in Section 10 below), or any other account held at Bank or at another financial institution the amount of all Chargebacks and all fees, fines and penalties arising out of or relating to any Chargebacks. You will fully cooperate with Processor and Bank in complying with the Rules, Operating Regulations and Laws regarding Chargebacks. Guarantors are personally liable for the full amount of all Chargebacks and all fees, fines and penalties arising out of or relating to any Chargebacks. You are obligated to monitor any and all Chargeback related notices and reports provided by Processor. You acknowledge and understand that your failure to respond to a Chargeback within the applicable deadline may result in a forfeiture of any right You may have had to contest the Chargeback. You are subject to Chargebacks on sales for at least 180 days following the sale transaction.

D. Excessive Activity. Excessive Activity by You shall constitute a breach of this Agreement and cause for immediate termination of this Agreement with cause and without prior notice or an opportunity to cure. "Excessive Activity" means, during any monthly period and for any one of your terminal identification numbers or merchant identification numbers in the aggregate, Chargebacks and/or retrieval requests in excess of one percent (1%) of your average monthly Card transactions or returns in excess of three percent (3%) of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take additional actions, as either of them may deem warranted in their sole and absolute discretion, to address or remedy Chargebacks, to prevent future Chargebacks, and/or to minimize the harm arising out of or relating to the Chargebacks, including, without limitation, suspension of processing privileges, creation or maintenance of a Reserve Account in accordance with this Agreement, or increase of funds or percentage of funds required in a Reserve Account.

E. Credits.

i. *Credit Memoranda.* You will issue a Credit Receipt instead of making a cash advance or providing a check, disbursement or refund on any Card transaction. Processor and/or Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to Processor. You will not submit to Processor or Bank a credit relating to any Sales Draft not originally submitted to Processor and Bank, nor will You submit a credit that exceeds the amount of the original Sales Draft. You cannot submit or process a credit transaction that does not correspond to a previous transaction on the original Sales Draft. Full refunds must be made for the exact dollar amount of the original transaction, including tax, handling charges, etc. You are solely responsible for paying all refunds submitted to Processor on your Merchant Account. Processor assumes no responsibility, duty or obligation for verifying any credits or refunds. Do not process a credit transaction after a Chargeback is received. Credits issued after a Chargeback has been received may not be recoverable and You are financially responsible for both the credit and the Chargeback in that situation. YOU ARE SOLELY RESPONSIBLE FOR SECURING YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES AND OTHERS FROM SUBMITTING CREDITS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS FOR TRANSACTIONS. You will, within the time period specified by the Law or Operating Regulations, whichever is shorter, provide Processor with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that was the subject of a Card transaction.

ii. *Revocation of Credit.* Processor or Bank may refuse to accept any Sales Draft or revoke the prior acceptance of a Sales Draft at any time, including without limitation in the following circumstances: (i) the transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, the Rules, Laws, and/or Operating Regulations; (ii) Bank or Processor receives notification that the Cardholder disputes his or her liability to Merchant for any reason, including, without limitation, those Chargeback rights enumerated in the Operating Regulations; or (iii) the transaction giving rise to the Sales Draft was not directly between You and the Cardholder. You acknowledge and agree that You are not entitled to retain, and will pay Bank and Processor, as appropriate, any amount previously credited to You for a Sales Draft not accepted by Processor or, where such Sales Draft is provisionally accepted, but is subsequently revoked.

F. Reprocessing. Notwithstanding any authorization or request for the Cardholder or customer, You will not re-enter or reprocess any Card transaction that has been the subject of a Chargeback. In the event that You re-enter or reprocess any Card transaction that was the subject of a Chargeback, You are solely responsible for all claims, causes of action, liabilities, and damages arising out of or relating to that transaction. Further, such action constitutes a breach of this Agreement and may, in the sole discretion of Processor and/or Bank, result in the immediate termination of this Agreement for cause.

G. Fraud, Debt Collection, and Factoring. You will not present for processing or credit, directly or indirectly, any transaction not originated as a Card transaction directly between You and a Cardholder or any transaction You know or reasonably should have known to be fraudulent or not authorized by the Cardholder. You will not submit an authorization request or Sales Draft for a Card transaction by another business. If You submit a Sales Draft on behalf of another person or entity, You will suffer all losses associated with the dispute of any such Sales Draft or related transaction and submitting such a transaction shall entitle Processor and/or Bank, in their sole discretion, to terminate this Agreement for cause. Perpetrators of fraudulent transactions will be referred to law enforcement

officials. You will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. You will not deposit any Sales Draft relating to the collection of debt that has been deemed uncollectable. You agree that Processor may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Processor and Bank will have no liability for any claims, causes of action, liabilities, or losses arising out of or relating to any suspension of funds disbursement pursuant to this Section or any other provision of this Agreement.

H. Tax ID Numbers and Forms 1099-K.

i. *Agreement Information and Tax ID Numbers.* You agree, represent and warrant that your tax identification number ("TIN") provided in the Application, is true and correct. You acknowledge that Processor and/or Bank may be obligated to provide certain information about You to government entities, including, without limitation, your entity name, DBAs, TIN, processing volume and principals' social security numbers. You hereby authorize and consent to Processor and Bank providing any information that You provide to us to any governmental agency that requests it. You further agree to release Processor and Bank from any claims, liability, damages, and losses, including penalties and fine and attorneys' fees that arise out of or relate to the TIN You provided in the Application being incorrect or not complying with your representations. Furthermore, Processor shall be entitled to collect a fee from You in the amount of $29.95 each time Processor determines that the current TIN You provided Processor is not valid. In addition, You agree and understand You may be subject to back-up withholding requirements as provided in the Internal Revenue Code of the United States and related regulations.

ii. *Paperless Delivery of 1099-K Forms.* You may elect to receive a paperless 1099-K form from Processor via electronic delivery; i.e., delivered by way of an email or through a web interface, where You can download the statement. By agreeing to accept electronic 1099-K forms, You also agree that:

1. Hardware and Software Requirements. Your computer system meets the hardware and software requirements to access, print, download and save a copy of your 1099-K forms. To access your 1099-K forms electronically, You must Adobe Acrobat Reader installed on your computer. If You do not, this can be downloaded for free at http://get.adobe.com/reader/. You also need to have Internet access that supports the use of a browser. You need hardware as necessary to support this software and browser. Additionally, and in order to keep copies for your records, You will need to have access to a printer of have the ability to download information.

2. Updating Information. You will promptly notify Processor of any change in your email address. You may do this by email or by calling Processor. If an email address is undeliverable due to an incorrect or inoperable email address, Processor will resend such information via U.S. Postal Service.

3. Withdrawal of Consent. You may withdraw your consent by writing (either electronically or on paper) to the person or department whose name, mailing address, telephone number and email address is listed in the "Notice" Section below or through a web interface. Withdrawal of consent to paperless delivery is prospective only. Any withdrawal ensures that future 1099-K forms will be delivered to You as a paper document but does not apply to any document that has already been furnished to You electronically. Processor may take up to 10 business days after receipt to process your request.

4. Form of 1099-K and Post-Consent Request for Paper 1099-K Forms. If You do not specifically consent to the electronic delivery of 1099-K forms, You will continue to receive paper copies of all required 1099-K forms. In addition to consenting to and obtaining electronic copies, You may request additional paper copies of your 1099-K forms by contacting Processor. Requesting a paper copy of your 1099-K form will not be considered a withdrawal of your consent for paperless delivery as You must formally withdraw consent to begin regularly receiving a paper copy of You future 1099-K forms, as outlined above.

5. Duration and Termination. Your consent will apply to 1099-K forms for every year following the date of the consent until it is withdrawn in according with the withdrawal of consent terms set forth above. Electronic 1099-K forms will remain available electronically for at least one year after the date such documents are made available to You electronically. Processor reserves the right to stop or modify the paperless delivery of your 1099-K forms at any time by providing You with written notice at the email address or physical address on file with Processor at the time notice is sent.

I. Merchant Financials. Upon receipt of a request from Processor or Bank, You, at your own expense, will provide quarterly and/or annual audited financial statements prepared in accordance with generally accepted accounting principles and such other financial information as Processor or Bank may reasonably request. Such information shall be provided as soon as possible following the request, but in no event more than 30 days following such request. You agree to promptly review all statements, receipts, billing statements, bank statements, invoices and other documents containing fees, charges, Chargebacks, expenses, costs, amounts due, amounts payable or amounts held in reserve (together, "Invoices") prepared by or for Processor and/or Bank and made available to You, whether in electronic or hard copy form, including, without limitation, Invoices available on the internet or provided pursuant to Processor's on-line reporting tools. You agree to carefully review all Invoices to identify any potential, claims, or actual incorrect, erroneous, inapplicable, excessive, inaccurate, or otherwise improper fees, costs, expenses, charges, costs, deductions, offsets, setoffs, amounts held or amounts paid (individually and collectively, "Errors"). Within sixty (60) days of any Invoices being made available to You, whether in hard copy or electronically, You shall inform Processor, in writing, of any

Errors, including, without limitation, dispute regarding or objection to the propriety, amount, applicability, validity, excessiveness, accuracy, or appropriateness of any fee, cost, expense, charge, Chargeback, setoff, deduction, offset, amount held, or amount paid. YOU STIPULATE AND AGREE THAT ANY OBJECTION TO, DISPUTE ABOUT, OR CLAIM RELATING TO ANY FEE, COST, EXPENSE, CHARGE, CHARGEBACK, SETOFF, DEDUCTION, OFFSET, AMOUNT HELD, OR AMOUNT PAID, IS FULLY AND FINALLY RELEASED AND WAIVED UNLESS PROCESSOR RECEIVES THE OBJECTION, DISPUTE OR CLAIM, IN WRITING, WITHIN SIXTY (60) DAYS FROM THE DATE THE INVOICE IS MADE AVAILABLE TO YOU, EITHER IN HARD COPY OR ELECTRONIC FORM. THE OBJECTION, DISPUTE OR CLAIM MUST BE IN WRITING AND SHOULD BE SENT TO: DIRECTOR OF OPERATIONS, PAYROC PAYMENT SYSTEMS, LLC, 7840 GRAPHICS DRIVE, TINLEY PARK, IL 60477, support@payroc.com.

J. Optional Services. Processor may offer and You may elect to use services from third parties that are related to the Services provided by Processor or Bank to You pursuant to this Agreement ("Optional Services"). Even though Processor may collect the fees related to the Optional Services, You acknowledge and agree that You will use these Optional Services at your own risk and Processor shall have no liability for the failure of the third parties who provide the Optional Services to provide some or all of those Optional Services or the failure of the Optional Services to be performed as contemplated by You. Processor and/or Bank shall have no obligation to provide the Optional Services and that the provision of any Optional Services is subject to the availability of the Optional Services from the third party actually providing such Optional Services. The Optional Services may require that You agree to additional terms and conditions or that You enter into an agreement directly with the vendor providing such services. Optional Services shall include all services provided by third parties. If You elect to use any Optional Services, the terms and conditions related to each applicable Optional Service that You have selected will become part of this Agreement, if already included herein, or will be attached as exhibits to this Agreement. Without limiting any of the foregoing provisions, if You elect to use any form of wireless service in connection with Card transactions then You agree that Processor and/or Bank are not responsible, and will not be liable, for (i) verifying wireless service coverage for You, (ii) any loss of coverage in any particular area, (iii) for termination of your wireless coverage, (iv) the continued use of your equipment as a wireless terminal if You wireless coverage is terminated or suffers a loss of coverage, or (v) any other losses, damages or injuries arising out of or relating to the use, loss or termination of wireless service. Neither Processor nor Bank make any warranties, representations or guarantees regarding the Optional Services, and shall not be liable for any claims, causes of action, liabilities, or damages arising out of or relating to the Optional Services.

K. Your Agents. In the event You use a third party to perform any of your obligations under this Agreement or You use a third party to perform services that arise out of, interact with, or relate to any of the services performed by Processor, Bank or their service providers under this Agreement, then You agree that You will be solely responsible for the actions of such third party as though You had performed those acts yourself. Furthermore, You agree to cause each such third party to comply with all requirements of this Agreement, the Rules, Operating Regulations, Data Security Regulations, and Laws, including, without limitation, all requirements related to due diligence, registration and/or certification and to be responsible for all costs and expenses related thereto. You agree to be solely and fully responsible for all claims, causes of action, liabilities, losses or damages suffered by Processor, Bank or any third party arising out of or relating to the actions of any such third party and agree to indemnify Processor and Bank, pursuant to the "Indemnification" provision below, for the acts of such third party.

L. Disclosure of Merchant Location. You shall prominently and clearly disclose to the Cardholder that You are the merchant at all points of the interaction and provide the Cardholder your location (physical address) so that the Cardholder can easily distinguish You from any other party, such as a supplier of products or services. The Merchant name and location, as disclosed to the Cardholder, must be the same as provided in authorization and clearing Transaction messages.

8. <u>Other Types of Transactions.</u>

A. Mail Order. You may not solicit or accept Card Not Present transactions, including email, internet, or telephone orders (also known as "MOTO") without prior written consent from Processor. Card Not Present and MOTO orders completed without prior written consent of Processor constitute a breach of this Agreement and may result, in the sole discretion of Processor and/or Bank, in the immediate termination for cause of this Agreement, in addition to any other remedies available under the Operating Regulations, Laws and Rules. You may be required to use an address verification service ("AVS") on Card Not Present and MOTO transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement, validate a fraudulent transaction, or otherwise relieve You in any way from any claim, cause of action or injury arising out of or relating to a Card Not Present or MOTO transaction. You will obtain the expiration date and CVV2 number of the Card for a Card Not Present or MOTO transaction and submit the expiration date when obtaining authorization of the Card transaction. No Sales Draft shall be submitted for processing prior to the shipping of the product or the provision of the services purchased by the Cardholder without prior approval. You acknowledge and agree that MOTO and other Card Not Present transactions have a substantially higher risk of Chargeback. You agree to be solely responsible for any claims, causes of action, liabilities or damages arising out of

or relating to a MOTO transaction or other Card Not Present transaction.

B. Recurring Transactions. For recurring transactions, You must obtain a written approval from the Cardholder, which specifies at least the following information: Cardholder's name, address, account number, expiration date, the transaction amounts, the timing or frequency of the recurring charge, and the duration of time for which the Cardholder's authorization is granted. For Discover, it must also include the total amount of recurring charges to be billed to the Cardholder's account (including taxes and tips) and your Merchant account number. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from Processor that authority to accept recurring transactions has been revoked; or (iii) a response that the Card is not to be honored.

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single sales 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; (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Operating Regulations or (iii) as otherwise expressly permitted by the Agreement.

D. Partial Completion.

i. *Prior Consent*. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior written consent will be deemed to be a breach of this Agreement and cause for mediate termination of this Agreement for cause by Processor and/or Bank, in addition to any other remedies available under this Agreement, the Rules, the Laws or Operating Regulations.

ii. *Acceptance.* If You have obtained prior written consent from Processor, then You will complete such Card transactions in accordance with the terms set forth in this Agreement, the Operating Regulations, and Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. You will note on the Sales Draft, among other things, the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or You have fully performed the services.

E. Special Terms. If You limit refunds or exchanges, or impose other specific conditions for Card sales, You must provide proper disclosure to the Cardholder at the time of the transaction in accordance with applicable Laws and the Rules and Operating Regulations. If applicable, the words "No Exchange. No Refund" or other applicable words must be clearly printed (in ¼" letters) on the Sales Draft near or above the Cardholder's signature. MAKING THE DISCLOSURES REQUIRED BY THIS SECTION OR ANY OTHER SECTION OF THIS AGREEMENT DOES NOT ELIMINATE YOUR LIABILITY FOR CHARGEBACKS OR FOR ANY VIOLATIONS OF THE LAWS (INCLUDING CONSUMER PROTECTION LAWS), RULES OR OPERATING REGULATIONS.

F. Lodging. If You are a lodging merchant, please review the Operating Regulations carefully to ensure that You are complying with all rules applicable to such merchants. For example, You must provide the Cardholder with written confirmation of a guaranteed reservation, with such confirmation containing at least the following information: Cardholder's name, Card number (truncated per applicable Laws and Operating Regulations), reservation confirmation number, anticipated arrival date and length of stay, and the cancellation policy. You are solely responsible for ensuring that You are in full compliance with all Laws, Rules and Operating Regulations applicable to lodging merchants.

G. Future Delivery. You will not present any Sales Draft or other memorandum to Processor for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery (including, without limitation, deposits) without prior written authorization from Processor. If Processor has given such written consent, You represent and warrant to Processor that You will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods and services, other than the goods and services being acquired by the Cardholder pursuant to the transaction. You 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.

H. Deposits of Principals. Your owners, partners, officers, and employees, and any guarantor of this Agreement, are prohibited from submitting Sales Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary court of your business.

I. Internet and ACH Transactions.

i. *Internet.* You must receive written consent from Processor to process transactions using the internet ("Internet Transactions"). If You obtain such written consent, You shall not process Internet Transactions unless the transactions have been encrypted by a third-party vendor acceptable to Processor, in Processor's sole and absolute discretion. If You submit Internet Transactions without Processor's written consent or through a third-party vendor not acceptable to Processor, then Processor may immediately terminate this Agreement for cause. If You have indicated on the Application that You will be submitting Internet Transactions, You acknowledge that You have received and fully reviewed a copy of the CISP, PCI-DSS, SDP, DISC and other manuals related to the Data Security Regulations. You agree that You are, and will remain, fully compliant with the Data Security Regulations,

including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. All Internet Transactions must comply with all applicable Data Security Standards. You agree that Internet Transactions are high risk and subject to a higher incidence of Chargebacks. You are solely and fully liable for all Chargebacks and claims, causes of action, liabilities, and losses arising out of or relation to Internet Transactions, whether or not: (i) Internet Transactions have been encrypted; or (ii) You have obtained written consent from Processor to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement, otherwise validate a fraudulent transaction, or otherwise reduce, impact or eliminate your liability under this Agreement. You must offer Cardholders a secure transaction method, that is compliant with PCI and any other applicable Data Security Standard. All communication costs related to Internet Transactions will be your sole responsibility. You agree that Processor will not manage the Internet telecommunications link, and that it is your sole responsibility to manage that link. Other than a terminal help desk, You also understand and agree that Processor does not have a seven (7) day per week, twenty-four (24) hour operation. All Internet Transactions will be settled by Bank into a depository institution of the United States in U.S. currency. Use of software or hardware that has connectivity to the Internet or any external network that interacts in any way with the services provided by Processor or Bank under this Agreement poses an increased risk and Merchant assumes all liability and shall be solely liable for all claims, causes of action, liabilities and losses resulting from the use of such software or hardware.

ii. *Requirements.* Further, your web site must contain all of the following information: (i) complete description of the goods or services offered; (ii) returned merchandise and refund policy; (iii) customer service contact, including electronic mail address and/or telephone number; (iv) transaction currency (e.g., U.S. or Canadian dollars); (v) if known, export or legal restrictions; (vi) consumer data privacy policy; (vii) your security method for transmission of payment data; (viii) all accepted Card brand logos in full color; (ix) the address of your permanent establishment and your country of domicile on the same screen view as the checkout screen used to present the total purchase amount, or within the sequence of web pages the Cardholder accesses during the checkout process; and (x) your delivery policy. If You store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, You must comply with the Operating Regulations, Laws and Rules, including, without limitation, all PCI-DSS requirements relating to securing such data. You agree to defend, hold harmless, indemnify and reimburse Processor and Bank immediately for any claims, causes of action, liabilities, losses, assessments and/or fines arising out of or relating to any breach of this Section.

J. Amex. Unless You have selected the Processor Amex OptBlue Program in the Application, upon your request, Processor will provide access to authorization and/or data capture services for Amex directly from Amex ("Amex Direct Program"). If You request the Amex Direct Program You must enter into a separate merchant agreement with Amex. Neither Processor nor Bank is in any way liable or responsible for funding transactions under the Amex Direct Program. Further, Processor or Bank may notify You that Amex or another card ("Additional Card") may be accepted by You. If You do not decline this offer in writing, Processor or Bank will forward certain information, including, without limitation, your Merchant Account number, to the Additional Card issuer. The terms of this Agreement shall apply to Additional Card transactions. Processor or Bank will notify You in writing of the fees applicable to Additional Card transactions. By (i) accepting an Additional Card; (ii) transmitting a transaction for an Additional Card; or (iii) causing an Additional Card transaction to be processed, You agree that the terms of this Agreement shall apply to all Additional Card transactions.

K. RewardPay. If You utilize RewardPay, You shall comply with all Rules and Operating Regulations applicable to surcharging including without limitation that (i) the amount of any surcharge shall not exceed the maximum amount allowed by the Card Networks, (ii) You shall not surcharge debit cards, (iii) You shall post proper signage at the entrance to Your place of business and at any point of sale. In the event that the Rates & Fees set forth in this Agreement exceed the maximum surcharge allowed by the Card Networks, You agree to pay such excess amounts to Processor and will not charge such amounts to any Cardholder. Credit Card surcharges charged to the Cardholder are subject to a daily discount and are deducted daily from Merchant Settlement. Monthly fees (including without limitation the monthly subscription fee, per transaction fee, and difference between the Rates & Fees set forth in this Agreement and the maximum surcharge allowed by the Card Networks) shall be deducted monthly from Merchant Settlement.

L. Consumer Choice. If You utilize Consumer Choice, You shall post, both on the shelf and in any marketing materials, either (i) the card price or (ii) both the card price and cash price. You shall also post signage provided by Processor in accordance with the Operating Regulations. If you accept tips, You will be charged processing fees related to such tips and You agree to pay such fees to Processor. Cardholder Card Charges are subject to a daily discount and are deducted daily from Merchant Settlement. Monthly fees shall be deducted monthly from Merchant Settlement.

M. Third-Party Software. You shall not use any third-party software to adjust the price of Your products or services if such software violates any Operating Regulation, including without limitation those Operating Regulations relating to surcharging or cash discounting.

