

# **CARD PROGRAM SERVICES**

**Terms and  
Conditions (Merchant  
Agreement)**

# Introduction

This Card Program Services Terms and Conditions (the "Merchant Agreement") is for the provision of the Services to the Merchant offered by Electronic Payment Providers Inc., d/b/a BillingTree, hereinafter referred to as the "Processor", and is entered into among Merchant, Processor and Merchant Bank. These Terms and Conditions govern the parties' relationship and apply to all applications signed by Merchant. The Processor and Merchant Bank are collectively hereinafter referred to as the "Provider." The Processor and Merchant Bank reserve the right to allocate Provider's duties and obligations amongst themselves as they deem appropriate in their sole discretion, and Merchant Bank or Processor may jointly or individually assert or exercise any rights or remedies provided to Provider hereunder. This Merchant Agreement, the Application and the appendices, addenda, and schedules thereto (collectively, the "Agreement"), contains the terms and conditions under which Provider will provide the Services. Merchant should read the Merchant Agreement completely.

In accordance with the terms of this Agreement and applicable Operating Rules, Merchant agrees to participate in the Services, as selected by Merchant on the Application, by honoring Valid Cards properly presented by Cardholders in accordance with this Agreement; and to submit all Charges, Credit Vouchers and other electronic data to Provider for the Services provided by Provider.

## **IMPORTANT INFORMATION ABOUT MERCHANT BANK'S RESPONSIBILITIES:**

Notwithstanding anything in the Agreement, Merchant understands and agrees: (A) that Merchant Bank does not sponsor Processor into the Discover or American Express or Diner's Club or JCB or CUP Network, is not providing or agreeing to provide Merchant any services hereunder with respect to Discover or American Express or Diner's Club or JCB or CUP Network Card Transactions, does not determine or approve or agree upon any fees, charges, pricing, or any other terms and conditions, relating to Discover or American Express or Diner's Club or JCB or CUP Network Card Transactions, and has no responsibility or liability to Merchant for Discover or American Express or Diner's Club or JCB or CUP Network Card Transactions; (B) that Merchant Bank does not provide or agree to provide Merchant any services hereunder or have any responsibility or liability to Merchant with respect to any PIN-based debit or stored value or electronic benefit transfer Transactions (except only to the extent, if any, required under Visa's or MasterCard's Operating Rules or under any mandatory provisions of applicable law), or any other Card type Transactions (other than Visa and MasterCard credit and non-PIN based debit/stored value Card Transactions), or any other services specified in the Application as covered in whole or in part by this Agreement but as not being provided by Merchant Bank; and (C) that to the extent applicable to Discover or American Express or Diner's Club or JCB or CUP Network Cards or Transactions, or to any of the other types of Cards, Transactions or services referred to above or in the Application as not being provided by Merchant Bank, any reference herein or in any of the other documents constituting part of the Agreement to the terms "Provider" or "Merchant Bank" (except only to the extent the reference constitutes a complete disclaimer of responsibility or liability on the part of Provider or Merchant Bank, or constitutes an obligation on the part of Merchant to indemnify, defend or hold harmless Provider or Merchant Bank from or against any responsibility or liability) means Processor only.

**Your "Merchant Bank" is Synovus Bank, located at 1111 Bay Avenue, Columbus, GA 31901; Phone: 1-888-SYNOVUS (1-888-796-6887)**

## **Notice of Important Card Network Acquiring Member Bank Responsibilities:**

- Merchant Bank is the only entity approved to provide acceptance of Visa and Mastercard products to Merchant.
- Merchant Bank is a principal party to this Agreement.
- Merchant Bank is primarily responsible for educating merchants regarding the Card Network Operating Rules with which Merchant must comply, but this information may be provided by Processor.
- Merchant Bank is responsible for and must provide settlement funds to the Merchant.
- Merchant Bank is responsible for all funds held in reserve that are derived from settlement.

*The responsibilities listed above do not supersede terms of the Agreement and are provided to ensure Merchant understands some important obligations of each party and that the Merchant Bank, as the member bank, is the ultimate authority should Merchant have any problems regarding its Card Network acquiring activities.*

## **Notice of Important Merchant Responsibilities Regarding Payment Acceptance**

- Merchant must ensure compliance with cardholder data security and storage requirements, including PCI-DSS Compliance (see section 5.4 of the terms and conditions).
- Merchant must maintain fraud and chargebacks below established thresholds.
- Merchant must review and understand the terms of this Agreement.
- Merchant must comply with all applicable NACHA and Card Network Operating Rules.
- Mastercard Rules can be accessed here: <https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>
- Visa Rules can be accessed here: <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>
- Resources for Discover Card acceptance can be found here: <https://www.discovernetwork.com/en-us/partner-with-us/business-owners>
- The American Express Merchant Operating Guide can be found here: [https://icm.aexp-static.com/Internet/NGMS/US\\_en/Images/MerchantPolicyOptBlue.pdf](https://icm.aexp-static.com/Internet/NGMS/US_en/Images/MerchantPolicyOptBlue.pdf)

**NOTE:** *The resources identified above are not exhaustive and may change from time to time. Regardless of the accuracy of the URLs listed above, Merchant is responsible at all times for understanding and abiding by all applicable Card Network Operating Rules.*

**NOTICE:** The following activities are **prohibited**. Any violation of these prohibitions shall be deemed a material breach of this agreement, and may subject Company to fines, penalties, payment of damages and/or termination of the Services:

- **Previously disputed charges** – Accepting cardholder payments for previously disputed Visa Card or Visa Electron Card charges incurred at the merchant location.
- **Illegal transactions** – Submitting any transaction into the payment system that is illegal or that the merchant knows or should have known was illegal. Transactions must be legal in both the cardholder’s and merchant’s jurisdiction.
- **Fraudulent or unauthorized transaction** – Submitting a transaction into the payment system that the merchant knows or should have known to be either fraudulent or not authorized by the cardholder.
- **Written cardholder information** – A merchant or its agent may not:
  - Require a cardholder to complete a postcard or similar device that includes any of the following in plain view when mailed: the cardholder’s account number, card expiration date, signature, or any other card account data.
  - Request the Card Verification Value 2 (CVV2) data on any paper order form
- **Surcharges** – Adding surcharges to transactions, unless explicitly done so in accordance with applicable law, regulations, and Visa Rules specific to the acquirer’s Region.
- **Minimum/maximum transaction amount** – Establishing a minimum or maximum transaction amount as a condition for honoring a Visa Card, except for a transaction conducted with a Visa Credit Card issued in the U.S. Region or a U.S. Territory.
- **Disbursement of funds** – Disbursing funds in the form of cash to a Visa cardholder unless:
  - The merchant is participating in Visa Cash-Back Services, a financial institution providing a manual cash disbursement, a hotel or cruise line, as specified in the Visa Rules.
  - The merchant is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or foreign currency. In this case, the transaction amount is limited to the values of the travelers cheques, Visa TravelMoney Card, or foreign currency plus any commission of fee charged by the merchant.
- **Travelers Cheques** – Disbursing funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods and services from the merchant.
- **Disputed transactions** – U.S. Region: Entering into the Visa payment system any transaction receipt for a transaction that was previously charged back to the acquirer and subsequently returned to the merchant, irrespective of cardholder approval. The merchant may pursue payment from the customer outside the Visa system.
- **Transaction Laundering (Factoring)** – Accepting a transaction that does not result from an act between the cardholder and the merchant or the cardholder and the sponsored merchant (a.k.a. laundering). Payment facilitators may deposit a transaction between the cardholder and a sponsored merchant of the payment facilitator but must not deposit a transaction on behalf of another payment facilitator.
- **Debt Repayment** – Accepting Visa cardholder payments for:
  - Collecting or refinancing existing debt that has been deemed uncollectible by the merchant providing the associated goods or services.
  - Previous card charges.
  - A transaction that represents the collection of a dishonored check
- **Account numbers** – Request or use an account number for any purpose other than as payment for its goods or services.
- **Adding tax** – Add any tax to transactions, unless applicable law expressly requires that a merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately.