N. Non-Bankcard Services. From time to time, Processor may offer You certain additional products and services which may or may not be related to the processing of Card transactions. If You wish to decline the offer, You will inform Processor in writing of your desire to decline the product or service within the time period Processor indicated in the offer. Your failure to decline the offer in writing within the prescribed time period shall constitute an acceptance of the offer, and You will be liable to Processor for all products or services provided in connection with, arising out of, or relating to the offer.

9. Merchant Account.

A. Establishment and Authority. You will establish and maintain with Bank and processor (or with an ACH-receiving depository institution acceptable to Bank) one or more commercial checking account(s) to facilitate payment for Card transactions (collectively, the "Merchant Account"). You will maintain sufficient funds in the Merchant Account to accommodate all transactions contemplated by this Agreement, including, without limitation, fees, fines, Chargebacks and any other amounts due from You to Processor or Bank pursuant to this Agreement. You irrevocably authorize Processor to (i) access the Merchant Account; (ii) deduct, offset, setoff, electronically debit or otherwise remove funds from the Merchant Account for Chargebacks or any fees, fines or penalties relating to Chargebacks in accordance with this Agreement or the Operating Regulations; (iii) deduct, offset, setoff, electronically debit or otherwise remove funds from the Merchant Account to pay, reimburse, or cover any funds owed to Processor or Bank, including, without limitation, funds owed for any fees, charges, penalties, Chargebacks, costs, or expenses, duty to defend, or indemnification obligations; and (iv) deduct, offset, setoff, electronically debit or otherwise remove funds from the Merchant Account to pay, reimburse, or cover any funds owed to Processor or Bank for any duty to defend or indemnification obligations owed under this Agreement. You also authorize vendors or agents of Processor or Bank to deduct, offset, setoff, debit or otherwise remove funds from the Merchant Account as appropriate or permitted under this Agreement. The authority provided under this Section will remain in effect for 2 years after termination of this Agreement, whether or not You have notified Processor of a change to the Merchant Account. You must obtain prior written consent from Processor to change a Merchant Account. If You change the Merchant Account without Processor's prior written consent, Processor may immediately terminate the Agreement for cause and may take any other action it deems reasonably necessary, in its sole discretion, to protect itself and Bank.

B. Deposits. Processor or Bank has the right to delay, suspend or withhold, within their sole and absolute discretion, crediting the Merchants Account with funds evidenced by submitted Sales Drafts. You authorize Processor to initiate reversal or adjustment entries and initiate, terminate or suspend such entries as may be reasonably necessary to grant You conditional credit for any entry. Processor or Bank will make deposits to the Merchant Account pursuant to this Agreement and the ACH Authorization. By executing this Agreement, You authorize and appoint Processor and Bank to act as your agent to collect Card transaction amounts from the Card issuing financial institution. As the collecting agent, Processor or Bank, in its sole discretion, may grant You provisional credit for transaction amounts, in the process of collection, subject to receipt of final payment by Processor or Bank, and subject to all Chargebacks, returns, fees, and fines.

C. ACH Authorization. By executing this Agreement, You authorize Processor and Bank to initiate debit/credit entries to the Merchant Account, the Reserve Account, or any other account maintained by You at any institution that is a receiving member of ACH, all in accordance with this Agreement. This authorization will remain in effect after termination of this Agreement and until all of your obligations to Processor and Bank have been paid in full. In the event You change the Merchant Account, within 10 business days of the change You will notify Processor in writing of the change and provide Processor with your new Merchant Account information, and this authorization will apply to the new Merchant Account. In the event that You change the Merchant Account without notification to Processor as provided for in the preceding sentence or fail to maintain an active Merchant Account, You shall pay Processor a fee of $25 per month until such time as proper notice is given and/or an active Merchant Account is established.

10. Security Interests, Reserve Account, Recoupment, and Set-Off.

A. Security Interests. This Agreement constitutes a security agreement under the Uniform Commercial Code. By executing this Agreement, You grant to Bank and Processor a security interest in and first priority lien upon: (i) all funds at any time in the Merchant Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account (as defined below), regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) any amount which may be due to You under, arising out of, or relating to this Agreement, including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other security to Processor and Bank upon request. You authorize Processor and/or Bank to file a financing statement in all applicable jurisdictions necessary to perfect the security interest in the Secured Assets. You represent and warrant that no other person or entity has a security interest in the Secured Assets. These security interest and liens will secure all of your obligation under this Agreement and any other agreements now existing or later entered into between You, on the one hand, and Processor, or Bank, on the other hand, including, without limitation, your obligation to pay any amount due to Processor or Bank. This security interest may be invoked, levied upon or exercised by Processor or Bank without notice or demand of any kind by, among other things, Processor or Bank making an immediate withdrawal or

freezing of the secured assets or by the withdrawal, debit or removal of funds. Further, with respect to the Secured Assets, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable laws and equity. You shall obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment, and neither Processor nor Bank are required to file a motion for relief, or otherwise seek relief, from a bankruptcy action automatic stay to realize, obtain, levy, debit or other take ownership or possession of any of the Secured Assets. Nevertheless, You covenant, warrant and agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank

B. Reserve Account.

i. *Establishment.* If requested by Processor or Bank, You will deposit into a non-interest bearing deposit account designated by Processor or Bank ("Reserve Account") funds sufficient to satisfy your current and reasonably estimated future obligations to Processor or Bank. Processor or Bank may establish a Reserve Account by depositing proceeds of your sales transactions into a Reserve Account if it determines in good faith that a reserve is warranted to ensure the interests of Processor or Bank are adequately secured and/or protected, including, without limitation, a determination that (a) transactions are outside the risk parameters indicated by You in this Agreement; (b) there has been a change in your business or transactions that raises concerns regarding your ability to pay Processor or Bank all amounts due or potentially due in the future; (c) You breached this Agreement, the Laws, Rules or Operating Regulations; or (d) there has been Excessive Activity. By executing this Agreement, You also authorize Processor and Bank to (1) debit the Merchant Account, (2) establish the Reserve Account or (3) deposit funds into the Reserve Account. You also authorize Processor and Bank to deposit funds into the Reserve Account that Processor or Bank would otherwise be obligated to pay You if Processor or Bank determines such action is reasonably necessary to protect one or both of their interests, with such authorization including, without limitation, the right to debit funds from the Merchant Account and deposit them into the Reserve Account. You shall not be entitled to interest on any funds held in the Reserve Account. Rather, Processor shall be entitled to all interest generated by or paid to the Reserve Account.

ii. *Authorizations.* Processor or Bank may in its sole discretion, and without notice to You, apply, debit, deduct, offset, or otherwise remove any amounts in the Reserve Account to reduce or satisfy any amounts You owe under this Agreement or under any other agreement between You and Processor or Bank.

iii. *Funds.* Unless You obtain Processor's written consent, You shall not debit, remove, transfer, spend, or use Funds in the Reserve Account until at least two-hundred seventy (270) days following termination of this Agreement. This 270-day period shall have no bearing on your liabilities, duties or obligations to Processor in the event of a breach of this Agreement; that is, it is simply a time period during which the funds in the Reserve Account will be held. Processor or Bank will have sole control of and over the Reserve Account and the funds contained therein. Processor shall be entitled to collect from Merchant, as either a debit to your Merchant Account or charge against funds held in your Reserve Account, fees necessary to cover all fees, costs, and expenses arising out of or relating to the establishment, maintenance and administration of your Reserve Account.

C. Recoupment and Set-Off. To the extent not already permitted by law, You authorize Processor and Bank to have the right of recoupment and set-off. This means that Processor and Bank may recoup and set off any amounts that are due and owing from You to Processor or Bank from: (i) any amounts Processor or Bank would otherwise be obligated to deposit into the Merchant Account, and (ii) any other amounts Processor or Bank may owe You under this Agreement or any other agreement. You acknowledge that in the event of a bankruptcy proceeding, in order for You to provide adequate protection under Bankruptcy Code § 362 to Processor, You must create and maintain the Reserve Account as required by Processor, and Processor and Bank have the right to offset against the Reserve Account for any and all obligations which You may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement are not intended to be, and shall not be, exclusive of each other. Rather, each and every right of Processor or Bank under this Agreement, at law or equity, will be cumulative and concurrent and in addition to every other right.

11. <u>Rates & Fees and Other Services.</u>

A. Rate & Fees. You will pay Processor all fees, costs and charges in accordance with the rates and fees set forth and provided for in this Agreement, including, without limitation, Section 6 of the Application, all schedules, addenda, and amendments and exhibits thereto ("Rates & Fees"). Such Rates & Fees will be calculated and electronically debited from the Merchant Account once each business day or each month, as solely determined by Processor, for the previous business day's or previous month's activity, or will be netted out from the funds due You under this Agreement. Processor shall have the sole and absolute discretion to adjust the Rates & Fees from time to time and You agree to pay such adjusted Rates & Fees to and through termination of this Agreement. You agree that all Rates & Fees are considered accurate and final unless You dispute them in accordance with the provisions of this Agreement. Furthermore, Merchant agrees that every Credit Receipt issued will be subject to a Transaction fee and Processor Assessment fee, as part of Rates & Fees, and that in no circumstance are You entitled to receive or will receive a refund of any Rate & Fees associated with the

original transaction. In the event that You select InterChange Plus Pricing, You agree to pay, and will pay, to Processor, in return for the services provided hereunder, (i) the Processor Assessment, plus (ii) the Transaction Fee, plus (iii) InterChange, plus (iv) the Card Networks Fees, plus (v) all other Rates & Fees that are not contained within subparagraphs (i) – (iv) above. In certain instances, Processor may bundle or combine some or all of the Card Network Fees as a single line item on the statement, which may bundle or combine some or all of the Card Network Fees as a single line item on the statement, which may be designated on your monthly statement; including without limitation "Card Access Fees." In the event You select tiered pricing ("Tiered Pricing") or flat rate pricing ("Flat Rate") and were boarded on or after November 1, 2023, You agree to pay to Processor, in return for the services provided hereunder, (a) the Processor Assessment, plus (b) the per Transaction Fee, plus (c) the following four (4) specific Card Networks Fees (i) those Card Network Fees related to acceptance by the Merchant of a **foreign card** including but not limited to A.) Visa's International Service Assessment, International Acquirer Fee, and Foreign Card Assessment, B.) Mastercard's Global Acquirer Program Support, Cross Border, and Cross Border Assessment, and C.) Discover's International Assessment, (ii) the monthly Visa FANF fee, excluding Table 1 FANF that generally applies to most card present merchants, but including **Visa® FANF Table 2** monthly fee which varies on a monthly basis based on transaction volume and applies to Card-not-present, unattended terminals, merchant aggregators, and fast-food restaurants volume, (iii) Visa's **Transaction Integrity Fee** which applies generally to an eCommerce Merchant that fails to qualify for Visa's Custom Payment Service (CPS); and (iv) Payroc's Visa & MC Auth Misuse fee (collectively the "Additional Pass-Through Fees"), plus (d) all other Rates & Fees that are not contained within subparagraphs (a) – (c) above. The "Tiers" in Tiered Pricing shall be determined by Processor, in its sole discretion. The Processor Assessment together with the Transaction Fee shall be referred to as the "Processor Fees." In the event that the Processor Fees due from You to Processor for any given month are less than the monthly minimum set forth in the Rates & Fees, then You will pay to Processor, in addition to the other amounts due from You under this Agreement for that month, the positive difference between the monthly minimum and the Processor Fees actually due for that month. In the event You have elected the RewardPay, Consumer Choice, or RewardPay Choice program and were boarded on or after November 1, 2023, You agree to pay Processor or cause to be paid to Processor, in addition to the Rates & Fees as delineated in the MPA, the Additional Pass-Through Fees. If You have any questions, concerns or uncertainty about any Rate & Fees, You are required to raise those questions, concerns or uncertainties with Processor in accordance with the requirements of Section 7.I. above. If You fail to do so, You fully and finally waive and release any claims, causes of action or damages incurred, arising out of, or relating to any Rates & Fees.

B. Change in Your Business. The Rates & Fees are based upon, among other things, assumptions regarding the anticipated annual volume and average transaction size of your business, as well as the anticipated number of Chargebacks. In the event the actual volume, transaction size, number of Chargebacks differs from Processor's records, or any information provided by You is inaccurate, Processor shall have the right, in its sole and absolute discretion, to adjust the Rates & Fees.

C. Other Amounts Owed. You will immediately pay Processor or Bank (i) any losses incurred by Processor or Bank attributable to, arising out of, or relating to this Agreement, including, without limitation, to Chargebacks, fines and penalties imposed by any Card Network, all non-sufficient fund fees, and/or ACH debits that overdraw the Merchant Account, the Reserve Account, or any other account You have at Bank or at any other financial institution or (ii) for any amount You owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between You, on the one hand, and Processor or Bank, on the other hand. This Section applies whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint, or several. In the event such ACH does not fully reimburse Processor or Bank for the amount owed, the outstanding balance shall be immediately due and payable, and You will immediately pay Processor or Bank such amount.

D. Rate or Fee Amendments. Processor or Bank, at its sole discretion, may amend, add to or modify, the Rates & Fees from time to time and upon 30 days' notice, which notice shall be delivered via mail to the billing address on file for You with Processor or via email transmission. Such notice may be sent separately or may be included as part of or sent with your monthly statement which shall be sent either by mail or made available in your portal. If You submit a transaction to Processor after the effective date of the amendment of the Rates & Fees, You will be deemed to have accepted the amended Rates & Fees, and to consent to the amended Rates & Fees No notice will be provided for changes to Interchange or Card Network Fees that are passed through to you by Processor without markup.

E. Taxes. You are obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.

F. Hardware Advantage Plan ("HAP"). HAP is an equipment replacement plan for your card processing device or devices ("*Equipment*") purchased or leased through Processor at the time You sign up for card processing servicing through Processor. Unless You elect to opt out in your Merchant Processing Agreement ("*MPA*") at the time of purchase or lease of your Equipment, You are enrolled automatically in HAP. Only businesses (i.e., Merchants) may participate in HAP; it is not available for personal or consumer use. HAP may be available for existing Merchants of Processor on a case-by-case basis, in Processor's sole discretion. Depending on the type and number of Equipment purchased or leased, the monthly fee

for HAP varies; see the "Hardware Advantage Plan" section of your MPA to calculate your specific HAP fee.

HAP includes the following benefits and conditions:

Beginning on the date of approval by Processor of your MPA, You are entitled under HAP to one (1) replacement every twelve (12) months per covered device, measured from the anniversary date of purchase or lease date, if that Equipment is determined by Processor, in its sole discretion, to be defective or breaks. You are entitled under HAP to one (1) replacement device for defective or broken Equipment every twelve (12) month period thereafter, and so on for as long as you participate in HAP. Damage outside of ordinary wear and tear that is not covered by HAP includes, by way of example but not limited to, cracked screens, broken print covers, damaged power packs or ports, and cut cords. Stolen or lost Equipment is also not covered by HAP. Subject to Processor's approval, in its sole discretion, additional requests to replace a defective/broken device (in addition to the one (1) free replacement every twelve (12) months) will be subject to a swap fee of up to $500 per device, depending on the type of device. Replaced Equipment shall be the same or substantially similar to your original Equipment.

When your Equipment, including any replacement, is determined by the manufacturer (in its sole discretion) to have reached its end of life, You may upgrade with Processor your Equipment at a discounted rate of up to 50%, exact discount amount depends on the type of Equipment. HAP does not generally cover Equipment beyond its end of life, although there may be some exceptions allowed by Processor, in its sole discretion, depending on the type of device, the reason for end of life, and availability of replacement Equipment.

To request a replacement or upgrade, You must contact Processor via email addressed to merchantadvocacy@payroc.com or call 888-477-4510. You are required, upon receipt of replacement Equipment, to return your defective/broken Equipment to Processor; a self-addressed, prepaid return shipping label will be sent to You with the replacement Equipment. The package with the defective/broken Equipment must be post marked within thirty (30) days of your receipt of the replacement, or Processor will charge You the full and then current price for the replacement Equipment. Processor assumes all risk of loss for shipping, as long as You use Processor's return shipping label.

Your HAP fee will appear on your regular monthly statement from Processor and, like Processor's other fees, your HAP fee will also be debited against your Merchant Account beginning on the month following approval of your MPA and will be subject to your Merchant's ACH authorization contained in Section 9.B. therein.

You may cancel your participation in HAP at any time and for any reason by giving notice to Processor via email addressed to merchantadvocacy@payroc.com or call 888-477-4510.

G. Merchant Advantage Club (optional merchant club fee). In the event You have elected to be enrolled in Merchant Advantage Club by populating the Merchant Advantage Club monthly fee contained in the Rates & Fees ("Merchant Advantage Club Fee"), You will be enrolled in the Merchant Advantage Club (or such other name as designated by Processor) and merchant club program ("Merchant Program"), and You agree to pay the monthly Merchant Advantage Club Fee. The benefits provided by the Merchant Program are subject to change or cancellation as provided in the terms and conditions of the Merchant Program provided to You in the welcome kit for the Merchant Advantage Club Program. The Advantage Club Program includes the following benefits and conditions:

- To qualify for the Merchant Program, Equipment must be purchased at or above list price;
- You may only opt into the Merchant Program at the time You purchase your Equipment;
- You will receive a box of paper at the time your Equipment is delivered and one additional box of paper every six (6) months during the period that You continue to participate in the Merchant Program;
- You shall be entitled to obtain replacement Equipment if your Equipment is defective, one time during each twelve (12) month period during the four (4) year period following the date on which You purchase the Equipment;
- The replacement Equipment shall be the same or substantially similar to your Equipment that is being replaced;
- In the case of each Replacement, You will be charged a service fee of $49;
- You will be obligated, upon receipt of the replacement Equipment, to return your Equipment to Processor and the returned Equipment shall then belong to Processor and the replacement Equipment shall then be covered by the Merchant Program;
- Damage outside of normal wear and tear, including, without limitation, cracked screens, broken printer covers, damaged power packs or ports and/or cut cords, will not entitle You to replacement Equipment under the Merchant Program;
- You may cancel at any time by giving written notice to Processor; and
- Theft or loss of the original Equipment will not entitle You to receive replacement Equipment.

You will be billed the Merchant Advantage Club Fee on your regular monthly statement beginning with the first billing cycle following thirty (30) days of processing with Processor, and each month thereafter. If You choose not to participate in the Merchant Advantage Club Program, any equipment failure not covered under your warranty will be repaired or replaced at solely your cost. The Merchant Advantage Club Fee, and any other amounts due from You to Processor related to your participation in the Merchant Advantage Club Program, shall be debited against the Merchant Account beginning on the month following approval of this Agreement and shall be subject to Merchant's ACH authorization contained in Section 9.B. of this Agreement. You will not be charged the Merchant

Advantage Club Fee for the first month of this service. Thereafter, You will be billed on a monthly basis. To cancel this service, please reference the Credit Card Acceptance Manual You have received or will receive in your Welcome Kit, which is incorporated by reference into this Agreement as if set forth fully herein. In the event of any inconsistency between the Credit Card Acceptance Manual and this Agreement, the terms and conditions of this Agreements shall control. The terms and conditions related to Merchant Advantage Club Program are provided in the welcome kit.

H. Chargeback Fee. You agree that Processor or Bank will assess the Chargeback fee set forth in Section 6 of the Application as the "Chargeback Per Occurrence" fee for each Chargeback. Furthermore, You authorize and consent to Processor or Bank assessing You and requiring You to pay or reimburse Processor or Bank for paying any fines imposed by Card Network plus a fee for processing such fine as may be required by Processor or Bank in its sole discretion.

I. Transaction Fee. Transaction fee is a fee charged on each authorization or decline, regardless of the total stated and shall also mean a fee charged for any other transaction which utilizes a POS Device for transaction or reception of data or information, including, but not limited to, debit card transactions address, verifications, batch closing, authorizations, and any other communication using the POS terminal.

J. Retrieval Fee. You agree that Processor or Bank will assess and is entitled to collect from You the Retrieval Fee set forth in Section 6 of the Application as the "Retrieval Per Occurrence" fee.

K. Annual Renewal. You agree that Processor will charge and is entitled to collect from You a nonrefundable annual renewal fee each year in the month set forth in the Application, or in such other month as designated in the Rates & Fees, in the amount set forth in the Rates & Fees.

L. UCC Fee. In the event Processor receives a notice from a secured creditor of yours requesting that funds due to You under this Agreement be paid to the secured creditor or held pending further instruction from the secured creditor, You agree to pay Processor a fee in the amount of $599.00 to cover at least some of the time, costs and expenses incurred by Processor in handling such notice. Such fee shall be in addition to any other fees due to Processor under this Agreement and in addition to any amounts that are payable to such secured creditor.

M. Returned ACH Transactions. In the event that an ACH debit initiated by Processor to your Merchant Account is returned or rejected due to non-sufficient funds ("NSF Return") in the Merchant Account, You will be charged a fee of $35.00 for each such NSF Return. In the event that an ACH debit initiated by Processor to your Merchant Account is returned or rejected for any other reason other than non-sufficient funds ("Other Return"), You will be charged a fee of $38.00 for each such Other Return. In the event that an ACH credit initiated by Processor to your Merchant Account is returned for any reason, You will be charged a fee of $35.00 for each such returned credit.

N. Token Export Fee. In the event that you request that Processor export any tokenized data contained on Processor's systems to a third-party, both you and such third-party shall be required to enter into a written Data Transfer Agreement with Processor, and You shall pay Processor's then current fees for such export.

O. RewardPay. If You utilize RewardPay, You agree that Processor will charge and is entitled to collect from You the amount that Interchange and Card Network Fees exceed the amount of the surcharge on any transaction.

P. CEDP. If You utilize CEDP, You agree that Processor will charge and is entitled to collect from You any new or additional fees imposed by the Card Networks after the transaction occurs.