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## A. Card Program Service Procedures

### 1. Merchant's General Duties

- 1.1 Merchant will comply with the terms and conditions of the Agreement for submitting and processing Charges and Credit Vouchers with Provider. Provider is responsible to Merchant for processing Transactions under the Operating Rules for the Services to which Merchant subscribes, which may vary among Card types. The applicable discount rates for Debit Cards and Credit and Business Cards are stated on the FEE SCHEDULE provided in or with the Application, as the same may be modified from time to time as provided herein. Merchant shall designate which Card type(s) Merchant will accept upon the signing of the Application.
- 1.2 Merchant may choose to accept (in the case of Visa and MasterCard acceptance) (i) Debit Cards only, or (ii) Credit and Business Cards only, or (iii) both Debit Cards and Credit and Business Cards, in each case of the Card Networks designated by Merchant on the Application.
- 1.3 Merchant agrees to, at all times, comply with the applicable Operating Rules, this Agreement, and any future rules, guidelines, or other documents provided or made available to Merchant by Provider or the Card Networks in honoring and accepting properly presented Cards.
- 1.4 For Transactions, Merchant agrees (in the case of each of the following, to the extent such agreement is not prohibited by mandatory provisions of applicable law) to: (i) honor all Valid Cards or the Card type(s) designated by Merchant on the Application; (ii) with respect to the Card Networks whose Cards Merchant so selects, honor all Cards, regardless of type(s), issued by a non U.S. Card Issuer; and (iii) not accept Cards for transactions that are classified as "Quasi Cash Transactions" including, but not limited to, the sale of casino, gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip.
- 1.5 Merchant will not contact any Cardholder with respect to any matter arising under the Operating Rules, except as required or permitted under the Operating Rules. Merchant, and not Provider, is responsible for any advice from, acts of, as well as omissions, acts of fraud or acts of misconduct by Merchant's employees, processors, consultants, advisors, contractors, agents, officers and directors. Merchant, and not Provider, is responsible for the use, unauthorized use or misuse of Merchant's equipment, POS terminals, or software.
- 1.6 Merchant consents to receiving electronically rather than in paper form all written notices, disclosures and other documents (each, a "Document") which are to be provided by Provider to Merchant under this Agreement. Provider will notify Merchant that a Document is available at Processor's web site with a link to that specific page of the web site containing the Document. Merchant agrees that such notification will be sent to Merchant at the e-mail address provided as part of the Application. Merchant understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for Merchant to access a Document electronically and Merchant confirms that Merchant has such access. Merchant understands that there are costs related to access Documents electronically and Merchant agrees that Merchant is responsible for these related access costs. At any time and without giving Merchant advance notice, Merchant Bank and/or Processor may elect not to send a Document electronically, in which case a paper copy of the Document will be sent to Merchant or such Document shall otherwise be provided as set forth herein.

## 2. Procedures for Card Transactions

- 2.1 In accepting Cards for the purchase of Merchant's goods and services, Merchant shall comply with the requirements of this Agreement, including but not limited to the Operating Rules, as the same are revised from time to time.
  - 2.1.1 Unless specifically exempted by Operating Rules, Merchant agrees to obtain Authorization for the total amount of the Transaction, including the tip and tax, if applicable, and shall record the positive Authorization Code on the sales draft prior to completing the Transaction and comply with all other requirements of the Operating Rules. Such Authorization must be obtained for every Transaction on the Transaction date and prior to completing the Transaction, unless otherwise specified in the Operating Rules. Procedures for obtaining Authorizations are set forth in the Operating Rules. If a Merchant completes a Transaction without Authorization, Merchant will be responsible for any Chargeback of the Transaction and this Agreement shall be subject to immediate termination without notice. Obtaining Authorization does not assure that the person using the Card is the Cardholder and will not prevent a Chargeback to Merchant for any of a variety of reasons under the Operating Rules, including use of the Card by an unauthorized user or a Cardholder claim or defense relating to the Transaction.
  - 2.1.2 Merchant must record each Charge and Credit Voucher by following procedures in a format and manner specified by Provider and in accordance with the Operating Rules. Merchant will complete each Transaction as a single Charge Record, except as alternative methods are specifically approved by Provider in writing. Merchant will deliver to the Cardholder an accurate and complete copy of the Charge Record, no later than the time of delivery of the goods or performance of services, using a format approved by the Card Networks and supplied by Provider. Merchant must provide on the Cardholder's copy of the Charge the truncated Card account number of the Cardholder and must not provide the Card expiration date, in accordance with the Operating Rules and applicable law. Merchant is responsible for ascertaining whether applicable law requires copies of transaction receipts retained by Merchant to truncate card numbers and suppress expiration dates, and for complying with all such laws.
  - 2.1.3 Merchant Return Policy: Merchant may limit returned merchandise or limit price adjustments, to the same extent as for sales not involving a Card, provided Merchant properly discloses its policy to the Cardholder before the sale, the limits are properly disclosed on the Charge Record before the Cardholder signs it, and the purchased goods or services are delivered to the Cardholder at the time the Transaction takes place. Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" (or words of substantially similar effect) are printed in large letters near the signature line on all copies of the Charge Record prior to obtaining the Cardholder's signature on the Charge Record. Merchant will submit any changes to its return policy to Provider in writing at least thirty (30) days before the change and will not implement any change to which Provider reasonably objects. Merchant's policies will not override the Operating Rules and will not prevent Chargebacks to Merchant under those rules. Credit Vouchers: Merchant will not make a refund or Adjustment for a Transaction in cash (except when required by law), but will deliver to Provider a Credit Voucher for a refund or Adjustment to the Cardholder Account within three (3) days of the refund or Adjustment and deliver to the Cardholder a copy of the Credit Voucher at the time the refund or Adjustment is made. Card numbers shall be truncated and expiration dates suppressed on copies provided the Cardholder in accordance with Operating Rules and applicable law. Merchant is responsible for ascertaining whether applicable law requires copies retained by Merchant to truncate card numbers and suppress expiration dates, and for complying with all such laws. Merchant will include the refund date and amount and a brief description of the refund or Adjustment on the Credit Voucher in sufficient detail to identify the Card used and original Transaction. The amount of the Credit Voucher must not exceed the amount of the original Transaction except for any amount which Merchant agrees to reimburse the Cardholder for return postage. Merchant may not deliver a Credit

Voucher to Provider for any refund or Adjustment of a purchase not originating as a Transaction with the same Cardholder requesting the refund or Adjustment, a Transaction not made with Merchant, or a Transaction not originally processed by Provider. Merchant will not complete a Credit Voucher for a Card issued to it or its Principals or employees except for a valid refund of a Transaction originating with Merchant. Merchant may not receive money from a Cardholder and subsequently deliver to Provider a Credit Voucher to make a deposit to the account of the Cardholder. Provider may delay processing Credit Vouchers on any day to the extent they exceed the total of valid Transactions presented on that day and the balance in the Settlement Account available to cover the Credit Vouchers, until the sum of valid Transactions and the balance in the Settlement Account is sufficient to cover the Credit Vouchers. Credit Vouchers After Agreement Termination: After this Agreement terminates, Provider is not obligated to process any Credit Vouchers that Merchant submits. All Chargebacks related to Credit Voucher disputes will be Merchant's responsibility. If Merchant enters into a new card processing service agreement with a new processor and provides Provider the name and address of Merchant's new processor, Provider will work with the new processor at Merchant's expense to reasonably resolve disputes.