12. <u>Application, Indemnification, Limitation of Liability.</u>

A. Application. You represent and warrant to Processor and Bank that all information in the Application You submitted to Processor, which is incorporated into this Agreement by reference, is correct and complete. You must notify Processor in writing of any changes of information in the Application, including, without limitation: (i) any additional location or new business, (ii) the identity of principals and/or owners, (iii) the form of business organization (e.g., sole proprietorship, partnership), (iv) type of goods and services provided and how sales are completed (e.g., by telephone, by mail, in person at your place of business). The notice must be received by Processor or Bank within 10 business days of the change. You will provide updated information to Processor or Bank within a reasonable time upon request. You are solely liable to Processor and Bank for all claims, causes of action, liabilities, losses and expenses incurred by Processor or Bank arising out of or relating to your information provided being incorrect or your failure to report changes. Processor and Bank retain the right to review your processing activity to confirm that You are processing transactions as stated in the Application, and to re-price or terminate its services based on changes to the facts stated in the Application.

B. Indemnification. You agree to defend, indemnify and hold harmless Processor, Bank and Card Networks from and against any and all claims, damages, liabilities, fines, penalties and expenses, including, without limitation, attorneys' fees and litigation/arbitration costs, arising out of or relating to (i) any act or omission by You or your employees, agents, representatives, subcontractors, or vendors including, without limitation, any intentional, negligent, fraudulent or deceptive acts or omissions; (ii) any breach by You of the terms of this Agreement; (iii) any fine or penalty imposed upon Processor or Bank by any third party related to any act or omission by You in connection with, arising out of, or relating to any Card transaction; (iv) any violation by You, your employees, agents, subcontractors, or vendors of any applicable Laws, Operating Regulations, Data Security Regulations or Rules; and (v) any use of Optional Services by You.

C. Limitation of Liability. The aggregate liability of Processor and Bank under this Agreement, whether to You

or any other party, whatever the basis of the liability (including, without limitation, tort, contractual, statutory, regulatory, or otherwise), will not exceed in the aggregate ten times the difference between: (i) the amount of Rates & Fees Processor received from You during the month in which the transaction out of which the liability arose occurred and (ii) assessments, Chargebacks, InterChange, Card Network fees and offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of Processor and Bank's liability will not exceed the lowest amount determined in accordance with the previous sentence for any one month involved. IN NO EVENT WILL PROCESSOR, BANK, OR THEIR AGENTS, OFFICERS, DIRECTORS, OR EMPLOYEES BE LIABLE FOR LOSS OF PROFITS, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. No party will be liable to the other for any failure or delay of its performance of the agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

D. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PROCESSOR NOR BANK MAKE ANY REPRESENTATION OR WARRANTY, STATUTORY OR IMPLIED, TO YOU OR TO ANY OTHER PERSON OR ENTITY. PROCESSOR AND BANK EXPRESSLY DISCLAIM, AND ARE NOT PROVIDING, ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CERTAIN STATES DO NOT ALLOW LIMITATIONS OF IMPLIED WARRANTIES OF EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, IN THE EVENT THAT YOUR STATE LAW HAS SUCH LIMITATIONS, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATION MAY NOT APPLY TO YOU.

E. Disputes. ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, WHETHER BROUGHT IN COURT OR IN ARBITRATION, SHALL BE COMMENCED WITHIN ONE YEAR OF THE DATE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION. THIS PARAGRAPH SHALL APPLY EVEN IF APPLICABLE LAW PROVIDES FOR A LONGER STATUTE OF LIMIATIONS FOR THE DISPUTE. ANY DISPUTE NOT COMMENCED IN COURT OR ARBITRATION WITHIN ONE YEAR OF THE DATE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION SHALL BE FULLY AND COMPLETELY WAIVED, RELEASED AND RELINQUISHED.

13. Representations, Warranties and Covenants. You represent and warrant to Processor and Bank the following (which shall apply and remain true both at the time of execution and throughout the term of this Agreement):

A. Information. All information contained on the Application, or any other document submitted to Processor or Bank by You, or on your behalf, is true and complete and properly reflects the business, financial condition, and the principal partners, owners or officers of Merchant. You are not engaged or affiliated with any business, products or methods of selling other than those set forth on the Application.

B. Corporate Power. You and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law or conflict with any other agreement to which You are subject.

C. No Litigation. There is no action, suit, or proceeding pending, or to your knowledge threatened, which, if decided adversely, would impair your ability to carry on your business as it is now conducted or which would adversely affect your financial condition or operations.

D. Transactions. In addition to all other warranties and representations contained within this Agreement and the Laws, Rules, and Operating Regulations, with respect to each transaction and Sales Draft You submit to Processor, You warrant and represent that: (i) the transaction is bona fide, permissible under the Laws, Rules and Operating Regulations; (ii) the transaction involves the use of a Card for the purchase of goods or services from You and does not involve Cardholder obtaining cash from You unless allowed by the Operating Regulations and agreed to in writing by Processor; (iii) the amount charged for each Card transaction is not subject to any dispute, setoff or counterclaim; (iv) each Card transaction is only for respective products or services (including taxes, but without any surcharge) sold, leased, or rented by You pursuant to your business as indicated on the Application and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon your accepting and submitting that Card transaction for processing; (v) You have no knowledge or notice of any fact or circumstance which would indicate that such Card transaction is fraudulent or not authorized by the Cardholder; and (vi) the transaction is made in accordance with this Agreement, the Rules, Laws, and Operating Regulations.

E. Rule Compliance. You have complied with and will continue to comply with the Operating Regulations, Data Security Regulations, Laws, and Rules.

F. Business. You will not engage in or be affiliated with any business, products or methods of selling other than those set forth in the Application, without the prior written consent of Processor.

14. Audit, Financial Information and Personal Guarantee.

A. Audit. You authorize Processor, Bank and Card Networks to audit your records to confirm compliance with all of your obligations under this Agreement. You will obtain and submit a copy of an audit of your business within ten (10) days of any request by Processor, Bank or Card Networks.

B. Financial Information. You and the personal guarantors authorize and consent to Processor and Bank making any credit inquiries regarding You or the guarantors that Processor or Bank consider reasonably necessary to

review the acceptance and continuation of this Agreement. You and guarantors also authorize and consent to any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and/or Bank.

15. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist You in processing transactions, including authorizations and settlements, or accounting functions. You are solely responsible for assuring compliance with the requirements of any third party in accessing or using their products. This includes making sure You comply with any software updates. To the extent Processor and Bank have any responsibility for any transaction, that liability does not begin until the point in time Processor and Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify Processor within 3 business days if You decide to use electronic authorization or data capture terminals provided by any entity other than Processor or its authorized designee (third party terminals) to process transactions, including, without limitation, leasing a terminal from a third party. If You elect to use third party terminals, You agree (i) the third party providing the terminals will be your agent in the delivery of card transactions to Processor and Bank; and (ii) to assume full and sole responsibility and liability of any failure of that third party to comply with the Data Security Standards, Rules, Operating Regulations, Laws or this Agreement. Processor and Bank will not be responsible for any claims, causes of action, liabilities, losses or additional fees incurred by You or any third party arising out of or relating to any use, error, mistake, delay, or malfunction of a third-party terminal.

16. Terms and Termination.

A. Term. This Agreement will become effective on the earlier of (i) the date Processor or Bank approve and assign You a Merchant Identification Number or (ii) the date Processor processes a transaction for You ("Effective Date"). By processing a transaction with, assisted by, or through Processor, You are agreeing to the terms and conditions of this Agreement. The Agreement will remain in effect for a period of forty-eight (48) months ("Initial Term") and, unless prohibited by applicable Law, will automatically renew for successive twenty-four (24) month terms ("Renewal Term"), or such shorter period as provided by applicable law, unless terminated as set forth below. You shall maintain a copy of his Agreement on file at your place of business.

B. Termination.

i. *Without Cause.* The Agreement may be terminated by either party to be effective at the end of the Initial Term or Renewal Term by giving written notice of the intention not to renew at least ninety (90) days before the end of the then current term. This Agreement may be terminated immediately upon the request of any of the Card Networks' request. Further, this Agreement may be terminated at any time with 30 days' prior notice by Processor or Bank. If this Agreement is terminated for any of the reasons set forth in this Section, Processor shall have no liability to You and You will not be entitled to any alleged or actual damages arising out of or relating to the termination.

ii. *With Cause.* The non-breaching party or the any of the Card Networks may terminate this Agreement immediately upon the occurrence of an Event of Default, defined below. Notice of a with cause termination must be provided in writing. Termination will be effective on the date specified by the notice.

C. Events of Default. The following will constitute an event of default:

i. *Adverse Financial Condition.* Processor or Bank determine, in their good faith reasonable discretion, that (a) your financial condition has materially adversely changed or (b) there is a reasonable basis to conclude that You cannot satisfy all of your duties and obligations under this Agreement, including, without limitation, your ability to pay all required Rates & Fees.

ii. *Garnishment.* Your Merchant Account, Reserve Account, or any of your property in the possession of Processor and/or Bank, is garnished, levied upon or attached.

iii. *Asset Assignment.* You assign your assets generally for the benefit of creditors.

iv. *Bankruptcy.* A proceeding is commenced by or against You under any bankruptcy, insolvency or similar law seeking an order to adjudicate You bankrupt or insolvent or other relief with respect to You or your debts or seek appointment of a receiver or similar official for You or any substantial part of your assets.

v. *Breach.* A party fails to perform a material obligation of this Agreement, and such failure continues for a period of thirty (30) days after the breaching party receives notice of the breach.

vi. *False Representation.* Any representation and warranty is or becomes false or misleading in any material respect as of the date made or becomes false or misleading at any time during the term of this Agreement.

vii. *Fraud.* Processor and/or Bank reasonably determine that fraud has occurred or is occurring.

viii. *Excessive Activity.* There has been Excessive Activity, as that term is defined above.

ix. *Prohibited Activity.* You: (a) engage in fraudulent activity, (b) present transaction receipts that do not result from an act between You and a Cardholder (laundering), (c) enter into this Agreement with a new name with the intent to circumvent the Law, Operating Regulations, or Rules, (d) engage in activity that causes Processor or Bank to violate the Law, Operating Regulations, or Rules, (e) engage in activity that results in one or more Card Networks prohibiting You from participating in the Card Network program, (f) exceed Chargeback thresholds a provided by the Rules, (g) enter illegal or brand-damaging transaction activity into the payment system, (h) engage in any activity that may result in undue economic hardship or damage to the goodwill of Processor, Bank, and/or Card Network, or (i)

take any action or inaction that breaches or violates this Agreement, the Law, Operating Regulations, Data Security Regulations or Rules.

D. Action Upon an Event of Default. Upon the occurrence of an Event of Default, Processor and Bank may take any or all of the following actions: (i) suspend processing privileges and terminate this Agreement; (ii) create a Reserve Account; and/or (iii) any other reasonable action deemed reasonably necessary by Processor and/or Bank to protect their interests or the interests of the Card Network or any consumer. Further, upon the occurrence of an Event of Default, You consent to Processor, Bank or a third party acting on behalf of Processor or Bank contacting You by email and/or text message.

E. Action Upon Termination.

i. *Terminated Merchant File/Reporting.* You acknowledge and agree that Processor is required to report your business name and the name of Merchant's principals to Visa, Mastercard and Discover Network when Merchant is terminated due to certain reasons listed in the Operating Regulations. You acknowledge and agree that neither Processor nor Bank shall be liable to You for any claims, causes of action, liabilities or damages arising out of or relating to Processor or Bank reporting You or your actions/inactions to any Card Network or proper governmental authority. You waive, and hold harmless Processor and Bank for, all claims and liabilities that may occur as a result of Processor and/or Bank complying with its reporting obligations under the Operating Regulations or the Laws.

ii. *Merchant Account.* All of your obligations regarding accepted Sales Drafts will survive termination of this Agreement. You must maintain in the Merchant Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by You for a reasonable time, which shall be no less than two-hundred seventy (270) days, unless otherwise agreed in writing by Processor and Bank. You authorize Processor to hold all funds due to You at the time of termination for at least two-hundred seventy (270) days and to apply those funds to satisfy your obligations under this Agreement. You authorize Processor and Bank to charge the Merchant Account, Reserve Account, or any other account maintained under this Agreement, for all such amounts. If the amounts available in the Merchant Account and Reserve Account are not adequate to satisfy your obligations to Processor or Bank, You will pay Processor and Bank the amount You owe upon demand, together with all costs and expenses incurred to collect the amount, including reasonable attorneys' fees, costs and expenses and arbitrator fees, costs and expenses.

iii. *Equipment.* Within fourteen (14) business days of the date of termination, You must return, at your sole expense, all equipment owned by Processor, including equipment loaned to You by Processor. Further, within fourteen (14) business days of termination You shall pay Processor any amounts You owe Processor for equipment costs. In the event that You do not return equipment in accordance with this Section, You shall be obligated to pay Processor, in addition to any applicable Early Termination fee set forth below, $525 for each piece of equipment that is not returned. You hereby authorize Processor to debit your Merchant Account and/or Reserve Account for any such amounts due or to invoice You for such amounts, in which case payments shall be due ten (10) days after the date of the invoice.

iv. *Early Termination.* If You terminate this Agreement before the end of the Initial Term, You shall be required to pay an early termination fee as liquidated damages (the "Termination Fee"), unless prohibited by applicable Law. The Termination Fee will shall be as set forth in the Rates & Fees section of the Application or the maximum amount allowed by applicable Law, whichever is less. Provided, however, that if this Agreement is terminated by Processor and/or Bank as a result of Your violation of the Operating Regulations or applicable Law, the Termination Fee shall be increased to $1500. If You terminate this Agreement within sixty (60) days after notice of any increase in the Rates & Fees, other than an increase that passes through to You any increase in interchange, assessments, Card Network Fees or other fees charged by the Card Networks, You will not be charged a Termination Fee. You agree that the Termination Fee is not a penalty, but rather is a reasonable in the light of the financial harm caused by your early termination.

17. <u>Use of Trademarks and Confidentiality.</u>

A. Use of Trademarks. You agree and represent that: (i) your use of Visa, Mastercard and Discover Network Marks will fully comply with the Operating Regulations; (ii) your use of Visa, Mastercard, Discover Network or any other Card Network's promotional material will not indicate directly or indirectly, that Visa, Mastercard, Discover Network or any other Card Network endorses any goods or services other than their own; and (iii) You will not refer to Visa, Mastercard, Discover Network or any other Card Network indicating eligibility for your products or services. If You have requested signage for the purpose of indicating acceptance of Debit Cards, You must display such signage in accordance with the applicable Operating Regulations. All point of sale displays or websites must, if required by the applicable Card Network, include either appropriate Card Network marks to indicate acceptance of Debit and other Cards or Card Network approved signage to indicate acceptance of the limited acceptance category You have selected. You agree to comply, and will comply, with all requirements regarding Marks, advertising and signage set forth in the applicable Operating Regulations for each Card Network. Your use of Card Network Marks will terminate effective with the termination of this Agreement or upon notification by the Card Network to discontinue such use or display. You acknowledge that your use or display of any Mark does not give You any ownership or interest in the Mark.

B. Confidentiality.

i. *Cardholder Information.* You will not disclose to any third party any Cardholders' account information or

other personal information except to an agent of yours assisting in completing a Card transaction, or as required by the Operating Regulations or Laws. You must keep all material systems and media containing account, Cardholder, or transaction information (physical or electronic, including, but not limited to account numbers, card imprints, Sales Drafts, TIDs and other Personally Identifiable Information) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy in a manner that will render the data unreadable all such media that You no longer deem necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, the Operating Regulations, Laws and Rules). Further, You must take all steps reasonably necessary to ensure Cardholder Data is not disclosed or otherwise misused. You will comply with all Laws, Data Security Regulations and Operating Regulations with respect to ensuring the security of Cardholders' account information.

ii. *Prohibition.* You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all non-public information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that You use to protect your own confidential information. Non-public information shall refer to information that is not generally available to the public. If You have requested BIN information, and Processor and/or Bank elects in their sole discretion to provide such information to You, unless otherwise provided by law, You must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential BIN information to any third party without prior written permission from Processor, Bank and the applicable Card Network.

iii. *Transfer.* In the event of a failure of your business, including bankruptcy, insolvency, or other suspension of business operations, You must not sell, transfer, or disclose any materials that contain Cardholder Data or other Card transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information to Processor.

iv. *Return to Processor.* All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to You by Processor and/or Bank and not purchased by You or consumed in use will remain the property of Processor and will be immediately returned to Processor upon termination of this Agreement. You will be fully and solely liable for any and all claims, causes of action, liabilities, and losses suffered or incurred by Processor or Bank arising out of or relating to your failure to return or destroy such materials following termination.

C. Passwords. If You received or will receive a password from Processor to access a Processor database, gateway, terminal or other similar device or software, You will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password to gain access to the Processor database, gateway, terminal or other similar device or software; (iii) be solely liable for all action taken by any user of the password; and (iv) notify Processor in writing if You believe the confidentiality of the database, gateway, terminal or other similar device or software, or your information was compromised by using the password (with such notice being provided as soon as possible but in no event later than two (2) business days after You obtain such belief). You will also keep your merchant identification number confidential and maintain it in a secure location, and You will not use it for any other purpose other than as authorized by Processor, Bank or the applicable Card Network.

18. PIN Based Debit.

A. Honoring PIN-Debit Cards. You shall not require Cardholders to provide personal information (such as telephone number or address) as a condition for honoring a PIN-Debit Card, unless required otherwise by the Laws, Rules or Operating Regulations. You may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity. Merchant shall place the PIN entry device in an area accessible by all Cardholders and that will reasonably prevent others, including your employees, from observing the PIN.

B. PIN-Debit Card Sales Drafts.

i. *Procedures.* You shall deliver to the Cardholder at the time of sale a true and completed copy of the Sales Daft evidencing a sale involving use of a PIN-Debit Card ("PIN-Debit Sales Draft"). The PIN-Debit Sales Draft must comply with the Operating Regulations and Laws. The following information must be included on the PIN-Debit Sales Draft: (i) the truncated PIN-Debit Card account number; (ii) your DBA name; (iii) your city and state; (iv) the amount of sale; and (v) the sale date. A PIN-Debit Sales Draft shall be made available to the Cardholder at each terminal. You may not require or request the Cardholder to provide or disclose their PIN in any oral or written manner to You or your employees. You shall not impose any fee or charge for a PIN-Debit Card transaction without the prior written consent of Processor or Bank.

ii. *Reversal.* A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect reversal or void, Cardholder must re-enter the PIN, the magnetic stripe reader or EMV chip reader must read the card, and You must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. Any reversal or void by You must be initiated with You.

iii. *Returns.* All returns shall be processed in accordance with your normal procedures except that You or Cardholder shall not attempt to reverse a previously approved transaction unless otherwise permitted in accordance with the applicable Card Network's Operating Regulations. Any sale known by You to be erroneous should be canceled and re-billed in the Cardholder's presence.

iv. *Balance Inquiry.* Balance inquiries may be performed only by the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder to enter the PIN and use the magnetic stripe reader or EMV chip reader.

C. Distribution and Storage of Information. You shall store all PIN-Debit Sales Drafts in accordance with applicable Operating Regulations Rules and Laws. You shall destroy or make unreadable all material containing Cardholder account numbers. There are no voice authorizations for PIN-Debit Card transactions and no manually imprinted PIN-Debit Sales Drafts. Merchant may not store Cardholder's PIN in any manner.

D. Promotional Materials. You will adequately display promotional materials to inform the public that PIN-Debit Cards will be honored by Merchant.

E. Equipment. You shall take all necessary steps to ensure all POS Devises and PIN entry devices operated in all locations: (i) are placed in an area accessible to all Cardholders; (ii) are available for use whenever Merchant is open for business; (iii) will function with minimal error, meeting all applicable technical specifications and security regulations, Laws, Operating Regulations, and industry standards; (iv) will require the Cardholder to enter the Cardholder's PIN at or near the checkout location when initiating a POS transaction; and (v) when PINs are used in conjunction with any store and forward transaction or resubmission You must ensure they are encrypted and stored within a tamper-resistant security module and if your authorization system is capable of store and forward, it must comply with the applicable Operating Regulations regarding this function. Processor, Bank, Card Networks and Card issuers shall not be liable for any losses suffered by You or any third party arising from or relating to the use of the store and forward function. A PIN must never be logged in any form as a function of software either in the clear or encrypted.

F. Supply of Information. Merchant must submit all information requested by Processor, Bank or any Card Network including, without limitation, lists and mailing addresses of terminals. You shall not sell, purchase, provide, or exchange account number information in any form, including, but not limited to, transaction receipts, carbon copies of transaction receipts, mailing lists, or tapes to any third party other than to your agents for the purpose of assisting You in your business, or to the Card Networks, Processor or Bank or pursuant to a government request.

G. Left PIN-Debit Cards. PIN-Debit Cards that are inadvertently left at your location must be held under dual control during the time they are retained. PIN-Debit Cards inadvertently left at your location shall be returned to the Cardholder by You only under the following conditions: (i) the Card was inadvertently left by the Cardholder at an on-premise location, (ii) the Cardholder requests the Card within one (1) business day, and (iii) the Cardholder provides two (2) forms of current identification, at least one (1) of which is a photo identification. If the Cardholder has not requested the Card within one (1) business day, the Card shall be destroyed by cutting it in half through the stripe.

19. <u>DISPUTE RESOLUTION.</u> (READ THIS SECTION CAREFULLY AS IT IMPACTS YOUR LEGAL RIGHTS)

A. MANDATORY ARBITRATION. YOU, PROCESSOR AND BANK AGREE THAT ANY AND ALL DISPUTES SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY; PROVIDED, HOWEVER, THAT YOU, PROCESSOR OR BANK MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF THE CLAIMS QUALIFY AND SO LONG AS THE MATTER REMAINS IN SMALL CLAIMS COURT AND PROCEEDS ONLY ON AN INDIVIDUAL (NOT CLASS OR REPRESENTATIVE) BASIS. THIS MANDATORY ARBITRATION PROVISION APPLIES TO ANY AND ALL DISPUTES, WHETHER BETWEEN YOU, PROCESSOR, AND BANK OR ANY SUBSET OF THESE ENTITIES. THE TERM "DISPUTE" SHALL BE DEFINED AS SET FORTH IN SECTION 1 ABOVE AND THUS INCLUDES ALL DISPUTES BETWEEN THE PARTIES, LEGAL AND OTHERWISE, NOT JUST DISPUTES AS DEFINED BY VISA. YOU, PROCESSOR AND BANK AGREE THAT THIS ARBITRATION PROVISION IS INTENTED TO BE AND IS RETROACTIVE.

i. You, Processor and Bank each waive the right to a trial by jury and any right to have a Dispute heard in court. Instead, You, Processor and Bank agree to have all Disputes resolved by a neutral third-party arbitrator. In arbitration, Disputes are resolved by an arbitrator instead of a judge or jury, discovery is more limited than in court, and the arbitrator's decision is subject to limited review by courts. The arbitrator's award can be confirmed in any court of competent jurisdiction.

ii. The arbitration shall be conducted by a single arbitrator, whose award may not exceed, in form or amount, the relief allowed by applicable law. The arbitrator shall have at least ten (10) years of experience in commercial litigation. The arbitrator shall issue his/her final award in a written and reasoned decision to be provided to each party to the arbitration. In his/her decision, the arbitrator shall award the prevailing party its reasonable attorneys' fees and expenses, as well as all arbitration fees, costs and expenses; provided, however, that neither Processor nor Bank shall be entitled to recover attorneys' fees or expenses in an arbitration brought by You if the amount of damages sought, exclusive of attorneys' fees and costs and arbitration fees and costs, is under $25,000. The arbitrator shall not have the authority to award punitive, exemplary, consequential, special or incidental damages, including, without limitation, lost profits or lost business value.

iii. For claims where You seek damages of $25,000 or less, exclusive of attorneys' fees and costs and arbitration fees and costs, the arbitration shall be conducted in the city where You are located or You can elect to have the hearing take place telephonically. All other arbitrations shall be conducted in Chicago, Illinois, unless the parties to the arbitration mutually agree to a different location in writing. The arbitration shall be conducted by the American Arbitration Association ("AAA"). The AAA's Commercial

Arbitration Rules ("Arbitration Rules") shall apply. The Arbitration Rules are available at www.adr.org. A form for initiating arbitration is available at www.adr.org.

iv. Any discovery sought in connection with arbitration must be expressly approved by the arbitrator only upon a showing of need by the party seeking discovery. All aspects of the arbitration shall be treated as confidential. The parties to the arbitration and the arbitrator may disclose the existence, content, or result of the arbitration only as expressly provided by the Arbitration Rules. The parties to the arbitration shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Accordingly, the parties to the arbitration acknowledge and agree that a violation or threatened violation of this nondisclosure covenant will cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, in equity, or otherwise, the non-breaching Party shall be entitled to obtain injunctive relief against the threatened breach of this covenant or the continuation of any such breach by the other party.

B. FAA Governs. This arbitration provision is entered into pursuant to the Federal Arbitration Act ("FAA"), which shall govern its interpretation and enforcement. To the extent any issues arise as to which the FAA does not apply or govern, this "Dispute Resolution" Section and all substantive claims shall be governed by and interpreted according to the laws of the State of Illinois, without regard to principles of conflicts of law. The arbitrator shall decide all issues of interpretation, scope, and application of this "Dispute Resolution" Section and the arbitration provision, with the exception of deciding whether the Arbitration Class Action Waiver in the Section below is valid or enforceable. Any question regarding the validity or enforceability of this "Dispute Resolution" Section shall be resolved by a state or federal court in Illinois, which You, Processor and Bank agree shall be the sole and exclusive jurisdiction for any such question to be resolved (and for which You, Bank and Processor consent to the Court's jurisdiction and waive any right to challenge jurisdiction or venue). This "Dispute Resolution" Section shall survive termination of this Agreement. The agreement to arbitrate is intended to be broadly interpreted.

C. ARBITRATION CLASS ACTION WAIVER. You, Processor and Bank agree that arbitration shall proceed solely on an individual basis and that any Dispute shall not be arbitrated as a class action, shall not be consolidated with the claims of any other party, and shall not be arbitrated on a consolidated, representative, or private attorney general basis. The award or decision in the arbitration will not have any preclusive effect as to issues or claims involved in any proceeding between Processor any anyone who is not a named party to the arbitration. The arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator's award, if any, shall not apply to any person or entity that is not a party to the arbitration. Any questions regarding the enforceability of this Section shall be decided by a court and not the arbitrator. If any portion of this Section is deemed invalid or unenforceable, then the entire arbitration provision in this Section (other than this sentence and the Section below) shall be null and void and not apply. In no case shall an arbitration proceed on a class basis.

D. NON-ARBITRATION CLASS ACTION WAIVER. If for any reason any Dispute proceeds in court rather than arbitration, the Dispute shall proceed solely on an individual, non-class, non-representative basis. In any Dispute that proceeds in court, neither You, Bank, nor Processor may be a class representative or class member or otherwise participate in any class, consolidated, representative, or private attorney general matter. If for any reason any Dispute proceeds in court rather than arbitration, You, Bank ad Processor agree that the sole and exclusive jurisdiction shall be a state or federal court located in Chicago, Illinois (and You, Bank and Processor consent to the Court's jurisdiction and waive any right to challenge jurisdiction or venue).

E. Invalid or Unenforceable. If an arbitrator or court determines that any part of this "Dispute Resolution" Section, other than Section 19.A. above (regarding Mandatory Arbitration), is invalid or unenforceable, the other parts of this "Dispute Resolution" Section shall apply. Notwithstanding anything to the contrary in the prior sentence, in all cases, the Section above (regarding Non-Arbitration Class Action Waiver) shall remain in effect, valid, and enforceable.

20. General Provisions.

A. Entire Agreement. This Agreement, including the completed Application, the Data Security Regulations, Rules, Laws, Operating Regulations, and any amendment or supplement to this Agreement made in accordance with the procedures set forth in this Section below, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are terminated and superseded by this Agreement.

B. Governing Law. This Agreement will be governed by the laws of the State of Illinois. The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in Illinois and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of Illinois. Subject to the provisions of "Dispute Resolution" Section above, all suits by either party shall be instituted exclusively in the state or federal courts located in Chicago Illinois. YOU HEREBY SUBMIT TO THE JURISDICTION AND VENUE OF THE COURTS OF THE STATEOF IILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN

DISTRICT OF ILLINOIS, UNLESS PROHIBITED BY APPLICABLE LAW.

C. Construction. The headings used in this Agreement are inserted for 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.

D. Assignability. This Agreement may be assigned by Processor, but it may not be assigned by Bank or Merchant, directly or by operation of law, without the prior written consent of Processor. If You nevertheless assign this Agreement without the consent of Processor, the Agreement will be binding on the assignee and Processor shall be permitted to terminate this Agreement with cause.

E. Notices. Any written notice under this Agreement shall be sent to Processor by certified mail addressed to:7840 Graphics Drive, Tinley Park, Illinois 60477. All notices to other parties shall be addressed to the last address shown on the records of the sender.

F. Bankruptcy. You will immediately notify Bank and Processor of any bankruptcy, receivership, insolvency, or similar action or proceeding initiated by or against the Merchant. You will include Bank and Processor on the list and matrix of creditors as filed with the bankruptcy court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to Processor under applicable Law. You acknowledge that this Agreement constitutes an executory contract to make a loan or extend other debt financing or financial accommodations to or for the benefit of You, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

G. Customer Contact. You authorize Bank and Processor to contact your customers or their card issuing bank if they determine that such contact is necessary to find out information about any Card transaction between You and the customer.

H. Amendments. Processor may propose amendments or additions to this Agreement. Processor will inform You of a proposed change in a periodic statement or other written notice, including notice contained within your billing statement, invoice or any notice sent electronically, including notices posted in your portal. You will be deemed to have agreed to the change if You present one or more transactions to Processor thirty (30) days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Agreement are effective upon notice to You, unless a later effective date is provided. Further, notwithstanding anything to the contrary in this Section or this Agreement, Processor is entitled to immediately pass through to You any fee increases imposed by Visa, Mastercard, Discover Network, Amex, Other Networks or telecommunication vendors without giving You the right to terminate this Agreement or reject those fee increases. Further, this Agreement will be deemed amended to comply with any changes to the Operating Regulations, Laws or Rules.

I. Severability and Waiver. Except as expressly set forth in the "Dispute Resolution" Section above, if any provision of this Agreement is illegal or unenforceable, the invalidity of that provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or the 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 by Processor.

J. Independent Contractors. Processor, Bank, and Marchant and certain of the sales and marketing offices will be deemed independent contracts and none will be considered agent, joint venture, or partner of the other.

K. Survival. Sections 1, 2, 3.B., 3.F., 3.G., 3.H., 6.A., 6.C., 7.C., 7.I., 7.K., 9, 10, 11, 12, 13, 14, 16, 17, 18, and 19 shall survive termination of this Agreement.

L. Bank Contact. Merchant may contact Bank at the following address and telephone number: Fifth Third Bank National Association, 38 Fountain Square Plaza, Cincinnati, Ohio 45263; Telephone (800) 972-3030.

TERMS AND CONDITIONS FOR AMERICAN EXPRESS OPTBLUE

To the extent Merchant elects at any time to accept American Express Transaction Cards and qualifies for Processor's Direct Settlement Program for American Express OptBlue (registered trademark), the following terms and conditions shall apply, in addition to the Merchant Processing Agreement, including the general terms and conditions as applicable (the "Agreement"), shall apply to the relationship between Processor and Merchant covered by this Addendum. In the event of any conflict between the Agreement and this Addendum related to an American Express Transaction Card or transaction related thereto, the terms of this Addendum shall apply.

1. **Definitions.** The following capitalized terms shall have the meanings set forth below when used in these Terms and Conditions of Processor's Direct Settlement Program for American Express. Any terms not defined in this Addendum shall have the meaning given to them in the Agreement:

A. "American Express Brand" means the American Express name, trademarks, service marks, logos, and other proprietary designs and designations and the imagery owned by American Express or American Express affiliates and the goodwill associated with all of the foregoing and with all the goods and services now and in the future provided, marketed, offered, or promoted by American Express or an American Express affiliate.

B. "American Express Transaction Card" means (i) any card, account device, or payment device or service bearing an American Express or an American Express affiliate trademark or logo and issued by an Issuer or (ii) an account number issued by an Issuer, which can be used to purchase goods or services at merchants on the American Express network.

C. "Applicable Law" means: (i) any law, statute, regulation, ordinance or subordinate legislation in force from time to time to which a party or its affiliates is subject; (ii) the common law as applicable to the parties from time to time; (iii) any court order, judgment, or decree that is binding on a party or its affiliates; and (iv) any directive, policy, rule or order that is binding on a party or its affiliates and that is made or given by a regulator, or other government or government agency, of, in the case of items (i) through (iv) above, any country, or other national, federal, commonwealth, state, provincial or local jurisdiction.

D. "High CV Merchant" means Merchant has either: (i) greater than $1,000,000 in American Express Transaction Card volume (net of Chargebacks, credits and any other amounts Merchant owes to American Express) in a rolling twelve (12) month period or (ii) greater than $100,000 in American Express Transaction Card volume (net of Chargebacks, credits and any other amounts Merchant owes to American Express) in any three (3) consecutive months. For clarification, if Merchant has multiple Locations, the American Express Transaction Card volume from all of Merchant's Locations shall be summed together when determining whether Merchant has exceeded the thresholds above.

E. "Issuer" means any legally recognized entity or organization (including American Express and American Express affiliates) authorized by American Express or an American Express affiliate to issue an American Express Transaction Card and to engage in the American Express Transaction Card issuing business.

F. "Location" means any or all of Merchant's locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that Merchant adopts in the future.

G. "Other Payment Products" means any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services or products other than the American Express Transaction Cards.

2. **American Express Transaction Card Acceptance.** Merchant shall accept the American Express Transaction Card as payment for goods and services (other than those goods and services prohibited under the Agreement and the paragraph below in this Section) sold, or (if applicable) for charitable contributions made, at all of Merchant's Locations, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of all of Merchant's Locations under the Agreement. To accept American Express Transaction Cards, You must clearly and conspicuously disclose all material terms of sale prior to obtaining an Authorization and clearly and conspicuously inform Cardholders at all points of the interactions (e.g., sales conducted in person, over the internet, mobile or via mail or telephone order) what entity is making the sales offer so that the Cardholder can clearly distinguish You from any other party involved in the interaction (e.g. a vender of goods or provider of services You may engage, or another Merchant seeking to conduct business with the Cardholder). The Transaction Data You collect to facilitate the transaction must be, or have been, provided directly to You by the Cardholder. Merchant must not accept the American Express Transaction Card for any of the following: (i) adult digital content sold via the internet; (ii) amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at your establishment; (iii) amounts that do not represent bona fide, direct sales by your establishments to Cardholders made in the ordinary course of your business; (iv) cash or equivalent; for example, purchases of gold, silver, platinum, and palladium bullion and/or bars (collectible coins and jewelry are not prohibited), or virtual currencies that can be exchanged for real currency (loyalty program currencies are not prohibited); (v) charges that the Cardholder has not specifically approved; (vi) costs or fees over the normal price of goods or services (plus applicable taxes) that the Cardholder has not specifically approved; (vii) damages, losses, penalties, or fines of any kind; (viii) gambling services (including online gambling), gambling charges, gambling credits, or lottery tickets; (ix) unlawful/illegal activities, fraudulent business transactions or when providing the

goods or services is unlawful/illegal (e.g., unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a "rights-holder" under laws applicable to American Express, You, or the Cardholder; (x) overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g. where the American Express Transaction Card is used as payment of last resort); (xi) amounts that represent repayment of a cash advance including, but not limited to, payday loans, pawn loans, or payday advances; (xii) sales made by third parties or entities conducting business in industries other than yours; or (xiii) other items of which American Express, Processor, or Bank notifies You. You must not use American Express Transaction Cards to verify the age of your customers.

3. **Settlement.** Processor shall settle all American Express Transaction Card transactions processed by Processor hereunder for Merchant in accordance with the Agreement. Merchant hereby designates the Bank and Processor as Merchant's agent to receive all payments pertaining to Merchant's American Express Transaction Card transactions. All payments required to be made to Merchant under this Agreement for American Express Transaction Card transactions shall be made by Processor to the Merchant Account, via electronic funds transfer by ACH (or other electronic means) or by wire transfer, at Processor's option, as soon as practicable after Processor's receipt of such funds from American Express.

4. **Treatment of the America Express Marks.** Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the American Express Transaction Card and display American Express Marks (including any American Express Transaction Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from Processor) indicate that American Express endorses Merchant's goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using and shall remove American Express' Marks from Merchant's website and wherever else they are displayed upon termination of the Agreement or Merchants participation in Processor's Direct Settlement Program for American Express. For additional guidelines on the use of the American Express Marks, contact Processor.

5. **Treatment of American Express Card Member Information.** Any and all information about Cardholders (including names, addresses, account numbers and card identification numbers) or American Express Transaction Card transactions is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose any such information, nor use nor store it, other than to facilitate transactions at Merchant's Locations in accordance with the Agreement.

6. **Conversion If Become a Hight CV Merchant.** Merchant will be converted from Processor's Direct Settlement Program for American Express to a direct card acceptance agreement with American Express if and when Merchant becomes a High CV Merchant (or if Merchant currently is a High CV Merchant). 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's American Express Transaction Card acceptance.

7. **American Express Third-Party Beneficiary.** American Express shall have the right, but not the obligation, to enforce the terms of the Agreement against Merchant with respect to American Express Transaction Card transactions and Processor's Direct Settlement Program for American Express.

8. **Cease Acceptance of American Express.** By contacting Processor's customer service or using some other method established by Processor, Merchant may opt out of accepting American Express Transaction Cards at any time without directly or indirectly or affecting Merchant's rights to accept other Transaction Cards.

9. **Refunds.** Merchant's refund policies for purchases with an American Express Transaction Card must be at least as favorable as Merchant's refund policy for purchases with any other Transaction Card and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with the Laws.

10. **Right to Bill or Collect from Cardholder.** Merchant shall not bill or collect from any Cardholder for any purchase or payment made with an American Express Transaction Card unless (i) American Express has exercised Chargeback for such charge, (ii) Merchant has fully paid American Express for such charge, and (iii) Merchant otherwise has the right to do so.

11. **Information Rights.** Merchant hereby authorizes (i) Processor to disclose to American Express transaction data (including, without limitation, information obtained at the point of sale, information obtained or generated during authorization and settlement, and any Chargeback or other fee information related to a transaction), Merchant data (including, without limitation, name, postal and email addresses, tax ID numbers, names and social security numbers of Merchant's authorized signers and similar identifying information), and other information about Merchant; (ii) American Express to use such information disclosed in Subsection (i) above to perform its responsibilities in connection with Processor's American Express Direct Settlement Program, promote the American Express network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes; and (iii) Processor to share information that Merchant discloses to Processor with Processor's agents, subcontractors, affiliates and other parties including industry organizations and reporting agencies, for any purpose permitted by Applicable Law. In addition,

American Express may use the information obtained in the setup of Merchant's account to screen and/or monitor Merchant in connection with American Express Transaction Card marketing and administrative purposes. Any person (including Merchant) providing permission to obtain or disclose information in connection with this Agreement hereby releases and waives any right or claim arising out of or related to such disclosure, including defamation claims, even if the information that is disclosed is incorrect or incomplete, Merchant acknowledges that its business name and the name of its principals may be reported to MATCH and hereby consents to such reporting, and waives and holds Processor harmless from all claims and liabilities it may have as a result of such reporting.

12. **American Express Merchant Requirements.** You must abide by ad are subject to the American Express Merchant Operating Guide which can be found at www.americanexpress.com/merchantopguide and the American Express OptBlue Operating Regulations, including, without limitation, the Data Security Operating Policy contained therein, which may be found at www.americanexpress.com/dsr.

13. **Treatment of the American Express Brand.** Except as expressly permitted by applicable Law, You must not: (i) indicate or imply that You prefer, directly or indirectly, any Other Payment Products over American Express Transaction Cards; (ii) try to dissuade Cardholders from using American Express Transaction Cards; (iii) criticize or mischaracterize American Express Transaction Cards or any of American Express' services or programs; (iv) try to persuade or prompt Cardholders to use Other Payment Products or any other method of payment; (v) impose any restrictions, conditions, disadvantages, or fees when a American Express Transaction Card is accepted that is not imposed equally on all Other Payment Products, except for electronic funds transfer, cash, or check; (vi) suggest or require Cardholders to waive their right to dispute any Transaction; (vii) engage in activities that harm American Express' business or the American Express Brand (or both); (viii) promote any Other Payment Products (except your own private label card that You issue for use solely at your establishments) more actively than You promote American Express Transaction Cards; or (ix) convert the currency of the original sale transaction to another currency when requesting authorization or submitting transactions (or both). You may offer discounts or in-kind incentives from your regular prices for payments in cash, ACH funds transfer, check, debit card, or credit/charge card, provided that (to the extent required by applicable Laws): (i) You clearly and conspicuously disclose the terms of the discount of in- kind incentive to your customers; (ii) the discount or the in- kind incentive is offered to all of your prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provision set forth above in this Section.

14. **Termination.** Processor may immediately terminate Merchant's right to accept American Express Transaction Cards if (i) Merchant breaches any of the provisions in this Addendum, the Agreement, or the American Express Merchant Operating Guide or (ii) upon American Express' request.

15. **Assignment of Payments.** Merchant shall not assign to any third party any payments due to Merchant under the Agreement, and all indebtedness arising from any charges will be for bona fide sales of goods and services (or both) at its Locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future transaction receivables to Processor, its affiliated entities and/or any other cash advance funding source that partners with Processor or its affiliated entities, without consent of American Express.

ACCOUNTING INTEGRATION TERMS AND CONDITIONS

These terms and conditions are between You and Processor, and not Bank, and govern your use of the Accounting Integration Services and related software (collectively the "AI Service"). Contact Processor's Customer Service for the Accounting Integration Service Provider ("ASP"), which may or may not be Processor, availability in your market area. Rates and AI Service are subject to change by the ASP. Any such changes shall be posted on ASP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE AI SERVICE PROVIDED BY ASP. YOUR USE OF THE AI SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the AI Service. ASP is willing to provide AI Service only if You agree to be bound by the following terms:

1. AI Services and Information.

A. Neither ASP nor Processor is responsible for the accuracy or completeness of information sent or received by You through the AI Service. In certain instances, ASP may make available through the AI Service certain information, data, or messages (collectively referred to as "Information") independently obtained by ASP from various sources, their affiliates, and others (collectively referred to as "Information Providers"). Such Information may be the subject of additional terms and conditions of the Information Providers. Your use of and access to the Information shall constitute your acceptance of those terms and conditions. If You do not agree to the additional terms and conditions, do not use and access the Information. The accuracy, completeness, timeliness, or correct sequencing of the Information is not guaranteed by ASP, the Information Providers, or any parties processing Information or payments (the foregoing parties are collectively referred to as the "Disseminating Parties"). The AI Service must be used in compliance with the Federal Communications Commission and other federal, state and local laws, rules and regulations. The AI Service shall not be used to transmit unauthorized or illegal credit card charges and may not be resold or otherwise provided to third parties.