- 2.1.4 Merchant will submit to Provider a Transaction only if the Transaction is made or approved by the Cardholder who is issued the Card used for the Transaction. Except as otherwise permitted by the Operating Rules and as approved by Provider in advance, Merchant will not submit a Transaction for processing by Provider until Merchant has delivered or shipped the goods and/or performed all its services. Merchant will not submit directly or indirectly: (i) any Transaction previously submitted to Provider (except as expressly permitted by the operating rules); (ii) any Transaction that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder; (iii) any Transaction that results from a Transaction outside of Merchant's normal course of business, as described on the Application; (iv) any Transaction that results from a Transaction not involving Merchant or not originated as the result of an act between Merchant and a Cardholder; or (v) any Transaction containing the account of a Card issued to Merchant or any account numbers issued to Merchant's business owners, family members and Principals for Transactions that do not represent a purchase of goods or services from Merchant or a related credit. Merchant will submit Transactions and Credit Vouchers within the applicable time limits specified in the applicable Operating Rules. If required by the Operating Rules, Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover any Card. Merchant acknowledges and agrees that any obligation of Merchant to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Provider harmless from any claim arising from any injury to person or property or other breach of the peace.
- 2.1.5 A Merchant with multiple Merchant Outlets must ensure that Provider is able to: (i) identify the location of each Transaction on the Charge Record, and (ii) include this identification in the clearing record submitted to Provider.
- 2.1.6 Merchant Bank will provide provisional credit to Merchant for each valid Transaction which Merchant submits to Provider by crediting Merchant's Settlement Account, provided Merchant Bank has received settlement for the valid Transaction through the interchange procedures specified by the Card Network applicable to the Card used for the Transaction (Provider does not provide payment for all Card types for which Authorization services are provided). Merchant Bank is not obligated to provide provisional credit to Merchant for Transactions submitted that are not valid Transactions and may suspend or discontinue any provisional credit in Merchant Bank's and/or Processor's sole and absolute discretion, including

for any reason that would justify termination of this Agreement. Each provisional credit from Merchant Bank to Merchant will be subject to Adjustment, including revocation, upon Provider's further review and verification. Provisional credit to Merchant for a Transaction disputed by a Cardholder for any reason is not final. Merchant Bank may deduct from any payment to Merchant the amount of any Credit Voucher processed for Merchant, any Chargeback to Merchant, any amount to be deposited in the Reserve Account and any Processing Fees and Card Network fines, assessments or charges due from Merchant. Merchant must immediately pay Provider the amount by which a Credit Voucher processed on any day exceeds valid Transactions submitted on that day. Without limiting Provider's remedies, Merchant Bank may obtain the amount due by deducting it from the Settlement Account, Reserve Account or other accounts of or funds due Merchant. Merchant acknowledges that all payments and credits provided to Merchant are provisional and subject to suspension, to Chargebacks and to Adjustments in accordance with this Agreement and the Operating Rules.

- 2.1.7 If Merchant deposits Charge Records with Provider through magnetic tape, electronic transmission, or electronic data capture terminal, upon the request of a Card Network or Provider, Merchant shall respond to all Transaction documentation (retrieval) requests within the time frames specified in the applicable Operating Rules. If Merchant does not respond or responds late to a Transaction documentation request, Merchant may be without recourse as Chargebacks for "non-receipt of requested item" in most cases, cannot be reversed.
- 2.2 Merchant must obtain Authorization for each On-line Debit Card Transaction before Merchant can complete the Transaction. Merchant will not complete an On-line Debit Card Transaction unless it has been authorized by the Card Issuer by using POS Equipment that complies with all applicable Operating Rules and following the procedures of the Card Network. Merchant may not complete an On-line Debit Card Transaction without entry of the PIN by the Cardholder. Merchant will comply with Regulation E, all applicable law, and all applicable Operating Rules in connection with each On-line Debt Card Transaction.
- 2.3 Specific terms for MasterCard Transaction:
- 2.3.1 For purposes of this Agreement and performance of this Agreement by the Processor: (i) the Processor is the exclusive agent of Merchant Bank; (ii) Merchant Bank is at all times and entirely responsible for, and in control of, Processor's performance; and (iii) Merchant Bank must approve, in advance, any fee to or obligation of the Merchant arising from or related to performance of this Agreement.
- 2.3.2 This Agreement is not effective and may not be modified in any respect without the express written consent of Merchant Bank.
- 2.3.3 Processor may not have access, directly or indirectly, to any account for funds or funds due to a Merchant and/or funds withheld from a Merchant for Chargebacks arising from, or related to, performance of this Agreement. Merchant Bank may not assign or otherwise transfer an obligation to pay or reimburse a Merchant arising from, or related to, performance of this Agreement to Processor.
- 2.3.4 Processor may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party, any right or obligation of Processor set forth in this Agreement.
- 2.3.5 Merchant Bank is responsible for the Card Program and for the Merchant's participation in the Card Program.
- 2.4 The CNP ADDENDUM applies to all Card Not Present Transactions. A Merchant may only accept CNP Transactions if the Merchant has completed the appropriate areas on the Application and has been authorized by Merchant Bank and Processor to accept such Card Not Present Transactions and complies with all Operating Rules and provisions of the CNP Addendum.
- 2.5 If Merchant chooses to purchase, rent or lease processing equipment from Processor or utilizes software provided by Processor for use in processing Transactions, Merchant agrees to pay Processor the purchase, rental or lease amounts, any initial upfront costs as required, and all applicable taxes for such processing equipment or software

utilization. Processor makes no representations or warranties of any kind or nature, directly or indirectly, expressed or implied, as to any matter whatsoever concerning any software, equipment, or services provided or procured by Processor, and such software, equipment, and services are provided "AS-IS" to Merchant. Processor also disclaims any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. Processor will, at Merchant's expense, use reasonable commercial efforts to assist Merchant in enforcing any warranty offered by the third-party supplier of such software, equipment or services. Merchant will use only the forms for Charges and electronic processing formats provided or approved in advance by Provider. Provider may change the forms from time to time, and, upon notification, Merchant will comply with any changes. Merchant will use Charge forms or materials provided by Provider only for Transactions which Merchant submits to Provider.

Merchant shall display Visa, MasterCard, and, if applicable, other Card Network decals, program marks, and advertising and promotional materials in compliance with the Operating Rules.

Merchant shall only display Visa and MasterCard approved decals, program marks and advertising and promotional materials for the Card type(s) that Merchant selected on the Application.

Merchant is prohibited from using each Card Network's program marks other than as expressly authorized in writing by Merchant Bank. Program marks mean the brands, emblems, trademarks and/or logos that identify the applicable Card Network's Cards. Additionally, Merchant shall not use the program marks other than to display decals, signage, advertising and other forms depicting the program marks that are provided to Merchant by Merchant Bank pursuant to the Services provided pursuant to this Agreement, or otherwise approved in advance in writing by Merchant Bank. Merchant may use the program marks only to promote the services covered by the program marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in advance by Merchant Bank in writing. Merchant shall not use the program marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the program marks. Merchant recognizes that it has no ownership rights in the program marks. Merchant shall not assign to any third party any of the rights to use the program marks. Merchant may not (i) indicate or imply that the Card Networks or Provider endorses any Merchant goods or services, (ii) refer to a Card Network or Provider in stating eligibility for Merchant's products, services or membership, or (iii) use any marks, symbols or logos owned by any Card Network or Provider for any purpose other than those permitted in the Operating Rules.