B. Although ASP uses commercially reasonable efforts to provide for the secure transmission of information through the AI Service, confidential use of the AI Service by You cannot be guaranteed by ASP, Processor or the Disseminating Parties. Neither ASP nor Processor is responsible for any harm that You or any person may suffer as a result of a breach of confidentiality in respect to your use of the AI Service. Subject to these terms and conditions, ASP will provide You with AI Service that enables the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors. The AI Service may include network connectivity via providers to the ASP application architecture including access to a variety of external payment processors that ASP arranges from time to time. Since the AI Service integrates third-party vendors as an essential part of the AI Service, availability may vary due to events beyond the control of ASP and Processor, including, without limitation, routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining hardware, handheld devices and related hardware required to access and use the AI Service. ASP may suspend the AI Service to You to: (i) prevent damages to, or degradation of, its network integrity which may be caused by You, Processor or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect ASP in its good faith judgment from potential legal liability. ASP may also suspend AI Service in the event fees hereunder are not paid when due. To the extent commercially reasonable, ASP shall give notice to You before suspending or terminating the AI Service. In the event of a suspension, ASP shall promptly restore the AI Service after the event giving rise to the suspension has been resolved. ASP reserves the right in its discretion and without notice to make changes to the AI Service and to terminate your access to, and use of, the AI Service to permit other customers to use the radio frequency, or frequencies, on which the AI Service are being provided. You acknowledge that the AI Service is subject to transmission limitations caused by conditions such as your operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, AI Service may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of ASP's facilities and the Service.

C. YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING ASP AND YOU ARE NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN ASP AND PROCESSOR. YOU UNDERSTAND AND AGREE THAT THE ASP SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU.

D. YOU SHALL INDEMNIFY AND HOLD HARMLESS PROCESSOR AND ASP AND THEIR OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PESONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMETN OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE SERVICE AND/OR NUMBER AND/OR THE NEGLIGENCE OF ASP AND PROCESSOR AND THEIR OFFICERS, EMPLOYEES, AND AGENTS EXCEPT WHERE THE CLAIMS RESULT FROM ASP'S OR PROCESSOR'S WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

E. YOU HAVE NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND YOU UNDERSTAND THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.

F. YOU UNDERSTAND THAT ASP AND PROCESSOR CANNOT GUARANTY THE SECURITY OF WIRELESS OR OTHER TELECOMMUNICATIONS, AND TRANSMISSION, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING THERETO.

G. You agree not to reproduce, re-transmit disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information in any manner without the express written consent of ASP and the relevant Information Provider(s). You agree to immediately notify ASP and Processor if You become aware of any of the following: (i) any loss or theft of your access number(s) and/or password(s) to the AI Service or Information, or (ii) any unauthorized use of any of your access number(s) and/or password(s), or of the AI Service or any Information. You agree to abide by all federal, state and local laws, rules, and regulations when utilizing the AI Service and Information. You agree to defend, indemnify, and hold ASP, Processor and the Disseminating Parties harmless from and against any and all claims, losses, liabilities, costs and expenses (including but not limited to attorneys' fees) arising from your violation of this Agreement or any third party's rights.

H. You acknowledge that neither the AI Service nor any of the Information is intended to supply advice of any nature. Although the AI Service may provide Information on a number of topics, none of the Information is endorsed by ASP, Processor, the underlying wireless service and/or telecommunication carrier(s), or any Disseminating Party. Neither ASP, Processor nor the Disseminating Parties recommends any service or product offered or advertised in the Information.

2. Pricing and Payment.

A. You shall make payment to Processor for all AI Services in accordance with the pricing set forth in the Agreement.

B. Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to Processor all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to Processor from You.

3. **DISCLAIMER.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE AI SERVICE AND INFORMATION. NEITHER ASP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION BY ASP, PROCESSOR OR ANY DISSEMINATING PARTY. THE AI SERVICE AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. ASP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. ASP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD-PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILIYT, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD-PARTY ITEMS.

4. **Term and Termination.** ASP and Processor reserve the right to terminate your access to the AI Service and Information or any portion of them in their sole discretion, without notice, and without limitation, for any reason whatsoever, including, without limitation, to the unauthorized use of your access number(s) and/or passwords, breach of this Agreement, failure to pay amounts due ASP, Processor and/or the Disseminating Parties, discontinuance of the AI Service, or loss of access to any information from any of the Disseminating Parties. Upon termination, ASP, Processor and the Disseminating Parties shall have no liability to You; provided, however, that if the termination is without cause, Processor shall refund the pro rata portion of any fee which may have been pre-paid by You for the portion of the AI Service not furnished to You as of the date of such termination.

5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL ASP OR PROCESSOR BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF THE USE OF AI SERVICE), EVEN IF ASP OR PROCESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY FOR CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY FAILURE OR DISRUPTION OF AI SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED $25.00.

6. **Assignment.** You may not assign or transfer any right or obligation under this Addendum without the written consent of Processor.

7. **Force Majeure.** Neither ASP or Processor shall be liable for any loss resulting from a cause over which such entity does not have direct control, including without limitation, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

8. **Incorporation of Terms of Agreement.** All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

9. **General.** You acknowledge that in providing You with the AI Service ASP and Processor have relied upon your assent to be bound by the terms of this Agreement. Subject to ASP's and Processor's right to change applicable pricing and AI Service terms by posting such changes on their Web sites, this Agreement and any license or other restrictions provided with the Information constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration by a single arbitrator conducted in accordance with and subject to the Commercial Arbitration Rules of the American take place in the state in which the ASP's principal place of business is located. These terms and conditions related to the AI Services shall be governed by the law of the state in which the ASP's principal place of business is located. The award of the arbitrator shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

10. **Survival.** The terms and conditions of Sections 2 through 9 above shall survive any expiration or termination of this Agreement.

PROCESSOR MOBILE PROCESSING TERMS AND CONDITIONS

These Mobile Processing terms and conditions are between You and Processor, and not Bank, and govern your use of the Mobile Service, defined below. Contact Processor's Customer Service for the Mobile Processing Service Provider ("MSP") availability in your market area. Rates and Mobile Service are subject to change by the MSP. Any such changes may be posted on MSP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE MOBILE SERVICE PROVIDED BY MSP. YOUR USE OF THE MOBILE SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the Mobile Service. MSP is willing to provide the Mobile Service only if You agree to be bound by the following terms:

1. Mobile Services and Information.

A. Processor, through MSP, will provide You with the ability to process credit and debit card transactions using a mobile device virtual terminal (the "Mobile Service") in accordance with the terms and conditions of this Addendum and the Merchant Processing Agreement (the "Agreement"), by and between Processor and You.

B. Processor will, or will cause MSP to, make available training tools and videos as generally available on Processor's or MSP's web site.

C. You will identify the mobile device(s) to be used in connection with the Mobile Services and will not change any cell phone used without notice to Processor. Processor is not responsible for providing the Mobile Services if You change the mobile device(s) used to a mobile device(s) that is not compatible with the Mobile Services.

D. You will be required to agree to MSP's terms and conditions before the Mobile Services are available for use.

E. Although MSP uses commercially reasonable efforts to provide for the secure transmission of information through the Mobile Services, confidential use of the Mobile Services by You cannot be guaranteed by MSP, Processor or the Disseminating Parties. Neither MSP nor Processor is responsible for any harm that You or any person may suffer as a result of a breach of confidentiality in respect to your use of the Mobile Services. Subject to these terms and conditions, MSP will provide You with Mobile Services that enable the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors. The Mobile Services may include network connectivity via providers to the MSP application architecture including access to a variety of external payment processors that MSP arranges from time to time. Since the Mobile Services integrate third-party vendors as an essential part of the Mobile Services, availability may vary due to events beyond the control of MSP and Processor, including, without limitation, routine maintenance and outages by telecommunications carrier and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining hardware, handheld devices and related hardware required to access and use the Mobile Services. MSP may suspend the Mobile Services to You to: (i) prevent damages to, or degradation of, its network integrity which may be caused by You, Processor or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect MSP in its good faith judgment from potential legal liability. MSP may also suspend Mobile Services in the event fees hereunder are not paid when due. To the extent commercially reasonable, MSP shall give notice to You before suspending or terminating the Mobile Services. In the event of a suspension, MSP shall promptly restore the Mobile Services after the event giving rise to the suspension has been resolved. MSP reserves the right in its discretion and without notice to make changes to the Mobile Services and to terminate your access to, and use of, the Mobile Services to permit other customers to use the radio frequency, or frequencies, on which the Mobile Services are being provided. You acknowledge that the Mobile Services are subject to transmission limitations caused by conditions such as your operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, Mobile Service may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of MSP's facilities and the Mobile Services.

F. MSP or Processor may, at any time, make such alterations to the Mobile Services or discontinue support for specific mobile devices, as MSP or Processor, in its sole discretion, deems appropriate. Provided, however, MSP or Processor will provide You at least fifteen (15) days written notice of any material change to the Mobile Services provided.

2. Pricing and Payment.

A. You shall make payment to Processor for all Mobile Services in accordance with the pricing set forth in the Agreement.

B. Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to Processor all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to Processor from You.

3. **DISCLAIMER.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE MOBILE SERVICE AND INFORMATION. NEITHER MSP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY ANY SUCH INACCURACY, ERROR,

DELAY OR OMISSION, NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY MSP, PROCESSOR OR ANY DISSEMINATING PARTY. THE MOBILE SERVICES, INCLUDING THE SOFTWARE, AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. MSP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MSP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWAE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE THIRD-PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD-PARTY ITEMS.

4. **Intellectual Property (IP) Rights and Trademarks.** All IP Rights evidenced by or embodied in and/or attached/connected/related to the Mobile Services (including the code and documentation) and Processor's or its MSP's trademarks shall be owned solely by Processor or the subcontractor, as applicable. You acknowledge that, except as expressly provided hereunder in connection with the use of the Mobile Services, Processor does not convey any IP Rights to You hereunder.

5. Term and Termination.

A. Either Party shall have the right to terminate the Mobile Services in the event of a material and continuing breach by the other Party of its obligations hereunder. The non-breaching Party shall send a written notice of termination identifying the breach upon which termination is based, and the notice shall become effective 30 days after delivery thereof to the breaching Party (the "Notice Period") unless the breaching Party shall have cured or commenced to cure the breach during the Notice Period.

B. Processor may terminate the Mobile Services immediately if one or more MSPs providing all or part of the Mobile Services to You cease to provide such Mobile Services to Processor for any reason.

C. Processor or MSP shall have the right to furnish notice of termination of the Mobile Services in the event You engage in any conduct or practice which, in the reasonable judgment of Processor or MSP, is detrimental or harmful to the good name, goodwill or reputation of Processor or MSP, including, without limitation, to your failure to comply with your obligations under these terms and conditions and/or the Agreement.

D. Upon termination for any reason the Mobile Services may be disabled by Processor or MSP.

6. Limitation of Liability.

A. UNDER NO CIRCUMSTANCES SHALL PROCESSOR BE LIABLE TO YOU FOR ANY CLAIM FOR (I) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, (II) COMPENSATION FOR LOSS OF PROFITS, ANTICIPATED REVENUE, SAVINGS OR GOODWILL, OR OTHER ECONOMIC LOSS, (III) EXEMPLARY, AGGRAVATED OR PUNITIVE DAMAGES HOWSOEVER INCURRED, (IV) CONTRIBUTION OR SET-OFF IN RESPECT OF ANY CLAIMS AGAINST YOU, (V) ANY DAMAGES WHATSOE3VER RELATING TO THIRD PARTY PRODUCTS OR MOBILE SERVIES OR YOUR MATERIALS, OR (VI) ANY DAMAGES WHATSOEVER RELATING TO INTERUPTION, DELAYS, ERRORS OR OMISSIONS, IN EACH CASE UNDER ANY THEORY OF LAW OR EQUITY, ARISING OUT OF OR IN ANY RELATED TO THIS ADDENDUM OR THE MOBILE SERVICES OR ANY MOBILE SERVICES PROVIDED BY PROCESSOR OR ITS SUBCONTRACTORS IN RELATION TO THE MOBILE SERVICE (FOR GREATER CERTAINTY, INCLUDING IN ERLATION TO ANY SUPPORT, TRAINING OR MAINTENCANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE SOFTWARE OR HARDWARE ASSOCIATED WITH THE MOBILE SERVICES), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

B. PROCESSOR'S AND ITS MSP'S LIABILITY TO YOU FOR ANY AND ALL DIRECT, COMPENSATORY LOSS OR DAMAGES, UNDER ANY THEORY OF LAW OR EQUITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE INTENDED FULFILLMENT OF ANY OF ITS OBLIGATIONS UNDER THIS ADDENDUM OR ANY MOBILE SERVICES PROVIDED BY PROCESSOR OR ITS MSP'S IN RELATION TO THE MOBILE SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT, TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE MOBILE SERVICES SOFTWARE OR HARDWARE), SHALL BE STRICTLY LIMITED TO THE AGGREGATE OF ANY FEES OR PURCHASE PRICE OR OTHER AMOUNTS PAID BY YOU TO PROCESSOR FOR THE PRIOR 4 MONTHS UNDER THIS ADDENDUM FOR THE MOBILE SERVICES THAT CAUSED SUCH LOSS OR DAMAGES.

7. **Assignment.** You may not assign or transfer any right or obligation under this Addendum without the written consent of Processor.

8. **Force Majeure.** Processor shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from a natural calamity, act of government, or similar cause beyond the control of Processor; provided that, in order to be excused from delay or failure to perform, Processor must act diligently to remedy the effect of such delay or failure.

9. **Incorporation of Terms of Agreement.** All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

10. **Survival.** The terms and conditions of Sections 2 through 9 above shall survive any expiration or termination of this Agreement.

GATEWAY TERMS AND CONDITIONS

These Gateway terms and conditions are between You and Processor, and not Bank, and govern your use of the Gateway Services, defined below. Rates and Gateway Service are subject to change by the Gateway Service Provider, who may or may not be Processor ("GSP"). Any such changes shall be posted on GSP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE GATEWAY SERVICE PROVIDED BY GSP. YOUR USE OF THE GATEWAY SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the Gateway Service. GSP is willing to provide the Gateway Service only if You agree to be bound by the following terms:

1. **Gateway Services and Information.**

A. Processor, through GSP, will provide You with the ability to process credit and debit card transactions using GSP's payment processing and gateway services ("Gateway Services") in accordance with these terms and conditions and the Merchant Processing Agreement (the "Agreement"), by and between Processor and You.

B. Processor will, or will cause GSP to, make available training tools and videos as generally available on Processor's or GSP's web site.

C. You will identify the hardware and software to be used in connection with the Gateway Services and will not change any hardware or software used without notice to Processor. Processor is not responsible for providing the Gateway Services if You change the hardware or software used to hardware or software that is not compatible with the Gateway Services.

D. You will be required to agree to GSP terms and conditions before the Gateway Services are available for use.

E. Although GSP uses commercially reasonable efforts to provide for the secure transmission of information through the Gateway Services, confidential use of the Gateway Services by You cannot be guaranteed by GSP, Processor or the Disseminating Parties. Neither GSP nor Processor is responsible for any harm that You or any person may suffer as a result of a breach of confidentiality in respect to your use of the Gateway Services. Subject to these terms and conditions, GSP will provide You with Gateway Services that enable the transport and reporting of certain data over certain networks to and from various credit and debit card payment processors. The Gateway Services may include network connectivity via providers to the GSP application architecture including access to a variety of external payment processors that GSP arranges from time to time. Since the Gateway Services integrate third-party vendors as an essential part of the Gateway Services, availability may vary due to events beyond the control of GSP and Processor, including, without limitation, routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining hardware, handheld devices and related hardware required to access and use the Gateway Services. GSP may suspend the Gateway Services to You to: (i) prevent damages to, or degradation of, its network integrity which may be caused by You, Processor or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect GSP in its good faith judgment from potential legal liability. GSP may also suspend Gateway Services in the event fees hereunder are not paid when due. To the extent commercially reasonable, GSP shall give notice to You before suspending or terminating the Gateway Services. In the event of a suspension, GSP shall promptly restore the Gateway Services after the event giving rise to the suspension has been resolved. GSP reserves the right in its discretion and without notice to make changes to the Gateway Services and to terminate your access to, and use of, the Gateway Services to permit other customers to use the radio frequency, or frequencies, on which the Gateway Services are being provided. You acknowledge that the Gateway Services are subject to transmission limitations caused by conditions such as your operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, Gateway Services may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or property for the operation or improvement of GSP's facilities and the Gateway Services.

F. Processor or GSP may, at any time, make such alternations to the Gateway Services or discontinue support for specific hardware or software, as Processor or GSP, in its sole discretion, deems appropriate. Provided, however, Processor or GSP will provide You at least fifteen (15) days written notice of any material change to the Gateway Services provided.

2. **Pricing and Payment.**

A. You shall make payment to Processor for all Gateway Services in accordance with the pricing set forth in the Agreement.

B. Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to Processor all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to Processor from You.

3. **DISCLAIMER.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE GATEWAY SERVICE AND INFORMATION. NEITHER GSP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, NON-PERFORMANCE, OR (III)

INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION BY GSP, PROCESSOR OR ANY DISSEMINATING PARTY. THE GATEWAY SERVICES, INCLUDING THE SOFTWARE, AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. GSP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GSP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD-PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD-PARTY ITEMS.

4. **Intellectual Property (IP) Rights and Trademarks.** All IP Rights evidenced by or embodied in and/or attached/connected/related to the Gateway Services (including the code and documentation) and Processor's or its GSP's trademarks shall be owned solely by Processor or the subcontractor, as applicable. You acknowledge that except as expressly provided hereunder in connection with the use of the Gateway Services, Processor does not convey any IP Rights to You hereunder.

5. **Term and Termination.**

A. Either Party shall have the right to terminate the Gateway Services in the event of a material and continuing breach by the other Party of its obligations hereunder. The non-breaching Party shall send a written notice of termination identifying the breach upon which termination is based, and the notice shall become effective 30 days after delivery thereof to the breaching Party (the "Notice Period") unless the breaching Party shall have cured or commenced to cure the breach during the Notice Period.

B. Processor may terminate the Gateway Services immediately if one or more GSPs providing all or part of the Gateway Services to You cease to provide such Gateway Services to Processor for any reason.

C. Processor or GSP shall have the right to furnish notice of termination of the Gateway Services in the event You engage in any conduct or practice which, in the reasonable judgment of Processor or GSP, is detrimental or harmful to the good name, goodwill or reputation of Processor or GSP, including, without limitation, your failure to comply with your obligations under these terms and conditions and/or the Agreement.

D. Upon termination for any reason the Gateway Services may be disabled by Processor or GSP.

6. **LIMITATION OF LIABILITY.**

A. UNDER NO CIRCUMSTANCES SHALL PROCESSOR BE LIABLE TO YOU FOR ANY CLAIM FOR (I) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, (II) COMPENSATION FOR LOSS OF PROFITS, ANTICIPATED REVENUW, SAVINGS OR GOODWILL, OR OTHER ECONOMIC LOSS, (III) EXEMPLARY, AGGRAVATED OR PUNITIVE DAMAGES HOWSOEVER INCURRED, (IV) CONTRIBUTION OR SET-OFF IN RESPECT OF ANY CLAIMS AGAINST YOU, (V) ANY DAMAGES WHATSOEVER RELATING TO THIRD PARTY PRODUCTS OR GATEWAY SERVICES OR YOUR MATERIALS, OR (VI) ANY DAMAGES WHATSOEVER RELATING TO INTERRUPTION, DELAYS, ERRORS OR OMISSIONS, IN EACH CASE UNDER ANY THEORY OF LAW OR EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE GATEWAY SERVICES OR ANY GATEWAY SERVICES PROVIDED BY PROCESSOR OR ITS SUBCONTRACTORS IN RELATION TO THE GATEWAY SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE SOFTWARE OR HARDWARE ASSOCIATED WITH THE GATEWAY SERVICES), EVEN IF ADIVSED OF THE POSSIBILITY THEREOF.

B. PROCESSOR'S AND ITS GSP'S LIABILITY TO YOU FOR ANY AND ALL DIRECT, COMPENSATORY LOSS OR DAMAGES, UNDER ANY THEORY OF LAW OR EQUITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE INTENDED FULFILLMENT OF ANY OF ITS OBLIGATIONS UNDER THIS ADDENDUM OR ANY GATEWAY SERVICES PROVIDED BY PROCESSOR OR ITS GSPS IN RELATION TO THE GATEWAY SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT, TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE GATEWAY SERVICES SOFTWARE OR HARDWARE), SHALL BE STRICTLY LIMITED TO THE AGGREGATE OF ANY FEES OR PURCHASE PRICE OR OTHER AMOUNTS PAID BY YOU TO PROCESSOR FOR THE PRIOR 4 MONTHS UNDER THIS ADDENDUM FOR THE GATEWAY SERVICES THAT CAUSED SUCH LOSS OR DAMAGES.

7. **Assignment.** You may not assign or transfer any right or obligation under this Addendum without the written consent of Processor.

8. **Force Majeure.** Processor shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from a natural calamity, act of government, or similar cause beyond the control of Processor; provided that, in order to be excused from delay or failure to perform, Processor must act diligently to remedy the effect of such delay or failure.

9. **Incorporation of Terms of Agreement.** All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

10. **Survival.** The terms and conditions of Sections 2 through 9 above shall survive any expiration or termination of this Agreement.

FUNDING TERMS AND CONDITIONS

These Funding terms and conditions contained in this Addendum are between You and Processor, and not Bank, and govern your use of the various funding options and related software, including but not limited to Next Day Funding and Same Day Money Express (individually a "Funding Service" and collectively the "Funding Services") provided by Processor. Rates, fees and the Funding Services provided by Processor are subject to change by the Processor. Any such changes shall either be provided to You by written notification or posted on Processor's web site. Further, your continued participation in Next Day Funding or Same Day Money Express is subject ongoing credit approval.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE FUNDING OPTION PROVIDED BY PROCESSOR PURSUANT TO THIS AGREEMENT. YOUR USE OF NEXT DAY FUNDING OR SAME DAY MONEY EXPRESS, OR YOUR SIGNED ACKNOWLEDGEMENT REGARDING THE SAME, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the Same Day Money Express. Processor is willing to provide the Same Day Money Express only if You agree to be bound by the following terms:

1. **Next Day Funding and Same Day Money Express.** Processor agrees that for Visa, Mastercard and Amex OptBlue Card transactions submitted in accordance with the requirements of the Agreement before (i) before 7:00 p.m. central time each day if You have elected Next Day Funding or (ii) before 4:00 a.m. central time if You have elected Same Day Money Express, Processor will, subject to the limitation set forth in the "Failure to Timely Fund" Section below, (i) if You have elected Next Day Funding, make funds due to You for Card transactions submitted on Friday, Saturday and Sunday available to You on Monday morning central time; (ii) if You have elected Next Day Funding, make funds due to You for Card Transactions submitted on Saturday and Sunday available to You on Monday morning central time; (iii) if You have elected Next Day Funding, make funds due to You for Card Transactions submitted on Monday through Thursday available to You on the next business day; and (iv) if You have elected Same Day Money Express, make funds due to You for Card Transactions submitted on Monday through Friday available to You on the same business day. For any batches submitted on Holidays or on a day on which the Federal Reserve is closed, the funds for Visa, Mastercard and Amex OptBlue Card transactions will be made available to You on the next business day following the Holiday or the date on which the Federal Reserve is closed.

2. **Posting of ACH Receipts.** Processor cannot guarantee that your bank will post ACH receipts the next morning, even though those funds were forwarded to your bank by Processor on a timely basis.

3. **Failure to Timely Fund.** In the event that any unforeseen circumstance prevents Processor from making the funds available in accordance with the provisions of the "Next Day Funding and Same Day Money Express" Section above, such funds will then be made available in accordance with Processor's Standard Funding schedule.

4. **LIMITATION OF LIABILITY.** IN THE EVENT THAT PROCESSOR FAILS TO FUND IN ACCORDANCE WITH THE SECTIONS ABOVE, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE LIMITED TO REDCUTION OF THE MONTHLY FEE FOR THE NEXT DAY FUNDING OR SAME DAY MONEY EXPRESS PROGRAM, AS APPLICABLE, PAID BY YOU FOR THE MONTH IN WHICH PROCESSOR FAILED TO SATISFY PROCESSOR'S FUNDING OBLIGATION UNDER THE SECTIONS ABOVE. SUCH REDUCTION SHALL BE EQUAL TO THE NUMBER OF DAYS ON WHICH PROCESSOR DID NOT MEET ITS FUNDING OBLIGATION DIVIDED BY THE NUMBER OF DAYS IN THE APPLICABLE MONTH.

5. **DISCLAIMER.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE FUNDING SERVICES. EXCEPT AS EXPRESLY SET FORTH IN THESE FUNDING TERMS AND CONDITIONS PROCESSOR WILL NOT BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR FUNDS OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH FUNDS, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY PROCESSOR. THE NEXT DAY FUNDING AND SAME DAY MONEY EXPRESS ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PROCESSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PROCESSOR MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD-PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD-PARTY ITEMS.

6. **Fee for Next Day Funding or Same Day Money Express.** You agree to pay the fee for Next Day Funding or Same Money Express set forth in this Agreement. Processor may change the fee for Next Day Funding or Same Day Money Express at any time by providing notice to You.

7. **ACH Authorization.** By signing the Merchant Application and electing to receive Next Day Funding or Same Day Money Express, You authorize Processor to collect the aforementioned fee by electronically debiting the Merchant Account using the ACH System.

8. **Termination.** Processor, in its sole discretion, reserves the right to terminate your participation in the Overnight Money Express (trademark) program at any time.

9. **Force Majeure.** Processor shall not be liable for any loss resulting from a cause over which Processor does not have direct control, including, without limitation, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

10. **Incorporation of Terms of Agreement.** All terms of the Agreement, except those inconsistent with the terms of this Addendum, are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

11. **General.** This Addendum and the Agreement constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration in accordance with the terms of the Agreement. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

12. **Survival.** The terms and conditions of Sections 4 through 11 above shall survive any expiration or termination of this Agreement.

WIRELESS SERVICES TERMS AND CONDITIONS

These Wireless Services terms and conditions are between You and Processor, and not Bank, and govern your use of the Wireless Services (the "Wireless Services"). Contact Processor's Customer Service for the Wireless Service Provider ("WSP") availability in your market area. Rates and Wireless Service are subject to change by the WSP. Any such changes shall be posted on WSP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE WIRELESS SERVICE PROVIDED BY WSP. YOUR USE OF THE WIRELESS SERVICE, OR SIGNED ACKNOLWDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If

this Agreement is unacceptable to You, do not use the Wireless Service. WSP is willing to provide the Wireless Service only if You agree to be bound by the following terms:

1. Wireless Services and Information.

A. Neither WSP nor Processor is responsible for the accuracy or completeness of information sent or received by You through the Wireless Service. In certain instances, WSP may make available through the Wireless Service certain information, data, or messages (collectively referred to as "Information") independently obtained by WSP from various sources, their affiliates, and others (collectively referred to as "Information Providers"). Such Information may be the subject of additional terms and conditions of the Information Providers. Your use of and access to the Information shall constitute your acceptance of those terms and conditions. If You do not agree to the additional terms and conditions, do not use and access the Information. The accuracy, completeness, timeliness, or correct sequencing of the Information is not guaranteed by WSP, the Information Providers, or any parties processing Information or payments (the foregoing parties are collectively referred to as the "Disseminating Parties").

B. Although WSP uses commercially reasonable efforts to provide for the secure transmission of information through the Wireless Service, confidential use of the Wireless Service by You cannot be guaranteed by WSP, Processor or the Disseminating Parties. Neither WSP nor Processor is responsible for any harm that You or any person may suffer as a result of a breach of confidentiality in respect to your use of the Wireless Service. Subject to these terms and conditions, WSP will provide You with Wireless Services that enable the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors. The Wireless Services may include network connectivity via Velocita Wireless, AT&T Wireless and other providers to the WSP application architecture including access to a variety of external payment processors that WSP arranges from time to time. Since the Wireless Services integrate third-party vendors as an essential part of the Wireless Services, availability may vary due to events beyond the control of WSP and Processor including, without limitation, to routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining the handheld devices and related hardware required to access and use the Wireless Services. WSP may suspend the Wireless Services to You to: (i) prevent damages to, or degradation of, its network integrity which may be caused by You, Processor or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect WSP in its good faith judgment from potential legal liability. WSP may also suspend Wireless Services in the event fees hereunder are not paid when due. To the extent commercially reasonable, WSP shall give notice to You before suspending or terminating the Wireless Services. In the event of a suspension, WSP shall restore the Wireless Services promptly after the event giving rise to the suspension has been resolved.

C. YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND YOU ARE NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN WSP, PROCESSOR AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S). YOU UNDERSTAND AND AGREE THAT THE UNDERLYIG WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU.

D. YOU SHALL INDEMNIFY AND HOLD HARMLESS WSP, PROCESSOR AND THE UNDERLYING WIRELESS, AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND THEIR OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS SERVICE AND/OR NUMBER AND/OR THE NEGLIGENCE OF ASP, PROCESSOR AND THE UNDERLYING WIRELESS, AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND THEIR OFFICERS, EMPLOYEES, AND AGENTS EXCEPT WHERE THE CLAIMS RESULT FROM WSP'S, PROCESSOR'S OR THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER'S WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

E. YOU HAVE NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND YOU UNDERSTAND THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.

F. YOU UNDERSTAND THAT WSP, PROCESSOR AND UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) CANNOT GUARANTEE THE SECURITY OF WIRELESS OR OTHER TELECOMMUNICATION TRANSMISSIONS, AND THEY WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE WIRELESS SERVICES.

G. You agree not to reproduce, re-transmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information in any manner

without the express written consent of WSP and the relevant Information Provider(s). You agree to immediately notify WSP and Processor if You become aware of any of the following: (i) any loss or theft of your access number(s) and/or password(s) to the Wireless Service or Information, or (ii) any unauthorized use of any of your access number(s) and/or password(s), or of the Wireless Service or any Information. You agree to abide by all federal, state and local laws, rules, and regulations when utilizing the Wireless Service and Information. You agree to defend, indemnify, and hold WSP, Processor and the Disseminating Parties harmless from and against any and all claims, losses, liabilities, costs and expenses (including but not limited to attorneys' fees) arising from your violation of this Agreement or any third party's rights.

H. You acknowledge that neither the Wireless Service nor any of the Information is intended to supply advice of any nature. Although the Wireless Service may provide Information on a number of topics, none of the Information is endorsed by WSP, Processor, the underlying wireless service and/or telecommunication carrier(s), or any Disseminating Party. Neither WSP, Processor nor the Disseminating Parties recommend any service or product offered or advertised in the Information.

2. Pricing and Payment.

A. You shall make payment to Processor for all Wireless Services in accordance with the pricing set forth in the Agreement.

B. Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to Processor all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to Processor from You.

3. **DISCLAIMER.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE WIRELESS SERVICE AND INFORMATION. NEITHER WSP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION BY WSP, PROCESSOR OR ANY DISSEMINATING PARTY. THE WIRELESS SERVICE AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. WSP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WSP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD-PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD-PARTY ITEMS

4. **Intellectual Property (IP) Rights and Trademarks.** All copyrights, patents, patent rights, trade secrets, trademarks, service marks, tradenames, moral rights and other intellectual property and proprietary rights in the Wireless Service and Information are and will remain the sole and exclusive property of, as applicable, WSP and its vendors/licensors and Disseminating Parties. The Wireless Service and Information contain material that is protected by United States copyright law and trade secret law, and by international treaty provisions. All rights not expressly granted to You under this Agreement are expressly reserved by WSP and its vendors/licensors and the Disseminating Parties. You may not remove or modify any proprietary notice of WSP and its vendors/licensors and Disseminating Parties from the Wireless Service or Information.

5. **Term and Termination.** WSP and Processor reserve the right to terminate your access to the Wireless Service and Information or any portion of them in their sole discretion, without notice, and without limitation, for any reason whatsoever, including, without limitation, the unauthorized use of your access number(s) and/or password(s), breach of this Agreement, failure to pay amounts due WSP, Processor and/or the Disseminating Parties, discontinuance of the Wireless Service, or loss of access to any Information from any of the Disseminating Parties. Upon termination, WSP, Processor and the Disseminating Parties shall have no liability to You; provided, however, that if the termination is without cause, Processor shall refund the pro rata portion of any fee which may have been pre-paid by You for the portion of the Wireless Service not furnished to You as of the date of such termination.

6. **LIMITATION OF LIABILITY.** IN NO EVENT WILL WSP, PROCESSOR, ANY UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS WIRELESS SERVICE CARRIER(S), OR ANY DISSEMINATING PARTY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITAITON, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DAT, LOSS OF BUSINESS INFORMATION AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF THE USE OF WIRELESS SERVICE), EVEN IF WSP, PROCESSOR, THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S), OR ANY DISSEMINATING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN ANY EVENT, REGARDLESS OF THE FORM OF THE

ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY FOR CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF WIRELESS SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED $25.00.

7. **Assignment.** You may not assign or transfer any right or obligation under this Addendum without written consent of Processor.

8. **Force Majeure.** Neither WSP, Processor, the underlying wireless and/or telecommunications service carrier(s), nor any Disseminating Party shall be liable for any loss resulting from a cause over which such entity does not have direct control, including, without limitation, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

9. **Incorporation of Terms of Agreement.** All terms of the Agreement, except those inconsistent with the terms of this Addendum, are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

10. **General.** You acknowledge that in providing You with the Wireless Serv ice WSP and Processor have relied upon your assent to be bound by the terms of this Agreement. Subject to WSP's and Processor's right to change applicable pricing and Wireless Service terms by posting such changes on their web sites, this Agreement and any license or other restrictions provided with the Information constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration by a single arbitrator conducted in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association then applicable. Any negotiation or arbitration pursuant to this Section will take place in the state in which the WSP's principal place of business is located. These terms and conditions related to the Wireless Services shall be governed by the law of the state in which the WSP's principal place of business is located. The award of the arbitrator shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

11. **Survival.** The terms and conditions of the Sections above shall survive any expiration or termination of this Agreement.

ACCOUNT UPDATER TERMS AND CONDITIONS

These Account Updater terms and conditions are between You, Processor, and Bank, and they govern your use of the Account Updater Services. Processor and Bank reserve the right to allocate their duties in connection with the Account Updater Service amongst themselves as they deem appropriate in their sole discretion. Rates and Services are subject to change by the Processor. Any such changes shall be posted on Processor's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE ACCOUNT UPDATER SERVICE. YOUR USE OF THE SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the Account Updater Service. Processor is willing to provide the Account Updater Service only if You agree to be bound by the following terms:

1. **Account Updater Services.** The Account Updater Service allows Processor and Bank to access, or supply to You, the most current cardholder account information to the extent your businesses requires electronic maintenance of customer account data. Using this service Processor and Bank will be able to obtain updated cardholder account information to support your subscription services, recurring payments, and other account on-file-functions, to the extent applicable to You. You shall only use this service for your own account, and You may not submit inquiries on behalf of any other entity.

2. **Use of Data.** You shall only use the data obtained from the Account Updater Services ("Updated Data") for the purpose of updating Cardholder information in order to complete future pre-authorized Card transactions in accordance with the Rules and Operating Regulations and shall not use the Updated Data for any other purpose, including, without limitation, in connection with any transactions that are not Card transactions or in connection with the development of any other service or product.

3. **Validation.** You shall allow Processor or Bank to validate, which shall include without limitation auditing your books, records and business, (i) that your use of the Updated Data complies with your obligations hereunder and (ii) your compliance with the Data Security Standards in connection with the Updated Data.

4. **PCI/DSS Compliance.** Upon the request of Processor or Bank, You shall provide any documents requested by Processor or Bank necessary to validate your compliance with the Data Security Standards and any annual re-validation or certification or your compliance with those standards, including, without limitation, providing Attestations of Compliance and Reports of Compliance prepared in connection with complying with PCI/DSS.

5. **Card Network Agreements.** You shall enter into any written agreements and submit any forms required by any Card Network or requested by Processor or Bank in connection with our receipt of the Account Updater Services.

6. **Right of Processor and Bank.** Processor, Bank and the applicable Card Networks each reserve the right to: (i) control access to the Updated Data; (ii) revoke your access to the Updated Data in the event that Processor, Bank or the applicable Card Network determines that your use of the Updated Data violates this Agreement, any agreement You signed with the applicable Card Network, the Rules or Operating Regulations; and (iii) determine the content access through the Account Updater Service, including limiting or removing content without prior notice.

7. **Compliance with Rules.** You agree, in connection with your use of the Account Updater Services to comply with all of the Rules and Operating Regulations applicable to those services, including, without limitation, all of the applicable Data Security Standards.

8. **Indemnification.** You shall, at your sole expense, indemnify, defend and hold harmless Processor, Bank and the Card Networks and their employees, agents and affiliates from and an against all claims, suits, actions, damages, settlements, losses, liabilities, costs and expenses, including without limitation reasonable attorneys' fees, arising out of or in connection with (i) a breach of your obligations under the Account Updater Terms and Conditions, (ii) your failure to comply with the Rules, the Operating Regulations or applicable law, or (iii) your, or your employees, agents or representatives, negligent or intentional misconduct in connection with the Account Updater Services or the Updated Data.

9. **LIMITATION OF LIABLITY.** IN NO EVENT SHALL PROCESSOR OR BANK BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT AND/OR IT SUBJECT MATTER REGARDLESS OF THE THEORY OF LIABILITY GIVING RISE TO SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OR AWARE OF THE POSWSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROCESSOR'S OR BANKS LIABILITY, IN THE AGGREGATE, FOR ANY REASONA IN CONNECTION WITH THE ACCOUNT UPDATER SERVICES EXCEED AN AMOUNT EQUAL TO THE PREVIOUS 4 MONTHS OF FEES PAID BY YOU FOR THE ACCOUNT UPDATER SERVICES.

10. **DISCLAIMER.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE SERVICE AND INFORMATION. NEITHER PROCESSOR, BANK, THE CARD NETOWRKS NOR ANY OTHER DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY DATA OR INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION BY PROCESSOR, BANK, THE CARD NETWORKS OR ANY DISSEMINATING PARTY. THE ACCOUNT UPDATER SERVICES, INCLUDING THE SOFTWARE,

UPDATED DATA AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PROCESSOR, BANK AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE ACCURACY OF THE UPDATED DATA OR INFORMATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PROCESSOR AND BANK MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY PRODUCTS, SOFTWARE, DATA, INFORMATION OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD-PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD-PARTY ITEMS.

11. **Termination.** The provision of the Account Updater Services may be terminated by Processor or Bank (i) without cause upon thirty (30) days' notice or (ii) immediately upon any breach of this Agreement by You, as expressly provided herein or in the event Processor or Bank are no longer able to provide the Account Updater Service.

12. **Incorporation of Terms of Agreement.** All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

13. **Survival.** The terms and conditions of the Sections above shall survive any expiration or termination of this Agreement.

SERVICE FEE PROGRAM TERMS AND CONDITIONS

1. Merchant shall, in accordance with all applicable Operating Regulations, charge a service fee in connection with any credit Card or signature debit Card transaction (the "Service Fee"). The amount of the convenience fee shall be equal to the fee set forth in Section 6 of the Merchant Processing Application (the "Service Fee").

2. Any credit Card or signature debit Card transaction shall result in two transactions being processed, a transaction equal to the sale amount plus any applicable taxes (the "Sale Transaction") and a transaction equal to the Service Fee amount (the "Service Fee Transaction"). The proceeds of the Sale Transaction shall be deposited in the Merchant Account and the proceeds of the Service Fee Transaction shall be deposited in an account in the name of Processor (the "Service Fee Account").

3. The Service Fee shall be satisfied solely from the Convenience Fee Account. All amounts deposited in the Service Fee Account shall belong to Processor and Merchant shall have no access to, or any ownership interest in, amounts deposited into the Service Fee Account in accordance with the terms and conditions of this Agreement.

4. Processor shall have the right by ACH debit to deduct other amounts from the Merchant Account due under this Agreement, including, without limitation, the amount of any Chargebacks. Processor shall not be entitled to deduct any amounts from the Merchant Account to pay any Service Fees.

5. Merchant agrees to cooperate with Processor and Bank in connection with registering with any Card Network where registration is required to participate in the service fee program or where Processor and/or Bank deems such registration desirable.

6. Merchant represents and warrants that all of the transactions hereunder will fall within MCC codes 9311 (Tax), 9222 (Fine, 9211 (Court Costs) and 9399 (Miscellaneous) for government merchants and for education related merchants 8220 (College Tuition), 8211 (Elementary and Second Schools), 8244 (Business) and 8249 (Trade Schools).

7. Merchant agrees to (i) clearly and conspicuously disclose the Service Fee, and that it will be charged as a separate transaction, to all Cardholders prior to completing the transaction, (ii) offer the Cardholder another form of payment or the opportunity to opt out of the sale, (iii) accept credit and signature debit Cards as a means of payment for all channels pursuant to which payments are accepted, and (iv) feature the ability to pay with credit and signature debit Cards at least as prominently as other payment methods.

TERMS AND CONDITIONS FOR PAYROC ACH

The Payroc ACH Merchant Processing Agreement Addendum and these Terms and Conditions form the basis of the relationship between the Merchant and DCS Holdings Group, LLC d/b/a Payroc ACH ("DCS") and the legal agreement between the Merchant and DCS. To the extent the Merchant selects a service or product provided by DCS through a third party, the Merchants legal relationship with the Third Party is also set forth in the Terms and Conditions For Payroc ACH below and the Third Party is a third party beneficiary of this agreement.

Definitions

The following terms that are used in Terms and Conditions for Payroc ACH are defined below (the following definitions are limited to, and only apply to, the Terms and Conditions for Payroc ACH and not the remaining Terms and Conditions):

- **"ACH"** shall mean a funds transfer system, governed by the NACHA Operating Rules, that provides for the inter-bank clearing of electronic entries for participating financial institutions.
- **"ACH" Credit** shall have the same meaning as that provided in the NACHA policies and guidelines.
- **"ACH" Debit** shall have the same meaning as that provided in the NACHA policies and guidelines.
- **"Agreement"** means the Application and the Terms and Conditions for Payroc ACH.
- **"Business Day"** means a day on which commercial banks settle payments in the United States.
- **"Charge Back"** shall mean a transaction that is rejected by the Transactees bank as unauthorized or fraudulent or based on a claim against the merchant such as failure to deliver.
- **"Check 21"** refers to the Check Clearing Act of the 21st Century. It may also be used to describe a specific file type (usually preceded by the reference: X9) approved by the Federal Reserve whereby the intent of the act may be achieved. Financial institutions sometimes refer to this type of check transaction as: "Check 21" or "X9.37" or "Image Cash Letters" or "Paper Based (electronic) Transactions".
- **"Clearing Account"** means a checking account that is used to manage check deposits and withdrawals. In this case the checks are being credited and debited electronically.
- **"Confidential Information"** means all information which prior to or upon its disclosure is designated as such by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or which should reasonably be considered as information of a confidential nature by the Receiving Party and which information includes, without limitation, data relating to Customers, their transactions, this Agreement, DCS' or Merchants products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs. Further all information as defined by state and federal laws, regulations, rules and guidelines, including but not limited to, the Gramm-Leach-Bliley Act of 1999, the Fair Credit Reporting Act and similar information shall be kept confidential by the parties to this agreement and used solely in the manner set forth by law.
- **"Customer(s)"** means the natural person(s) or legal entity or entities who or which have purchased or ordered services from Merchant.
- **"DCS Service Provider"** shall mean any entity designated or chosen by DCS (including but not limited to a ODFI Bank or a Master Independent Sales organization which has a contract with a ODFI Bank) which provides to Merchant or other banks, on behalf of DCS, Processing Services and shall also mean any entity which provides Third Party Products to DCS which DCS shall provide to Merchant.
- **"Financial Institution"** shall mean a legally chartered bank or credit union.
- **"ODFI "** is a financial institution used by Merchant who will be acting as the Originating Depository Financial Institution as defined by NACHA rules. A participating financial institution that initiates ACH entries at the request of and by agreement with it customers. ODFI's must abide by the provision of NACHA operating guidelines. For purposes of this agreement this term may also be used to refer Bank of First Deposit which is a term used in conjunction with Check 21 origination,
- **"Merchant"** means a business which has elected to receive the Payroc ACH services.
- **"Merchant Processing Agreement"** means any agreement for provision of Processing Services or Products in effect between DCS and Merchant and, in some cases, a DCS Service Provider, and shall include any information provided by the Merchant as part of the agreement.
- **"NACHA"** means the National Automated Clearing House Association.
- **"Originator"** shall have the same meaning as that provided in the NACHA policies and guidelines.
- **"Processing Services"** means the equipment, operational support and/or software relating to the acceptance, transmittal, processing, storage and collection of check transactions and/or electronic payments (Electronic Funds Transfer – EFT) And the creation of electronic files (ACH or

Check21) whereby financial institutions can move funds from one account to another.