### 3. Chargebacks

- 3.1 Provider will charge back to Merchant and Merchant will pay Provider, the amount of each Transaction which Merchant or a Merchant Affiliate submits to Provider for processing that is subject to Chargeback to Provider for any reason under the Operating Rules, or to the extent Provider receives claims regarding the Transactions from Cardholders under other provisions of law. A Chargeback may occur for any one or more of several reasons under the Operating Rules or through operation of consumer protection laws, such as the Truth in Lending Act and the Fair Credit Billing Act. Merchant may not enter into interchange any Transaction that was previously charged back to Merchant Bank and returned to Merchant, irrespective of Cardholder approval.
- 3.2 If Provider determines that Merchant has or is reasonably likely to have a monthly ratio of Chargebacks to Transactions exceeding one percent (1%), Provider, may, at Processor's or Merchant Bank's discretion and without advance notice, (i) impose new, mandatory procedures and/or additional Processing Fees for processing Chargebacks for Merchant, and/or (ii) terminate this Agreement. The Card Networks have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive credits and Chargebacks, and increased deposit activity. In the event Merchant exceeds the guidelines or submits suspicious

Transactions as identified by a Card Network or any related program or reports, Merchant may be subject to: (a) operating procedure requirement modifications; (b) incremental Chargebacks and/or fees; (c) settlement delay or withholding; (d) termination of this Agreement; and/or (e) audit and imposition of fines or other assessments. Merchant hereby releases Provider from any and all damages, liability, expenses that Merchant may incur as a result of Provider's compliance with Card Network directives. Merchant must immediately pay any fines, assessments or fees imposed by a Card Network or Provider relating to Chargebacks to Merchant.

- 3.3 Each Chargeback to Merchant is immediately due and payable by Merchant. Without limiting Provider's other remedies or Provider's security interest described in Section 17 below, Merchant Bank may deduct, debit and withhold the amount of a Chargeback or anticipated Chargeback from the Settlement Account, Reserve Account, or any Merchant account at Merchant Bank, or other property of Merchant held by Provider, or any Settlement Account or Reserve Account of a Merchant Affiliate. Provider will send Chargeback reports to Merchant as debits occur. To the extent funds are not available from the previously described accounts of the Merchant or Merchant Affiliate, Merchant irrevocably authorizes Merchant Bank to attach and initiate withdrawals of funds from Merchant's accounts at other financial institutions, by ACH entry, sight draft, preauthorized checks, reverse wires or otherwise to cover the Chargebacks, and Merchant hereby irrevocably authorizes the other financial institutions to withdraw the funds from Merchant's accounts and pay Provider the amount of the Chargebacks. Merchant Bank will release to Merchant any of Merchant's deposits, funds or property after Provider determines in its sole and absolute discretion that the deposits, funds or property are not likely to be needed to cover any Chargebacks.

## 4. Data Security and Privacy

4.1 Merchant will retain in a secure and confidential manner, in accordance with the Operating Rules, original or complete and legible copies of each Charge Record, and each Credit Voucher required to be provided to Cardholders, for at least two (2) years or longer if required by law or the Operating Rules. Merchant shall render any materials containing Cardholder Account numbers unreadable prior to discarding. Merchant will store Charge Records in an area limited to selected personnel, and when record-retention requirements have been met, Merchant will destroy the records so that Charge Records are rendered unreadable. Merchant confirms that it is, and shall be, in full compliance during the term of this Agreement with all federal, state and local statutes, rules and regulations (including without limitation the information privacy and security requirements of the Gramm Leach Bliley Act and regulations thereunder), as well as all Operating Rules, regulations and bylaws of the Card Networks and the Security Standards. Merchant will have in place and comply with at all times during the term of this Agreement a comprehensive written information security program that is designed to ensure the security, confidentiality and integrity of Transaction and Cardholder information, and includes a procedure (i) for periodic review to identify new and emerging threats and vulnerabilities and (ii) to take appropriate measures to remediate and remove such threats and vulnerabilities, all in accordance with the Security Standards. The Card Networks or Provider, and their respective representatives, may inspect the premises of Merchant or any independent contractor or agent or Merchant Servicer engaged by Merchant for compliance with security requirements. Merchant acknowledges that any failure to comply with security requirements, or to demonstrate compliance, may result in the imposition of restrictions on Merchant or the permanent prohibition of Merchant's participation in Card Programs by the Card Networks. Without limitation as to Merchant's obligations or liabilities under other provisions hereof, Merchant hereby agrees to indemnify Processor and Merchant Bank, including their officers, directors, employees, and agents, and to hold them harmless from any fines, assessments, fees and/or penalties that may be assessed by the Card Networks or any governmental agency in regards to PCI-DSS or PA-DSS or otherwise in regards to data security or any actual or suspected data breaches that may occur, as well as all costs of forensic exam/audit, card replacement fees, all claims and demands of Cardholders, Card Issuers, Card Networks, governmental agencies, or other third parties, and all litigation costs and expenses including reasonable attorney's fees, and all other costs of any kind, associated with any actual or suspected data security breach or noncompliance with Card Network data security requirements or data security requirements of applicable law; and (b) in the event of a computer or other data security breach, or suspected computer or other

data security breach, Merchant agrees to abide by Card Network requirements which may include without limitation a forensic network exam by a Qualified Incident Response Assessor (QIRA); and (c) Merchant agrees to cooperate with Processor and Merchant Bank in order to effectively manage breach response. Without limiting the generality of the foregoing, Merchant understands that the payment card industry has required all merchants to be PCI DSS compliant. Processor and Merchant Bank, in compliance with Card Network mandates, will not board merchants for the Services provided for in this Agreement that are not PCI DSS compliant.

Merchant and Merchant's principals hereby covenant that they are, and will continue for the duration of the Term to be, PCI DSS compliant. Processor and Merchant Bank also require compliance with the PA- DSS standards in accordance with industry mandates, and with all applicable Card Network mandates relating to PIN and PIN entry device (PED) security, including without limitation, and as applicable, the applicable Payment Card Industry PCI PIN Security Requirements, PCI PIN-Entry Device Security Requirements, and PCI Encrypting PIN Pad Security Requirements. Merchant covenants that all point-of-sale (POS) and/or terminal hardware and software (make and version) that Merchant will use to submit Transactions during the Term is PA- DSS compliant, and compliant with all applicable PIN and PED security requirements, and that any future changes in Merchant's POS hardware or software will be in compliance with the PA-DSS and all applicable PIN and PED security requirements.

- 4.2 Merchant must notify Provider and receive Provider's prior approval of its use of any Merchant Servicer and, to the extent required by each Card Network, all Merchant Servicers must be (i) compliant with all Security Standards applicable to Merchant Servicers; and (ii) registered with and/or recognized by such Card Network(s) as being so compliant. Merchant agrees to exercise due diligence to ensure that all Merchant Servicers, and any other agents, business partners, contractors, or subcontractors with access to Merchant's Card Information, maintain compliance with the Security Standards. To the extent required by each Card Network, all Payment Applications or software involved in processing, storing, receiving, or transmitting of Card Information, shall be (a) compliant with all Security Standards applicable to such Payment Applications or software; and (b) registered with and/or recognized by such Card Network(s) as being so compliant. Merchant will be bound to the acts and omissions of Merchant Servicer and will be responsible for the compliance of such Merchant Servicer with all applicable laws, regulations and Operating Rules. Provider shall in no event be liable to Merchant or any third party for any actions or inactions of any Merchant Servicer used by Merchant, and Merchant hereby expressly assumes all such liability.
- 4.3 Merchant will immediately notify Provider if Merchant decides to use electronic authorization or data capture software or terminals provided by any entity other than Provider or its authorized designee ("Third Party Terminals") to process Transactions, including leasing a terminal from a third party. If Merchant elects to use Third Party Terminals, (i) the third party providing the terminals will be Merchant's Merchant Servicer in the delivery of Transactions to Provider; and (ii) Merchant assumes full responsibility and liability for any failure of that third party to comply with the requirements of Provider, the Operating Rules, applicable laws, rules or regulations, or this Agreement. Provider will not be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third-party agent or Merchant Servicer or a malfunction in a Third-Party Terminal.
- 4.4 Merchant must immediately notify Merchant Bank and Processor of any suspected or confirmed loss or theft of materials or records that contain Cardholder Account numbers or Transaction information. In the event of a suspected or confirmed loss or theft Merchant shall provide immediate access to all facilities, systems, procedures, equipment, and documents as may be deemed appropriate by Provider or its designated representatives for inspection, audit, and copying as deemed appropriate by both Merchant Bank and Processor in their individual sole discretion. Merchant shall be responsible for all costs associated with such inspection, audit, and copying however such costs may occur.

- 4.5 Merchant must, at all times, comply with the PCI-DSS and Operating Rules requirements regarding the storage of Cardholder and Transaction data, including all restrictions on the types of data that Merchant may store. Such restrictions include, but are not limited to, prohibition on Merchant's storage or retention of Card magnetic stripe, CVV, CVV2, CVC2, CID or any other data classified by PCI-DSS as "Sensitive Authentication Data".
- 4.6 Merchant has and will maintain a comprehensive privacy program that is reasonably designed to address privacy risks related to Merchant and Merchant customer information, including personally identifiable information ("PII"), and to protect the privacy of PII. This program shall include appropriate privacy controls and procedures, including but not limited to:
  - 4.6.1 the designation of an employee or employees to coordinate and be responsible for the privacy program;
  - 4.6.2 the identification of reasonably foreseeable, material risks, both internal and external, that could result in Merchant's unauthorized collection, use, or disclosure of PII, and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this privacy risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to employee training and management;
  - 4.6.3 the design and implementation of reasonable privacy controls and procedures to address the risks identified through the privacy risk assessment, and regular testing or monitoring of the effectiveness of those privacy controls and procedures; and
  - 4.6.4 the evaluation and adjustment of Merchant's privacy program in light of any circumstances that Merchant knows or has reason to know may have a material impact on the effectiveness of its privacy program.
- 4.7 Processor acknowledges that it is responsible for the security of Card information that it transmits on behalf of Merchant in connection with the Services while such Card information is in Processor's possession.

## B. General Terms

### 5. Services

- 5.1 Subject to the Operating Rules, the Services may be performed by Provider, their affiliates, their agents or third parties Provider may designate from time to time in connection with this Agreement.

### 6. Operating Rules

- 6.1 Merchant must comply with the Operating Rules, as amended from time to time. The Operating Rules may change with little or no advance notice to Merchant and Merchant will be bound by all such changes. If Merchant objects to any change in the Operating Rules, it must immediately stop accepting new Transactions for Cards governed by the change. The Operating Rules will govern in the event that there is any inconsistency between this Agreement and the Operating Rules. However, nothing in this Agreement shall be construed to impose on Merchant a requirement (including a requirement under the Operating Rules) the imposition of which on Merchant is prohibited by mandatory provisions of applicable law (i.e., where the applicability of such provisions of law to this Agreement, and of the law's prohibition to the particular requirement which otherwise would be imposed on Merchant hereunder, cannot lawfully be waived by agreement), but the requirement hereunder shall be construed to continue in effect and to be imposed on Merchant in all respects and at all times to the fullest extent possible without violating the law's prohibition, with only those particular applications of the requirement which would violate the law's prohibition deemed severed from the provisions hereof.
- 6.2 Operating Rules of the Debit Networks may differ among them with respect to the Debit Card Transactions they allow. Provider, at its discretion, may require that the most restrictive requirements of one Debit Network apply to all of Merchant's On-line Debit Card Transactions, regardless of Card type.
- 6.3 If Merchant selects, and Provider provides Services for, any one or more of American Express, Discover, JCB Card or Diners Club as payment options and Merchant's selection is approved by Provider, Merchant understands that (i) Merchant's acceptance of any of those payment options may require execution of a separate merchant card



acceptance agreement with those individual Card Networks, as applicable, and that agreement will govern the completion and processing of Transactions, and (ii) Merchant will be obligated to contact the appropriate service provider(s) for service.

## 7. Merchant Warranties

7.1 Without limiting any other warranties hereunder, upon signing the Application and each time Merchant submits a Transaction, Merchant represents and warrants that:

- 7.1.1 Merchant has abided by this Agreement, and all applicable laws and Operating Rules for the Transaction;
- 7.1.2 Each statement made on the Application was true as of the date Merchant signed (including any electronic signature) the Application agreeing to be bound by this Agreement;
- 7.1.3 There have been no materially adverse changes in information provided in the Application or in Merchant's financial condition, or management;
- 7.1.4 Merchant does not do business under a trade name or other name not previously disclosed in writing, and there has been no change in the nature of Merchant's business or the product lines that Merchant sells not previously disclosed;
- 7.1.5 The Transaction is genuine and arises from a bona fide sale of merchandise or services by Merchant, represents a valid obligation for the amount shown on the Charge Record and does not involve the use of the Card for any other purpose;
- 7.1.6 Merchant has title to the Transaction, there are no liens or other encumbrances on it, and Merchant has the authority to convey the Transaction for processing;
- 7.1.7 The Transaction is not subject to any dispute, set-off or counterclaim;
- 7.1.8 The Transaction has not been previously presented for processing unless allowed by the Operating Rules;
- 7.1.9 Each statement on the Charge is true, and Merchant has no knowledge of facts that would impair the validity or collectability of the amount of the Transaction;
- 7.1.10 Merchant has completed only one Transaction per sale, or one Transaction per shipment of merchandise where the Cardholder has agreed to partial shipments;
- 7.1.11 The person who executes the Application on behalf of the Merchant has the full power and authority to execute the Application and to enter into this Agreement;
- 7.1.12 This Agreement is the legal, valid, and binding obligation of the Merchant enforceable against the Merchant in accordance with its terms;
- 7.1.13 Merchant shall submit Transactions only in accordance with the information contained in the Application and this Agreement;
- 7.1.14 Merchant has the power and authority to authorize the automatic funds transfer provided for in Section 15.5;
- 7.1.15 The Settlement Account described in Section 15 is owned and controlled by the Merchant and is a valid account for processing Transactions under this Agreement.
- 7.1.16 That Merchant will immediately notify Merchant Bank and Processor of any material changes to any information provided herein including but not limited to a change in Merchant's legal entity, Merchant Outlet, business type, or the types of goods and services offered for sale by Merchant.
- 7.1.17 Merchant is not (i) a Sanctioned Person, under any of the regulations of the Office of Foreign Assets Control of the U.S. Treasury, (ii) located in or operating under a license issued by a jurisdiction whose government has been identified by the U.S. Department of State as a sponsor of international terrorism under 22 U.S.C. 2371 or 50 U.S.C.

App. 2405(j), (iii) located in or operating under a license issued by a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the U.S. is a member, or (iv) located in or operating under a license issued by a jurisdiction that has been designated by the U.S. Secretary of Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