- "**Receiver" -** shall have the same meaning as that provided in the NACHA policies and guidelines.
- **"Refund"** means any amount returned by DCS to a Customer(s) account at their financial institution based upon specific instructions of Merchant to do so. Such refund may be either an ACH credit or paper check. A "Refund" may also be referred to as an ACH Credit.
- "**Reserve" –** shall mean a deposit of funds into an non-interest bearing account owned by DCS for the purpose of serving to absorb checks that are returned or charged back.
- **"Returns" –** shall mean check transactions that are returned and shall have the same meaning as that provided in the NACHA policies and guidelines. Notices of Change are considered Returns.
- **"Rules"** means the written regulations, guidelines, policies and procedures issued by NACHA, the Federal Reserve, DCS, ODFI Bank, a Third Party providing services under this agreement and government agencies having jurisdiction over the activities of such entities, all as amended from time to time.
- **"The National Banking System"** means the aggregate of chartered financial institutions in the United States that participate in the ACH network. Generally referring to the federal-state dual banking structure that evolved from the National Banking Acts but also includes Credit Unions.
- **"Third Party Agreement"** is the terms under which a party (one other than the Merchant or DCS) provide services to the Merchant. The terms governing the third-party relationship are set forth herein. An agreement with a third party is consummated when the Merchant processes their first transaction using the third party's services. Example: If a merchant contracts for the use of DCS' Payment Gateway they will agree to a Third-Party Agreement with RedFin, a vendor DCS' contracted with to provide and maintain a PCI compliant payment gateway. The first transaction using the gateway by this definition consummates the Third-Party Agreement between the Merchant and RedFin but does not cancel or supersede this agreement.
- **"Third Party Products"** means product provided by one (other than the Merchant or DCS) directly involved in this agreement. Examples include but are not limited to RedFin, various check guarantee companies, A2ia, Ranger, ODFI(s), and other companies whose services DCS and or the Merchant may use as part of this agreement.
- **"Transactee"** means the Customer or Receiver.

ACH/EFT and or Check 21 Transactions Products and Services

1. DCS Products and Services:

a. ***ACHeck21 Premier***- a workflow-driven, multi-pass remittance processing software client with distributive capture and distributive workflow solutions. Features include: 2 pass or 1 pass, multiple stub options, web services/web site - ACHeck21™ Gateway, A/R posting, hot files, reporting and search capabilities, archival, OCR and CAR/LAR read, Verification, ACH and Check 21 file formats, mechanical and virtual endorsement. Services include DCS clearing transactions either through a DCS clearing account or direct to the Merchants bank. If the Merchant does not want to send items to a bank electronically Premier supports power encoding.

b. ***ACHeck21 Micro* -** a high speed web based thin client solution. Features include: High speed, Reporting, OCR and CAR/LAR, ACH and Check 21 file format. Services include DCS clearing transactions either through a DCS clearing account or direct to the Merchants bank.

c. ***ACHeck21 Gateway* -** provides online financial services featuring accessibility through our web services portal. The ACHeck21 Gateway provides the following features: Duplicate check detection, supports a wide variety of input mechanism, available for use with e-sales, and other alternative cash flow mechanisms, robust reporting and searching capability, Provides connectivity between "front end" clients and "back end" processing.

d. ***Check clearing services* –** DCS will clear checks through bank clearing accounts owned by DCS or through bank clearing accounts owned by the Merchant.

e. ***ACH clearing services* –** DCS will transmit ACH entries originated by the Merchant to an ODFI for settlement through bank clearing accounts owned by DCS or through bank clearing accounts owned by Merchant or through accounts owned by the bank For the Benefit Of (FBO) DCS or Merchant.

f. ***ACHeck21 API* –** DCS provides an Application Programing Interface which is a tool set that programmers can use to have

their software communicate transaction information directly to ACHeck21.

2. ***Third Party Products or Services***

   a. ***ACHeck21 Verification –*** Verifies that the routing and account number found on a check is not currently listed on one of several national "negative" data bases. A negative data base is used to allow financial institutions, originators and third party processors to report routing and account numbers that have failed to clear checks submitted due to insufficient funds or other allowed reasons.

   b. ***ACHeck21 Payment Gateway –*** Payment gateway is a PCI compliant credit card and/or check payment "terminal" that communicates with the check and/or credit card payment to authorize and settle transactions.

   c. ***ACHeck21 CAR/LAR Reading –*** technology that reads handwriting as well as OCR (optical character recognition)

   d. ***Bank clearing services –*** a service contracted between the bank and DCS to clear funds on behalf of the Merchant and then send collected funds to the Merchants bank account. In some cases the service clears funds on behalf of a Merchant by sending agreed to payments to Vendors, Customers (returns) and others.

MERCHANT'S OBLIGATIONS AND ACKNOWLEDGEMENTS TO DCS

Merchant must comply with, at all times**,** this Agreement including the Terms and Conditions. In addition, the Merchant is responsible for providing accurate and truthful information as part of this application process and whenever asked by DCS. It is the Merchant's obligation to update its information and notify DCS, in writing**,** within 5 Business Days of any change.

1. Merchant acknowledges and agrees that it is an Originator under the NACHA rules.
2. MERCHANT HEREBY APPOINTS DCS AS ITS AGENT AND THIRD PARTY SENDER UNDER THE RULES. DCS' APPOINTMENT AS AGENT IS LIMITED IN SCOPE TO THE PROCESSING AND RECEIPT OF FUNDS ON BEHALF OF MERCHANT BY CLEARING FUNDS THROUGH THE US BANKING SYSTEM USING AN ACCOUNT OWNED BY DCS IN ACCORDANCE WITH THIS AGREEMENT, NACHA RULES AND US BANKING LAW.
3. Merchant represents and warrants to DCS that it has provided bona fide services or goods to the Receiver (or Customer) for which payment is lawfully due or the Receiver has provided bona fide services or goods to the Merchant for which payment is lawfully due, and that all transactions submitted to DCS are for services or goods lawfully provided and received, notwithstanding the entry of an ACH debit/credit or deposit of a Check Image.
4. Merchant agrees that prior to submitting instructions to debit or credit the Receiver's account, it shall provide the goods and services purchased by the Receiver or shall enter into a binding written contract for the provision of such goods and services. Merchant further agrees that in the event DCS collects available funds but fails to disburse the funds to Merchant, Merchant shall only seek recovery from DCS. Merchant shall not use the failure of DCS to disburse funds to Merchant as a basis to seek restitution from the Receiver for its goods or services; nor shall Merchant breach its contract with the Receiver. This provision shall not apply to any fraudulent activities by the Receiver, nor shall this provision apply if DCS' failure to disburse funds is due to a return or adjustment by either the Receiving Depository Financial Institution or the ACH Operator (the Federal Reserve Bank or the Clearing House Electronic Payments Network).
5. Merchant acknowledges and agrees that it has authorized DCS to conduct credit checks on both the Merchant's business and personal guarantors.
6. Merchant agrees to abide by restrictions on the dollar amount of a transaction, the size of a file (i.e. number of items and or images in the file) and the types of paper remittances DCS is willing to accept. Restrictions, if any, are attached to the Merchant Processing Agreement. Merchant warrants to DCS that Merchant shall at all times comply with Merchant Processing Agreement.
7. Merchant warrants that the amount of any credits and debits for which payment instructions are given to DCS shall be accurate and timely and agrees, in addition to any other indemnity, to indemnify DCS against any loss associated with inaccurate information.
8. Merchant agrees to provide appropriate notice and obtain any authorization as required by the rules from Transactee prior to debiting or crediting Transactees' accounts. Merchant will maintain copies of the authorizations in accordance with NACHA rules: http://pubs.nacha.org/.
9. Merchant shall insure that there are always adequate funds in its account to cover Returns, Charge Backs or other demand for funding. If any amount debited against the Merchant or Merchant's Transactee is dishonored or returned for any reason, such as but not limited to**,** non-sufficient funds, account closed, or unable to locate account, or is reversed by Merchant, Merchant's Transactee and/or Transactee's Bank, DCS may take any action permitted by law or this agreement including but not limited to:

a. Reversing any corresponding credit issued to Merchant, Merchant's Transactee or any other party without liability to Merchant or Merchant's Transactee or any other party.

b. Requiring Merchant to wire funds to DCS to be received no later than 3:00 pm **Central** Time on the same day Merchant was notified of said return if Merchant was notified prior to 11:00 a.m. Central Time on such day; otherwise by no later than 3:00 pm Central Time on the next business day.

c. Resubmitting the item and Merchant will owe DCS a late fee as provided in the fee section below.

d. Merchant agrees to reimburse DCS for any returned payments that were disbursed to Merchant. DCS is authorized to debit the amount from the Merchant's Account via ACH or withhold the amount from the next disbursement or deduct amount from Merchants Reserve**.** Returned items from ACH entries may be reprocessed by DCS and may be collected upon resubmission. Should resubmission fail, Merchant shall be required to collect said funds and pay fees to DCS as described in the Merchant Processing Agreement.

e. Unauthorized Returns or Fraudulent Returns. Unauthorized returns are typically associated with return reason codes 07-Authorization Revoked by Customer; 08-Payment Stopped (RC); 10-Customer advises not authorized (RQ); 29-Corporate Customer advises not authorized; Altered Fictitious Item (RN). All unauthorized returns that exceed .5% of either the dollar amount deposited or the number of items deposited whichever occurs first shall be subject to a penalty charge of ten (10) dollars each returned ACH or check. The penalty charge will be in addition to all other fees and charges including NACHA mandated fees. Excessive Unauthorized Returns (over 0.5%) or excessive Administrative Returns (over 3%) is grounds for immediate cancellation of this agreement and may subject the Merchant (Originator) to fines by NACHA. DCS reserves the right to collect said fines from the Merchants reserve held by DCS or to hold incoming transactions until all unauthorized returns are collected. Fraudulent Returns are typically one of the above listed return reasons but may also be associated with other return types. Should any return regardless of return reason code be deemed Fraudulent by the bank or DCS a penalty charge of ten (10) dollars for each returned fraudulent check may be assessed by DCS, notwithstanding if the check amount or number of items exceeds .5%. Further any assessment for a fraudulent check shall be in addition to the assessment for Unauthorized Returns and in addition to all other fees.

Merchant shall pay all of DCS' collections costs, including but not limited to, attorney's fees, within 10 days after receipt of written demand for payment.

10. ACH returns may not be presented more than twice and Check21 returns may only be represented once. Should the merchant attempt to represent a return more the allowed number of re-presentments, DCS will intercept the excess re-presentments and assess a five (5) dollar fee for each.

11. If requested to do so, and if Merchant is processing transactions through DCS, Merchant shall maintain adequate reserves to cover the highest seven (7) day average of checks returned to Merchants account over the three (3) months preceding the date of this agreement or in the case of high risk six (6) months preceding the date of this agreement.

12. The Merchant shall immediately wire funds to DCS' clearing account, in the event the Reserve should ever prove inadequate to cover one or more returned checks.

13. Merchant agrees to promptly and regularly review all entries and other communication received from Merchants Bank and/or DCS and to immediately notify DCS (within two (2) business weeks) and its bank in writing if there are any discrepancies between Merchant records and those provided by DCS or with respect to any transfer not authorized by Merchant. Should Merchant fail to notify DCS within two weeks of discovering a discrepancy, then the Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer and shall indemnify, defend and hold DCS, ODFI and or their agents, Third Party Vendors, assigns harmless from all losses, attorney's fees and costs arising with respect thereto.

14. Merchant will create all files directing where and when (within the time schedules set by DCS) all money will be moved. Upon the request of Merchant, DCS may make adjustments or edits on files received and on occasion, DCS has the right to create files initiating credit/debit entries to make adjustments which have been requested by Merchant or whenever DCS and or the bank in whose name files have been moved to or transferred to deems it necessary to do so.

15. Merchant desires to utilize the ACHeck21® software and processing services of DCS to create and transmit ACH and or x9 files (Check 21) files through the National Banking System pursuant to the terms of this Agreement and NACHA rules. Merchant shall initiate credit/debit entries through the use of ACHeck21 technology in accordance with the training and instructions provided by DCS. The

total amount of credits must equal the total amount of debits.

16. It shall be Merchants responsibility to manage the security of its access to the system by carefully controlling access and monitoring use through its user name and password. Merchant shall also be responsible for instituting measures to monitor for fraud, theft or misrepresentation and similar acts that may result in unauthorized ACH or checks being submitted to DCS.
17. NACHA, the Bank and DCS have all adopted Rules which may be amended from time to time effective upon reasonable notice to Merchant. Merchant agrees to abide by said Rules.
18. MERCHANT ACKNOWLEDGES THAT DCS LICENSES ACHeck21® SOFTWARE FOR USE THROUGH DCS TO MERCHANT AND PROVIDES ONLY ITS SERVICES TO MERCHANT AS MERCHANT'S AGENT. FURTHER, MERCHANT ACKNOWLEDGES THAT DCS IS A THIRD PARTY PROCESSOR OF ACH/EFT AND CHECK 21 TRANSACTIONS AND FURNISHES NO FINANCIAL ACCOMMODATIONS TO MERCHANT OR, WHERE APPLICABLE, MERCHANT'S TRANSACTEE. FURTHER, MERCHANT**,** ACKNOWLEDGES THAT THE MERCHANT APPLICATION PROCESSING AGREEMENT AND THESE TERMS AND CONDITIONS FOR PAYROC ACH (WHICH ARE PART OF THE AGREEMENT) DO NOT LIMIT MERCHANT'S OBLIGATION TO COMPLY WITH SUCH LAW OR RULES.
19. Merchant must provide a voided check and authorization for ACH Credits and or Debits to Merchants bank account to DCS. The check should have a bank routing code and account number. The voided check is used to verify the information entered on the Merchant Application Processing Agreement.
20. Merchants should store or maintain check images and records for the amount of time mandated by the transaction type, based on NACHA and other rules. See http://pubs.nacha.org/. for further information. In the event of natural disasters or other unforeseen events stored files may be destroyed or corrupted.
21. Merchant agrees to destroy transacted original check as soon as Merchant verifies that an image document of that check is posted online.

DCS' OBLIGATIONS TO MERCHANT

1. DCS agrees to supply and Merchant agrees to license the ACHeck21™ software. DCS agrees to act as Merchant's Agent for the Processing Services described in the Merchant Processing Agreement. Processing Services will be provided in accordance with this agreement and may rely on Third Parties to assist carrying out this contract.
2. DCS will only be responsible for processing entries that are submitted in proper format and on a timely basis. DCS shall have the right to advise Merchant of any applicable cut-off times which may change from time to time at the discretion of DCS after at least 3 business days' prior notice to Merchant. Merchant does not have the right to cancel or amend any entry after submission to the National Banking System and DCS shall have no liability to Merchant for any transactions that have been processed after submission by Merchant. However, Merchant has the ability to amend or cancel entries prior to submitting files to DCS or the National Banking System.
3. DCS shall provide a secure link to and from the ACheck21 Gateway for Merchant's access. This secure link is encrypted through 256-bit SSL following industry standard guidelines and will be used for file transmission and various reports. Access links will be authenticated with username and password. DCS, DCS Independent Sales Office and ACHeck21™ will not have access to the username and password. DCS is acting only as a processor of ACH and Check 21 entries on behalf of the Merchant It is understood and agreed that DCS' obligation under this Agreement is to facilitate the transfer of funds.
4. DCS may reverse any credit if payment of the corresponding debit is not honored or is reversed by Merchant's bank for any reason or if Merchant fails to deposit adequate funds.
5. All successfully collected payments, less returned items, shall be deposited into one or more accounts designated by Merchant as "Merchant Accounts".
6. Processing and Sender Services:
    a. DCS as Merchant's Agent, will provide the ACHeck21® Processing Services to create an x9 file format or ACH file for submission to the National Banking System through the ODFI and deposit all funds processed into the Merchant's account.
    b. Capture of check images and information to create an x9 or ACH file that includes check MICR line information (ABA, DDA, Check number and amount) and check images.
    c. Providing administrative access to Merchant's Transactee data to electronically update accounts receivable send emails, download payment data and print statements and reports.
    d. All processing will be performed by DCS acting as Merchant's Agent and executing ACH or Check transactions in accordance with debit/credit instructions provided by Merchant.
    e. Merchant agrees to notify all Merchant Transactees if their checks shall be electronically deposited through the ACH system or Check 21 image exchange through the National Banking

System. DCS will provide, processing Services, software and training. Merchant must provide PC, Internet connection, imaging equipment and all other related hardware.

7. Image Storage/disaster recovery: ACHeck21™ has the ability to store images at the Merchant location. The amount of storage at any one time will depend on the memory capacity of the Merchant's computers. In addition, ACHeck21™ allows the Merchant to transfer storage files from their computer to other storage media thus allowing unlimited storage at no costs.
8. DCS reserves the right to retain or expunge images stored on behalf of merchant in compliance with all known laws and regulations.
9. DCS reserves the right to require additional information regarding third party Originators and Merchant agrees to supply said information within three (3) business days upon written request. Analysis of information provided to the Bank may be used to determine approved activity limits and balance requirements.
10. DCS will be responsible for the performance of ACH/EFT services as a Third-Party Sender and Processor in accordance with the terms of this Agreement and the laws, rules and regulations governing ACH and Check 21.
11. DCS will use the information provided by the Merchant to originate Entries to the ACH network as Merchant's Agent.

MERCHANT'S LIABILITY AND INDEMNIFICATION

1. Liabilities and indemnification - DCS is not responsible for the actions of Merchant or any other third party with respect to the amount, accuracy, and timeliness of ACH entries or authorization of entries received from Merchant. The acts of any other person or organization including, without limitation, banks or other financial institutions, shall not be deemed the acts of DCS. DCS is not liable for errors, acts, or failure to act by others, including but not limited to, banks or common carriers. DCS is not liable for any loss, liability or delay caused by acts of God, fires, earthquakes, war, civil disturbances, terrorism, power surges or failures, acts of governments, labor disputes, failures in communication networks, legal constraints or other events beyond the reasonable control of DCS. Notwithstanding anything to the contrary contained herein, the remaining sentences of this paragraph shall control for all purposes and may only be modified by a subsequent writing signed by the Parties hereto. MERCHANT SHALL INDEMNIFY AND HOLD HARMLESS ACHeck21 AND DCS. IN NO EVENT SHALL DCS BE LIABLE FOR OR ANY DAMAGES, WHETHER IN AN ACTION OF CONTRACT OR TORT, FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS LOSSES, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE, IN CONNECTION WITH SERVICES PROVIDED HEREUNDER, EACH OF WHICH IS HEREBY PRECLUDED AND WAIVED BY AGREEMENT OF THE PARTIES, EVEN IF DCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL DCS AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES HEREUNDER EXCEED THE AMOUNT OF FEES RECEIVED BY DCS UNDER THIS AGREEMENT FOR THE THREE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO DAMAGES, EXCEPT FOR DAMAGES RESULTING FROM DCS' LIABILITY FOR ITS OWN GROSS NEGLIGENCE, RECKLESSNESS, BAD FAITH OR WILLFUL MISCONDUCT.

a. Merchant represents and warrants with respect to all transactions originated by Merchant that (1) each Merchant Transactee has authorized the debiting and or crediting of its account, (2) each Entry is for an amount agreed to by the Merchant Transactee, and (3) each Entry is in all other respects properly authorized and legal.
b. Merchants shall protect the check writers information by keeping checks safe until they are successfully imaged and then destroying the originals; institute operational controls to insure compliance with the law, regulations and rules; monitor hiring practices; have regular training concerning the rules and merchants responsibilities as outline herein and in the rules; and, regularly review IT infrastructure to insure secure access.
c. Merchant agrees to indemnify, defend and hold DCS harmless from any losses, liabilities, costs or expenses including attorney's fees suffered or incurred as a result of Merchant's breach of its representations and warranties herein.
d. Merchant understands that DCS may rely solely on identifying numbers provided by the Merchant to determine the bank and account of a Transactee even if the numbers identify a bank or account holder different from the one identified by the Merchant by name. Merchant will indemnify, defend and hold DCS harmless from any losses, liabilities, costs or expenses suffered or incurred as a result of an incorrect account or other identification.
e. Merchant acknowledges and agrees that DCS may reject Entries for any reason permitted or required in the Law, Rules or Regulations associated with the movement of money. Merchant also understands that entries or files which exceed the threshold parameters identified and set for the Merchant may be rejected. Merchant also acknowledges and agrees that an Entry may be rejected if the Entry would cause DCS to violate any Federal Reserve or other regulatory risk control program or any other law or regulation. DCS will, at Merchant's written

request, make reasonable efforts to reverse, modify, or delete an Entry previously submitted to DCS by Merchant; provided, however, that notwithstanding anything to the contrary contained herein, Merchant acknowledges and agrees that DCS shall have no liability for the failure or inability to comply with Merchant's request under any circumstance and Merchant hereby waives and releases DCS from any loss or claim arising therefrom. All requests by Merchant for DCS to reverse a previously submitted Entry must be made in writing and faxed, or delivered to DCS, by certified mail, within 24 hours of the Entry in issue.

f. Merchant represents and warrants that funds from Merchant's account shall be available to DCS if DCS fails to collect from Merchant's Transactees.