## 8. Processing Fees

- 8.1 Merchant will pay Processing Fees in the amount specified in the FEE SCHEDULE attached to the Application or as otherwise provided for in this Agreement as amended from time to time. Provider may revise the Processing Fees by giving Merchant fifteen (15) days advance notice effective for Transactions and Credit Vouchers submitted on and after the effective date of the change. Provider will not be required to provide the Merchant with fifteen (15) days' notice of any changes in Processing Fees in the event that any Card Network, or any other entity having such authority revises the Processing Fees and the effective date for implementation of the revision in the Processing Fees is less than fifteen (15) days. In such cases, Provider shall make reasonable efforts to provide reasonable notification to Merchant. However, failure to provide advance notice of the revision in Processing Fees will not affect Merchant's obligation to pay the revised Processing Fees. The revision(s) in Processing Fees shall be effective on the date specified by Provider. Merchant is responsible for examining all statements and Processing Fee charges and must provide written notice of any error in such charges to Provider within thirty (30) days of receipt of the charges. Otherwise, such charges shall be conclusively presumed to be correct.
- 8.2 Processing Fees and other service charges owed by Merchant to Provider may be deducted by Merchant Bank from amounts due Merchant, or from the Settlement Account or from the Reserve Account. Merchant will pay the amounts due by the next Business Day if sufficient funds are not available in the Settlement Account.
- 8.3 Regarding Card Network Discount Rates and Fees: (i) In the FEE SCHEDULE, "Discount" refers to a percentage of the gross dollar Card sales processed by Merchant. "Per Item" refers to a fee per Transaction processed by Merchant. "Interchange" refers to the fees assessed by the Card Networks on all bankcard sales that are paid to the bankcard issuing financial institution. "Assessments" refers to the fees assessed and retained by the Card Networks on all Card sales. "Fees" or "Processing Fees" refers to all the foregoing and, in addition, to amounts charged for any other purposes or services as described in the Application; (ii) Interchange fees and assessments are based on the current interchange rates and assessments set by the Card Networks. Any increases in these interchange fees and assessments will be passed through to Merchant either as part of the separately stated interchange fees and assessments or as an increase in any percentage-based or per item processing fee. Merchant acknowledges that whenever Merchant's Transactions fail to qualify for any reduced interchange fees, Provider will process such Transactions at the applicable interchange fees as set by the applicable Card Network, and Merchant will pay Provider the corresponding increased interchange fees (or as an increase in any percentage-based or per item processing fee based on the corresponding interchange fees). Merchant acknowledges that the fees specified as "qualified" or "mid-qualified" in the Application, as they may be updated or amended from time to time, are basic fees which will apply only to Transactions which exactly meet certain processing criteria or "qualify" or (in the case of "mid-qualified") partially qualify for those basic fees according to the Operating Rules. In the event that Transactions submitted to Provider for processing only partially qualify or do not at all qualify for the qualified discount rate quoted in accordance with the Application and/or the Operating Rules, Merchant may be assessed, and agrees to pay, an additional Non-Qualified or Mid-Qualified Surcharge as set forth on the Application (or, if not set forth therein, or if set forth therein at a rate or in an amount less than that specified in the Operating Rules) as set forth in the Operating Rules; (iii) Processor may receive program discounts and other special pricing benefits based on the total volume of business it processes with some or all of its customer base. Merchant understands and agrees that all such discounts and special pricing inures solely to the benefit of Processor, and Merchant is not entitled to such discounts; (iv) Initial Discount: Merchant understands that initial discount rates assessed by Provider are based on Merchant's projected sales volume, average Transaction amount, and Card acceptance practices. If Merchant's actual sales volume and average Transaction amount are less than

Merchant's projected sales volume and average Transaction amount, Provider reserves the right to adjust discount rates to reflect Merchant's actual sales volume and average Transaction amount with thirty (30) days advanced written notice.

- 8.4 If during the Term, Merchant, or any entity controlling, controlled by, or under common control with Merchant, acquires a portfolio of merchant accounts from another entity or acquires an entity that owns a portfolio of merchant accounts ("Acquired Portfolio"), and the merchant processing services for the Acquired Portfolio are, at the time of such acquisition, provided by Processor, the Fees assessed by Processor to Merchant for the provision of Services for the Acquired Portfolio will be either the fees and charges set forth in the agreement governing the Acquired Portfolio at the time of acquisition ("Acquired Portfolio Agreement"), or the Fees set forth in this Agreement, whichever is greater, for the lesser of (i) one (1) year following such acquisition of the Acquired Portfolio by Merchant, or (ii) the amount of time remaining on the then-current term of Acquired Portfolio Agreement. Thereafter, the Fees set forth in this Agreement will apply to the Acquired Portfolio.

## 9. Merchant's Business; Other Processors

- 9.1 Merchant will comply with all laws, rules and regulations, including but not limited to laws and regulations regarding anti-money laundering compliance, and Office of Foreign Asset Control compliance, in completing Transactions, submitting them to Provider, performing its obligations under this Agreement, and otherwise conducting its business.
- 9.2 Merchant will give Merchant Bank and Processor at least thirty (30) days' prior written notice before any change in Merchant's name or Merchant Outlet, any change in ownership or management of Merchant's business, any sale, assignment, rental, lease or transfer of ownership of any Merchant Outlet that accepts Cards, or any material change in information concerning Merchant in the Application, and material change in the type or nature of the business carried out by Merchant or otherwise required to be provided to Provider.
- 9.3 This is an exclusive requirements contract, and Merchant, to the extent permitted under applicable law, agrees and guarantees that Merchant, and any entity that is an affiliate of Merchant, will not use another financial institution or processor for the processing of credit or debit card transactions without Provider's written approval. Notwithstanding the forgoing, nothing herein shall be deemed to prohibit or restrict Provider's ability to provide any service provided to Merchant to any third party, and Provider shall have the sole discretion to do so.

## 10. Credit Reports and Other Information

- 10.1 From time to time, Provider may obtain credit and other information on Merchant, owners of Merchant and officers of Merchant, from others (such as customers and suppliers of Merchant, lenders and credit reporting agencies), and furnish information on Merchant's relationship with Provider and Provider's experience with Merchant to others seeking the information.
- 10.2 Merchant will provide Provider with updated business and financial information concerning Merchant, including financial statements, tax returns, evidence of required licenses and other information and documents Provider may request from time to time. All material marked "confidential" which Provider receives from Merchant will be used only by Provider or Card Network in performing the Services under this Agreement or related services and reporting, or as necessary to comply with any requirements of applicable law or of a Card Network or of any state or federal governmental agency with supervisory authority over Merchant Bank. At any time, Provider, any Card Network or any other entity having authority has the right to audit Merchant's records relating to this Agreement. Merchant understands and agrees that if at the time of signing this Merchant Agreement Merchant is undergoing a forensic investigation; Merchant must notify Provider and must fully cooperate with the investigation until it is completed.
- 10.3 Federal regulations enacted pursuant to the USA PATRIOT Act and other applicable laws require financial institutions to verify the

identity of every person who seeks to open an account with a financial institution. As a result of Merchant's status as an account holder with Merchant Bank, Merchant shall provide documentary verification of Merchant's identity, such as a driver's license or passport for an individual and certified copy of organization documents for an entity in manner acceptable to Provider. Provider reserves the right to verify Merchant's identity through other non-documentary methods as Provider deems appropriate in its sole discretion. Provider may retain a copy of any document it obtains to verify Merchant's identity with the financial institution.