FEES

1. In exchange for DCS' Services under this Agreement, Merchant shall pay DCS fees as set forth in the Merchant Processing Agreement. The Merchant's account will be debited monthly for the prior months activity.

   a) If any electronic debit for DCS' fees is returned, DCS reserves the right to temporarily or permanently remove Merchant from processing Entries through DCS. Any returned billing transactions for DCS fees are subject to a service charge. Past due accounts shall be subject to a 1.5% monthly service charge. Merchant authorizes DCS to automatically collect all fees, charges and other amounts due them pursuant to this Agreement by appropriate ACH entries three business days after billing to Merchant. Merchant authorizes DCS to debit/credit Merchant's bank account.

   b) Fees may be adjusted from time to time with 30 days' notice to the Merchant.

2. The Merchant has provided information to DCS concerning its existing bank account. This account may be used by DCS to transfer funds by credit or debit.

3. In the event the Reserve should ever prove inadequate to cover one or more returned checks, the Merchant shall immediately wire funds to DCS' clearing account (if applicable). In such event, Merchant agrees to cover the costs or overdraft fees (if any) and to pay DCS $75 per hour to cover the time and effort required to, notify the merchant and work with the bank. In the event the Merchant is unable to wire funds the same business day and DCS if forced to cover the overdraft, there shall be an additional fee of $200 plus interest at the highest rate allowed by law.

4. In case of a return item for DCS fees, DCS may re-submit the item and Merchant will be charged a $30 service fee. If further collection attempts are required, all DCS' collections costs, including attorney's fees, where permitted by law, will be charged to and paid by Merchant. Merchant will have ten (10) days after receipt of written demand for payment and if not timely paid, DCS shall have the right, in addition to all other rights, to offset funds sufficient to pay any amounts owed to DCS from the Merchant's Account by an appropriate Entry.

5. Merchant understands and agrees that any interest accrued on funds transferred to the DCS Bank clearing account is the property of DCS.

TERM

1. **Term of this Agreement:** This Agreement will have a term of three years commencing with the date of this Agreement. Either party may terminate this Agreement at the end of any contract term provided that written notice to this effect is given to the other party not less than ninety (90) days prior to the end of any contract term. It is understood that if proper notification is not given, the term will automatically be renewed pursuant to the terms of the Agreement.

   In the event that Merchant provides timely notice to DCS as aforesaid of its intention to terminate this Agreement, this Agreement shall terminate as provided hereafter. In the event of such termination, Merchant shall pay DCS all direct expenses incurred by DCS in turning over to Merchant all information maintained by DCS and relating to Payment Services performed by DCS.

   These expenses shall include, but shall not be limited to, charges for computer run time and programming requirements in accordance with DCS published rate schedules in effect at that time. In the event that Merchant discontinues using DCS for payment Services prior to the end of any contract term, Merchant will be liable to DCS for a lump sum early termination fee to be calculated as the greater of the monthly minimum or the average monthly billing exclusive of pass through costs including, but not limited to postage, Federal Reserve charges, etc., for the past twelve months multiplied by the number of months and any portion of a month remaining in the Services contract term.

   In the event that any entity merges or acquires Merchant, such entity will automatically assume the obligations and liabilities of Merchant in this Agreement for the remaining contract term.

   Upon receipt of notice of Merchant's intention to terminate DCS's Payment Services and Agreement termination fees will be assessed by DCS at its sole discretion, and shall become immediately due and payable. Under no circumstances shall Merchant render payment of these fees later than thirty (30) days after DCS has billed the Merchant.

   DCS reserves the right to cease providing **ALL**-Services to Merchant if any amount due to DCS under this

Agreement or any other amount due DCS is not paid in a timely fashion.

During the term of the Agreement, Merchant shall not engage any third party processor other than DCS to provide the Services and shall not perform the Services itself provided that DCS agrees to provide Services for the geographic area and volume sizes that Merchant requires.

TERMINATION

1. Notwithstanding any other provision of this agreement, the applicable party may terminate this Agreement at any time at the occurrence of one or more Events of Default. Events of Default are as follows: a breach by Merchant or DCS of any covenant, condition or representation of this Agreement and the failure to cure such breach within thirty (30)after receipt of written notice from the non-defaulting party of said breach; or (ii) any dissolution, bankruptcy, insolvency, liquidation, or similar event affecting either party and (iii) Cancellation or suspension of a necessary license, bank relationship or any other reason that makes it legally impossible for either party to perform the obligations, terms and conditions under this agreement.
2. **Non-Default Termination of Agreement:** Any time while this Agreement is in effect during which time neither party is in breach of this Agreement, any party to this Agreement may terminate this Agreement upon ninety days (90) days' notice of termination to be emailed to either party and followed up by written correspondence. Merchant's representations, obligations and duties shall survive termination of this Agreement and Merchant shall indemnify, defend and hold DCS harmless from all claims, losses and expenses including attorney's fees relating to any breach of this Agreement and Merchant shall be liable to DCS for all sums of monies due and payable hereunder to DCS leading up to said breach.
3. **Immediate Termination:** DCS reserves the right to terminate this agreement without any further obligation and at any time, without cause, if in the sole opinion of DCS the Merchant account or Merchant practices (including consumer complaints about Merchant practices) exposes DCS to financial, compliance or reputational risk whether or not such risk was fully disclosed during the application and underwriting process.

PERSONAL GUARANTEE

1. Personal Guarantors guarantee to DCS the performance of this Agreement, and any addendum thereto by Merchant, including payment of all sums due and owing and costs associated with the enforcement of the terms hereof. DCS shall not be required to first proceed against the Merchant or enforce any other remedy before proceeding against the Guarantor.
2. This is a continuing guarantee and shall not be discharged or affected by the death of the undersigned and shall bind the heirs, administrators, representatives and assigns and be enforced by or for the benefit of any successor of DCS. The term of this guarantee shall be for the duration of the Merchant Processing Agreement and any addendum thereto and shall guarantee all obligations which may arise in connection with Merchants activities during the term thereof though enforcement shall be sought subsequent to any termination.
3. DCS reserves the right to substitute two years of audited financial reports or signed tax returns in lieu of Personal Guarantees.

OTHER

1. **Authority:** Merchant represents and warrants that it has been authorized to enter into this Agreement and stipulates that any action that DCS takes in reliance upon this Agreement is authorized by either actual or apparent authority of the Merchant, its agents, assigns, officers, directors, and employees. In the event that any of Merchant's agents, assigns, officers, directors, and employees does not have the authority to agree to the debit or the credit process by DCS, Merchant shall indemnify, defend and hold DCS harmless from such actions and all costs and attorney's fees incurred by DCS. Merchant stipulates and agrees that Merchant is liable for all actions taken by DCS in reliance upon the actual or apparent authority of Merchant representative.
2. **Document Execution:** The parties to this Agreement agree to execute whatever documents are reasonably necessary to carry out the terms of this Agreement and give effect to the intentions of the parties contained herein.
3. **Intellectual Property:** ACHeck21® is copyrighted by DCS Holdings Group, LLC a Florida Limited Liability Company located at 7840 Graphics Drive, Tinley Park, Illinois 60477(DCS). All rights, title and interest, including, without limitation all intellectual property rights, (Collectively, the "Rights") in and to ACHeck21, the contemplated services, any and all products, software, documents and other material related thereto are retained by DCS. Merchant may only use the services, software and documentation under license from DCS. The trademarks "ACHeck21®", and such other trademarks that may be filed from time to time are also proprietary and may not be used except by permission. Merchant acknowledges and agrees that the processing services and any software used in connection therewith contain proprietary and confidential information of DCS that is protected by applicable intellectual property and other laws.
4. **Use of Merchant Information:** DCS agrees that all Merchant's Transactee data is confidential and will

only be disbursed to third parties of DCS when necessary to effect the terms of this agreement.

5. **Suitability Review:** Merchant agrees that DCS may require the Merchant to update the information provided to DCS as part of our initial review and underwriting at any time, including by not limited to updated credit reports, financials and bank statements. Merchant also agrees that DCS may employ other services to ascertain the Merchant's continued suitability in DCS sole judgment for check processing services. During regular business hours DCS may visit Merchant location to determine Merchant's compliance with this agreement and or require of the Merchant a self-assessment to address the Merchant's suitability. Should Merchant be judged by DCS to be unsuitable for continued processing, DCS may discontinue processing for Merchant and may invoke the termination procedures set forth in this agreement.

6. **Agreement not to sue:** Merchant hereby waives releases and agrees not to sue DCS for any claim in connection with, arising out of, or in any way related to this Agreement. The procedure for settlement of all disputes shall be by negotiation first, mediation second and final resolution by Arbitration as follows:

   a. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

   b. If they do not reach solution by negotiation within a period of 60 days, then, upon written notice by either party to the other, all disputes, claims, questions, or differences shall be settled by non-binding mediation administered by the American Arbitration Association under its Commercial Mediation. The cost of mediation will be split among the parties.

7. **DISPUTE RESOLUTION. (READ THIS SECTION CAREFULLY AS IT IMPACTS YOUR LEGAL RIGHTS)**

   a. **MANDATORY ARBITRATION.** YOU, PAYROC AND DCS AGREE THAT ANY AND ALL DISPUTES SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY; PROVIDED, HOWEVER, THAT YOU, PAYROC OR DCS MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF THE CLAIMS QUALIFY AND SO LONG AS THE MATTER REMAINS IN SMALL CLAIMS COURT AND PROCEEDS ONLY ON AN INDIVIDUAL (NOT CLASS OR REPRESENTATIVE) BASIS. THIS MANDATORY ARBITRATION PROVISION APPLIES TO ANY AND ALL DISPUTES, WHETHER BETWEEN YOU AND DCS. THE TERM "DISPUTE" SHALL BE DEFINED AS SET FORTH IN SECTION 1 OF THE TERMS AND CONDITIONS AND THUS INCLUDES ALL DISPUTES BETWEEN THE PARTIES, LEGAL AND OTHERWISE. YOU, PAYROC AND DCS AGREE THAT THIS ARBITRATION PROVISION IS INTENTED TO BE AND IS RETROACTIVE.

      i. You, Payroc and DCS each waive the right to a trial by jury and any right to have a Dispute heard in court. Instead, You, Payroc and DCS agree to have all Disputes resolved by a neutral third-party arbitrator. In arbitration, Disputes are resolved by an arbitrator instead of a judge or jury, discovery is more limited than in court, and the arbitrator's decision is subject to limited review by courts. The arbitrator's award can be confirmed in any court of competent jurisdiction.

      ii. The arbitration shall be conducted by a single arbitrator, whose award may not exceed, in form or amount, the relief allowed by applicable law. The arbitrator shall have at least ten (10) years of experience in commercial litigation. The arbitrator shall issue his/her final award in a written and reasoned decision to be provided to each party to the arbitration. In his/her decision, the arbitrator shall award the prevailing party its reasonable attorneys' fees and expenses, as well as all arbitration fees, costs and expenses; provided, however, that neither Processor nor Bank shall be entitled to recover attorneys' fees or expenses in an arbitration brought by You if the amount of damages sought, exclusive of attorneys' fees and costs and arbitration fees and costs, is under $25,000. The arbitrator shall not have the authority to award punitive, exemplary, consequential, special or incidental damages, including, without limitation, lost profits or lost business value.

      iii. For claims where You seek damages of $25,000 or less, exclusive of attorneys' fees and costs and arbitration fees and costs, the arbitration shall be conducted in the city where You are located or You can elect to have the hearing take place telephonically. All other arbitrations shall be conducted in Chicago, Illinois, unless the parties to the arbitration mutually agree to a different location in writing. The arbitration shall be conducted by the

American Arbitration Association ("AAA"). The AAA's Commercial Arbitration Rules ("Arbitration Rules") shall apply. The Arbitration Rules are available at www.adr.org. A form for initiating arbitration is available at www.adr.org.

iv. Any discovery sought in connection with arbitration must be expressly approved by the arbitrator only upon a showing of need by the party seeking discovery. All aspects of the arbitration shall be treated as confidential. The parties to the arbitration and the arbitrator may disclose the existence, content, or result of the arbitration only as expressly provided by the Arbitration Rules. The parties to the arbitration shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Accordingly, the parties to the arbitration acknowledge and agree that a violation or threatened violation of this nondisclosure covenant will cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, in equity, or otherwise, the non-breaching Party shall be entitled to obtain injunctive relief against the threatened breach of this covenant or the continuation of any such breach by the other party.

b. **FAA Governs.** This arbitration provision is entered into pursuant to the Federal Arbitration Act ("FAA"), which shall govern its interpretation and enforcement. To the extent any issues arise as to which the FAA does not apply or govern, this "Dispute Resolution" Section and all substantive claims shall be governed by and interpreted according to the laws of the State of Illinois, without regard to principles of conflicts of law. The arbitrator shall decide all issues of interpretation, scope, and application of this "Dispute Resolution" Section and the arbitration provision, with the exception of deciding whether the Arbitration Class Action Waiver in the Section below is valid or enforceable. Any question regarding the validity or enforceability of this "Dispute Resolution" Section shall be resolved by a state or federal court in Illinois, which You, Payroc and DCS agree shall be the sole and exclusive jurisdiction for any such question to be resolved (and for which You, Bank and Processor consent to the Court's jurisdiction and waive any right to challenge jurisdiction or venue). This "Dispute Resolution" Section shall survive termination of this Agreement. The agreement to arbitrate is intended to be broadly interpreted.

c. **ARBITRATION CLASS ACTION WAIVER.** You, Payroc and DCS agree that arbitration shall proceed solely on an individual basis and that any Dispute shall not be arbitrated as a class action, shall not be consolidated with the claims of any other party, and shall not be arbitrated on a consolidated, representative, or private attorney general basis. The award or decision in the arbitration will not have any preclusive effect as to issues or claims involved in any proceeding between Processor any anyone who is not a named party to the arbitration. The arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator's award, if any, shall not apply to any person or entity that is not a party to the arbitration. Any questions regarding the enforceability of this Section shall be decided by a court and not the arbitrator. If any portion of this Section is deemed invalid or unenforceable, then the entire arbitration provision in this Section (other than this sentence and the Section below) shall be null and void and not apply. In no case shall an arbitration proceed on a class basis.

d. **NON-ARBITRATION CLASS ACTION WAIVER.** If for any reason any Dispute proceeds in court rather than arbitration, the Dispute shall proceed solely on an individual, non-class, non-representative basis. In any Dispute that proceeds in court, neither You, Bank, nor Processor may be a class representative or class member or otherwise participate in any class, consolidated, representative, or private attorney general matter. If for any reason any Dispute proceeds in court rather than arbitration, You, Bank ad Processor agree that the sole and exclusive jurisdiction shall be a state or federal court located in Chicago, Illinois (and You, Bank and Processor consent to the Court's jurisdiction and waive any right to challenge jurisdiction or venue).

e. **Invalid or Unenforceable.** If an arbitrator or court determines that any part of this "Dispute Resolution" Section, other than Section 19.A. above (regarding Mandatory Arbitration), is invalid or unenforceable, the other parts of this "Dispute Resolution" Section shall apply. Notwithstanding anything to the contrary in the

prior sentence, in all cases, the Section above (regarding Non-Arbitration Class Action Waiver) shall remain in effect, valid, and enforceable.

7. **Legal fees:** Should either party appeal an Arbitration award or any part of such award the court having jurisdiction shall award the "post arbitration award" legal Costs and Fees to the prevailing party, if any, as determined by the court. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

8. **Governing Law:** This agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. The Parties acknowledge that this agreement evidences a transaction involving interstate commerce. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this agreement. In the event an Arbitration ruling is appealed, venue shall be in the state or federal courts located in Cook County, Illinois.

9. **Survivability:** If any provision of this Agreement contravenes or is held invalid under the laws of any jurisdiction, this Agreement shall be construed as though it did not contain that provision, and the rights and liabilities of the parties to this Agreement shall be construed and enforced accordingly.

10. **Successors:** This Agreement shall be binding upon the successors and assigns of the parties.

11. **Entire Agreement:** This Agreement, together with exhibits thereto, constitutes the entire Agreement between the parties and correctly describes the parties' mutual understanding of this Agreement. Any and all oral or written agreements, representations or understandings between the parties entered into or made prior to or made contemporaneously with the effective date of this Agreement have been incorporated into this Agreement or were revoked, released or terminated before the effective date of this Agreement. No modifications, deletions, additions or amendments to this Agreement shall be binding on DCS unless the same are reduced to writing and the writing is signed by DCS.

12. **Data Privacy:**

The Parties acknowledge that, during the Term of this Agreement, each party may provide the other with Confidential, as defined hereunder, including but not limited to data, information, ideas, materials, specifications, procedures, schedules, software, technical processes and formulas, source code, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing data or other relevant information that is marked "confidential" (or similarly) or, if not so marked, is clearly intended to be confidential (collectively, the "Confidential Information"). No mobile opt-in or text message consent will be shared with third parties or affiliates for marketing purposes.

Each Party will protect all Confidential Information of the other with at least the same degree of care it uses to protect its own confidential information, but not less than a reasonable degree of care. Neither party may use, disclose, provide, or permit any person to obtain any Confidential Information in any form, except for employees, agents, or independent contractors whose access is required to carry out the purposes of this Agreement and who have agreed to be subject to the same restrictions as set forth in this Agreement. Violation of any provision of this Section is the basis for the immediate termination of this Agreement. Each party's obligation to maintain confidentiality will survive termination of this Agreement.

The confidentiality obligations of this Section do not apply to any information received by a party that (i) is generally available to or previously known to the public, (ii) can be reasonably demonstrated was known to a party prior to the negotiations leading to this Agreement, (iii) is independently developed by a party outside the scope of this Agreement without use of or reference to the other party's Confidential Information, or (iv) is lawfully disclosed pursuant to a court order, provided that the party subject to the order will promptly notify the party whose Confidential Information is to be disclosed, so that party may seek a protective or similar order.

Each party will monitor for any incidents involving the compromise of Confidential Information or NPI, as defined below (a "Breach") and agrees to notify the other party as soon as possible of any such incident to enable that party to expeditiously implement its incident response program. Should any Breach occur, each party agrees that the non-breaching party has the right, in addition to such other remedies which may be available to it, to seek injunctive relief enjoining such use, disposition, attempted use or attempted disposition, it being acknowledged that legal remedies are inadequate to protect non-breaching party under such circumstances and that the unavailability of immediate injunctive relief would subject non-breaching party to irreparable harm.

CARD NETWORK FEES ADDENDUM

Card Network Fees are effective as of the date issued. Card Network Fees include costs and expenses that (1) are specific charges by the Card Networks to Payroc's Bank(s) or that may be charged directly to Payroc and (2) other estimated costs and expenses Payroc incurs that include but are not limited to (a) the multitude of those Card Network charges and other charges not specifically itemized herein and (b) internal Payroc costs incurred to manage, reconcile and provide reporting with respect to the charges of the Card Networks and Interchange. Capitalized terms used herein, unless otherwise defined herein, are defined in the Payroc Terms and Conditions. Items below are separated between those that are specific to and identify the Card Networks and other items that include both Card Networks and Payroc.

Specific Card Network Items: Card Network Dollar Volume times Rate		Rate
Visa Assessment	Volume	0.0014
Visa Assessment Sig Debit	Volume	0.0013
Visa CEDP Participation[1]	Volume	0.0005
Visa International Service Assessment	Volume	0.0100
Visa International Acquirer Fee	Volume	0.0045
Visa Foreign Card Assessment	Volume	0.0145
MasterCard Acquirer Assessment Volume	Volume	0.0014
MasterCard Acquirer Assessment Volume > $1,000	Volume	0.0015
MasterCard Digital Enablement[2]	Volume	0.0002
MasterCard Global Acquirer Program Support	Volume	0.0085
MasterCard Cross Border	Volume	0.0060
MasterCard Cross Border Assessment	Volume	0.0145
Discover Assessment	Volume	0.0014
Discover International Assessment	Volume	0.0080
Amex Opt-Blue Assessment	Volume	0.00165

Specific Card Network Items: Card Network Transactions times Rate		Rate
Visa APF Sig Debit	Transactions	0.0155
Visa APF	Transactions	0.0195
Visa International Sig Debit APF	Transactions	0.0355
Visa International APF	Transactions	0.0395
Visa Credit Voucher	Transactions	0.0195
Visa Transaction Integrity Fee	Transactions	0.1000
Visa Fallback Transaction	Transactions	0.1000
Visa Zero-Floor Limit	Transactions	0.2000
MasterCard Network Access Brand Usage	Transactions	0.0195
Mastercard Address Verification - Card Not Present	Transactions	0.0100
Mastercard Address Verification - Card Present	Transactions	0.0050
Discover Data Usage	Transactions	0.0195
Discover Network Authorization	Transactions	0.0035
Amex-Acquirer Transaction Fee	Transactions	0.0200

Specific Card Network Items: Card Network Merchant times Rate		
MasterCard Merchant Location Fee	Merchant	$1.25/month

Other Payroc and Card Network Items:		
Visa FANF	X Merchant	> $4.90/mo. or estimate by Payroc
Visa & Payroc Other Card Network & Other	X Transactions	0.0195
MasterCard & Payroc Acquirer License & Other	X Volume	0.00025
Payroc Visa & MC Auth Misuse	X Transactions	0.0900
Payroc's Amex Network Sponsorship	X Volume	0.0012

[1] On each qualifying Level 2 and Level 3 transaction.

[2] Subject to a minimum of $0.02 per authorization. Authorizations equal to or greater than $1,000 shall incur a fee in the amount of $.40 per authorization.