## 11. Confidentiality

- 11.1 Merchant will not: (i) Provide Cardholder Account numbers, personal Cardholder information or Transaction information to anyone except Provider, Card Networks, or Merchant's agents/Merchant Servicers (but only those who have been approved by Provider as required under this Agreement and are properly registered with the Card Networks) for the purpose of assisting Merchant in completing Transactions, or as specifically required by law; (ii) Retain or store Card Magnetic Stripe, CVV, CVV2, CVC2 or CID data (including Track Data) subsequent to Authorization for a Transaction; (iii) Sell, purchase, provide or exchange Card account number information or other Transaction or Cardholder information to any third party, or to any entity other than Merchant's authorized agents/Merchant Servicers (but only those who have been approved by Provider as required under this Agreement and are properly registered with the Card Networks), the Provider, the Card Networks, or in response to valid legal process or subpoena; or (iv) Release any Cardholder information over the telephone under any circumstances.
- 11.2 Merchant may not, in the event of its (and Merchant shall ensure, and by contract provide, that Merchant's agents/Merchant Servicers shall not, in the event of their or Merchant's) failure, including bankruptcy, insolvency, or other suspension of business operations, sell, transfer, or disclose any materials that contain Cardholder Account numbers, personal information or Transaction information to third parties. In the event that Merchant's (or such an agent's/Merchant Servicer's) business fails or ceases to exist, Merchant is required to return (and shall ensure and by contract provide, that such agent/Merchant Servicer shall return) to Provider all such information or provide proof of destruction of this information to Provider.
- 11.3 Merchant agrees to keep confidential and not disclose the terms and conditions of this Agreement, including Processing Fees, except as required by applicable law. Merchant also agrees to keep confidential and not disclose or use any information supplied or otherwise made accessible by Provider or their agents, including without limitation Provider's Confidential Information. Notwithstanding the foregoing, Merchant may use Provider's Confidential Information only to exercise its rights and to perform its obligations under this Agreement. Merchant will protect Provider's Confidential Information from unauthorized disclosure, publication, or dissemination by employing at least those precautions that Merchant employs to protect its own confidential information, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate Provider's Confidential Information, except in connection with the performance of its obligations under this Agreement. Upon request by Provider or upon termination of this Agreement, Merchant shall return to Provider or destroy all of Provider's confidential information in Merchant's possession or control, unless the retention of such information is required by applicable law.
- 11.4 If Merchant receives any password from Processor to access any of Processor's systems or otherwise utilize any of Processor's services, Merchant shall (i) keep the password confidential; (ii) not allow any other entity or person to use the password; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Processor if Merchant believes that any of Processor's systems have been accessed or compromised by the use of the password by anyone other than the Merchant.
- 11.5 Except as expressly provided for in this Agreement, this Section does not confer any right, license, interest or title in, to or under Provider's Confidential Information to Merchant. Except as expressly provided for herein, no license is hereby granted to Merchant under any patent, trademark, copyright, trade secret or other proprietary rights of Provider. All rights, title, and interest in and to all intellectual property related to the Services provided by Provider hereunder (including, without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed

or licensed by us prior to, during the Term of, or after the Agreement, or employed by us in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the parties, Provider's exclusive property.

- 11.6 Merchant authorizes Provider to release its name and address to any third party whom the Provider determines needs to know such information in order for Provider to perform the Services under this Agreement and who has requested such information. Without limitation as to the authority granted to Merchant Bank and Processor in Section 11 of the Application, Merchant authorizes Provider to disclose Transaction data and other information relating to the Merchant, Guarantor and each of their principals, to the Card Networks, current and prospective Card issuers, current and prospective acquirers, regulatory authorities, and other entities to whom Provider or any such entity may be required to provide such information and to Provider's and each such entity's affiliates, agents, subcontractors and employees, for purposes Provider or such other entities deem necessary in Provider's or their reasonable discretion, including without limitation, in connection with the performance of their various obligations hereunder or under their other applicable agreements or under the Operating Rules or applicable law.
- 11.7 Merchant is responsible for ensuring its Merchant Identification Number ("MID") is kept confidential. When a change to a Merchant account is required, Merchant shall disclose its MID to the Provider representative as confirmation that the person requesting the change has authority. If the person requesting the change discloses the proper MID, Provider shall assume that person has the proper authority to make the change. Merchant shall be fully liable for any changes to its account after disclosure of the MID. Provider may request from Merchant additional information to further verify Merchant's identity.

## 12. Assignment; Bankruptcy

- 12.1 This Agreement is binding upon the successors and assigns of Provider and Merchant. Merchant will not assign this Agreement to another entity without Provider's prior written consent and any purported assignment made without Provider's consent will be void.
- 12.2 Merchant will notify Provider immediately if any bankruptcy, insolvency or similar petition is filed by or against Merchant. Merchant acknowledges that this Agreement constitutes an executory contract to extend credit or financial accommodations and that the Agreement cannot be assumed or assigned in the event of bankruptcy. Merchant and Provider agree that in the event of Merchant's bankruptcy, Provider shall be entitled to suspend further performance under this Agreement. Merchant acknowledges and agrees that in the event of a bankruptcy proceeding, Merchant must establish a Reserve Account or maintain a previously established and then current Reserve Account in amounts required by Provider and in accordance with any Reserve Account provision specified in this Agreement. Merchant Bank will have the right to offset against the Reserve Account for any and all obligations which Merchant may owe Provider, without regard as to whether the obligations relate to Transactions initiated or created before or after the filing of the bankruptcy petition.

## 13. Amendments; Waivers

- 13.1 Unless otherwise provided for in this Agreement, Provider may amend this Agreement at any time by providing Merchant with fifteen (15) days' prior notice by: (i) sending Merchant written notice of such amendment, or (ii) posting such amendment to the Processor's web site and providing Merchant with electronic notice as provided in Section 1.6. The amendment will become effective unless Provider receives Merchant's notice terminating this Agreement before the effective date. Provider may amend this Agreement upon less than fifteen (15) days' prior notice if Provider reasonably determines immediate modification is required by laws, Operating Rules or any adverse change in Merchant's financial condition. Amendments submitted by Merchant will bind Provider only if in writing and approved and signed (including any electronic signature) by Merchant Bank and Processor.

- 13.2 Provider's failure to enforce this Agreement will not waive Provider's rights under this Agreement. Waivers of any provision of this Agreement must be in writing and signed (including any electronic signature) by Merchant Bank and Processor. A waiver in one instance will not apply to other occasions unless that intent is clear from the signed (including any electronic signature) waiver.

## 14. Term; Termination

- 14.1 The initial term of this Agreement and the parties' relationship shall be three (3) years from the date upon which Merchant's most recent application is accepted by Processor and Merchant Bank (the "Initial Term"). All application shall be coterminous. At the expiration of the Initial Term, this Agreement will automatically renew for successive one (1) year periods ("Renewal Term") unless a party provides the other parties with notice of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the then current Term. The Initial Term and Renewal Term shall together be referred to herein as the "Term".
- 14.2 Processor may terminate this Agreement as to all Card types or individually specified Card types, without cause, upon thirty (30) days advance written notice. Merchant Bank may terminate this Agreement as to Visa and MasterCard card types without cause upon thirty (30) days advance written notice. Merchant further acknowledges and agrees that any Card Network may limit or terminate this agreement as to Merchant's acceptance of such Card Network's Cards, with or without cause, at any time and with immediate effect.
- 14.3 Merchant Bank or Processor may terminate this Agreement in either's sole and absolute discretion, effective immediately, upon written, electronic or oral notice to Merchant if Merchant Bank or Processor reasonably determines that any of the following conditions exists: (i) Merchant has violated any provision of this Agreement or any Card Network requires Provider to terminate this Agreement as to any Card type; (ii) There is a material adverse change in Merchant's financial condition or a change in Merchant's products/services or volume or mix thereof, or otherwise in Merchant's business, or in Merchant's customer acceptance policy which increases Processor's or Merchant Bank's risks; (iii) A petition in bankruptcy has been filed by or against Merchant, the Merchant is generally unable to pay its debts as they become due, a receiver, custodian, trustee, liquidator or similar official is appointed for a substantial portion of Merchant's business, there is a general assignment for the benefit of creditors, or the business terminates; (iv) Any information which Merchant provided to Provider, including Application information, was false, incomplete or misleading when received; (v) At any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to Transactions exceeding one percent (1%), or Chargebacks are in excess of three percent (3%) of any monthly dollar amount of Transactions; (vi) There is an overdraft for three (3) days or more in the Settlement Account, or overdrafts in the Settlement Account are otherwise excessive; (vii) Merchant or any of Merchant's officers or employees has been involved in processing Transactions with Provider or other parties arising from fraudulent or otherwise unauthorized Transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or any applicable laws; (ix) Merchant has failed to pay Provider any amount when due; (x) Merchant has failed to promptly perform or discharge any obligation under this Agreement, the Settlement Account or the Reserve Account; (xi) Any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given; (xii) Merchant has defaulted on any agreement it has with Provider; (xiii) Provider is served with legal process seeking to attach or garnish any of Merchant's funds or property in Provider's possession, and Merchant does not process within fifteen (15) days of the Provider being served; (xiv) The Operating Rules are amended in any way so that the continued existence of this Agreement would cause Provider to be in breach of such Rules; (xv) Any Guaranty supporting Merchant's obligations is revoked, withdrawn or terminated or altered in any way; (xvi) If any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Network, or Merchant Bank, or Processor, or the payment system; (xvii) Merchant engages in any activity which cause Provider to be in breach of the Operating Rules; (xviii) Merchant appears on any Card Network's security reporting; (xix) A judgment in excess of \$1,000 is entered against Merchant or any Guarantor and not

discharged or bonded off within fifteen (15) days after the entry of the judgment; (xx) If Merchant submits for processing Transactions that were not originated as a result of a direct Transaction between a Cardholder and Merchant in the normal course of business; (xxi) For a period of more than sixty(60) consecutive days, Merchant does not submit Transactions to Processor; or (xxii) The circumstances otherwise warrant immediate termination.

14.4 Merchant may terminate this Agreement in the event of a material breach of the terms of this Agreement by Provider, provided Merchant gives Provider written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the Provider.

14.5 Provider and Merchant acknowledge and agree that determining the actual damages resulting from an early termination of this Agreement by Merchant is impractical and difficult to compute. Accordingly, in addition to all other remedies available to Provider under this Agreement or as otherwise available in law or equity, **if this Agreement, or any MID processed hereunder, is terminated by Merchant prior to the expiration of the applicable Term of the Agreement for any reason other than for a material, uncured breach by Provider, Merchant agrees to pay Provider, per terminated MID, the greater of (i) the amount calculated in the manner specified below (the "Early Termination Fee"), or (ii) the maximum amount allowed under applicable state law.** Merchant acknowledges and agrees that the Early Termination Fee is not a penalty but rather is a reasonable computation of the financial harm caused by an early termination by Merchant. Any recovery pursuant to this section shall in no way limit Merchant's financial obligations under this Agreement, including, without limitation, Merchant's obligation with respect to Processing Fees, other fees, fines, penalties, returns, refunds, assessments, Chargebacks, and the Reserve Account. **The Early Termination Fee amount shall be the greater of: (a) \$500, or (b) seventy-five percent (75%) of the average amount in monthly Processing Fees earned by Processor during the full twelve (12) month calendar period prior to earlier of (x) the date Merchant breaches the Agreement or (y) the date Processor receives notice of Merchant's intent to terminate, multiplied by the number of months remaining in the then-current initial or renewal term. Note: If Merchant terminates or breaches the agreement in the first 12 months of the Initial Term, then the highest amount in monthly Processing Fees earned by Processor shall be used in such calculation (in lieu of a 12-month average).** In addition, Merchant shall pay to Provider the costs and attorneys' fees Provider incurs as a result of Merchant's termination. If this Agreement has been in place less than twelve (12) months, then the highest monthly Processing Fee amount paid by Merchant shall be used in the calculation set forth in (y) above. Early Termination Fees may be collected by Provider according to the same methods for collecting amounts otherwise due under this Merchant Agreement. All amounts payable hereunder by Merchant to Provider shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant.

14.6 Provider's rights of termination under this Agreement are cumulative. A specific right of termination shall not limit any other right of Provider to terminate this Agreement expressed elsewhere in this Agreement. Notice of termination may be given orally or in writing, and if given orally, shall be confirmed in writing.

14.7 It is understood that a file for terminated merchants referred to herein as "MATCH" (whether referred to by the applicable Card Network as "MATCH" or as Consortium Merchant Negative File", or by any other name) is maintained by Card Networks containing the names of any business (and its principals) which have been terminated for certain reasons, including fraud, depositing excessive counterfeit paper, excessive unauthorized Transactions, depositing paper for others (laundering), bankruptcy or breach of Merchant Agreement. Merchant acknowledges that Provider is required to report Merchant to the MATCH if this Agreement is terminated for any of the foregoing reasons or other reasons as may be modified by the Card Networks. Merchant agrees and consents to such reporting in the event of the termination of this Agreement for any of the foregoing

reasons.

14.8 Upon termination, Merchant's rights to complete Transactions and Credit Vouchers and submit them to Provider, and to use Charge form or formats, promotional material and any other items provided by Provider, will cease. Termination of this Agreement will not terminate the rights and obligations of Merchant and Provider relating to acts or omissions occurring before termination, including for example, any Processing Fees or other service fees owed to Provider, any Transactions processed for Merchant by Provider (whether before or after termination), Merchant's Chargeback and indemnity obligations, and the security interest granted to Provider in this Agreement.

14.9 Sections 2.4, 3, 4, 7, 8, 10.2, 11, 14, 15, 16, 17, 18, 19, 20, 21,22 and 23 will survive termination of this Agreement.

## 15. Settlement Account

15.1 Merchant must maintain a Settlement Account in Merchant's name in satisfactory condition at a depository institution under arrangements acceptable to Provider. The Settlement Account will be subject to the provisions of Section 17.

15.2 Subject to the terms and conditions of this Agreement, Provider agrees to provisionally credit Merchant for each Transaction that Provider accepts from Merchant. Merchant agrees that Merchant Bank may charge the Settlement Account for the amount of any Transaction processed under this Agreement, or any agreement Provider may have with any Merchant Affiliate that results in a Chargeback, or for any Credit Voucher or other reimburse merchant Processing Fees to which Provider may be entitled. Merchant agrees that Provider may audit all Transaction calculations and that Merchant Bank shall have the right, without notice, to make withdrawals, deposits, or other Adjustments to or from the Settlement Account for any deficiencies or overages. Provider shall presume that any amounts Provider pays to or debits from Merchant are correct unless Merchant disputes these by sending Provider written notice within thirty (30) days of the date of the applicable statement containing any disputed payments or debits. Merchant understands that Processor shall not have access to or hold settlement funds. With respect to Visa Transactions, Merchant Bank is responsible for providing settlement funds directly to Merchant.

15.3 If Merchant chooses to rent or lease processing equipment from Processor or utilizes software provided by Processor for use in processing Transactions, Merchant agrees to pay Provider: (i) a predetermined monthly rental fee; (ii) any initial upfront costs as required; and (iii) all applicable taxes for such Card processing equipment or software utilization. Any such fees for rental equipment shall, for the purposes of this Section 15 and Section 16, be considered "amounts due under this Agreement."

15.4 If the Settlement Account is closed, Merchant Bank or Processor may terminate this Agreement, effective immediately, upon written or oral notice (with written confirmation in the event of oral notice) unless Merchant opens another Settlement Account acceptable to Provider. Merchant may change the Settlement Account upon prior written approval by Provider, which approval will not be unreasonably withheld.

15.5 Merchant authorizes Merchant Bank or its agents or designated representatives to initiate debit and credit entries and Adjustments to the Settlement Account or the Reserve Account (described in Section 16) through the ACH settlement process for amounts due under this Agreement. This authorization will remain in full force and effect until termination of the Agreement and the full and final payment of all obligations of Merchant due under this Agreement. Merchant agrees to be bound by all applicable terms and provisions of the ACH Rules or other applicable network(s), in effect from time to time. Merchant acknowledges and agrees that Provider will not be liable for any delays in receipt of funds, any failure by Merchant to receive funds, or errors in debit or credit entries caused by Merchant, or third parties, including but not limited to any Card Network or any financial institution.

## 16. Additional Collateral Security; Reserve Account

16.1 As a condition for providing the Services, Merchant may be required to provide additional collateral security for Merchant's obligations hereunder, which additional collateral security shall be of a kind, and in amounts, satisfactory to Provider in Provider's sole discretion, and which shall be in addition to all other collateral provided for in Section 17 hereof. Such additional collateral security may include, for example, (i) a letter of credit, if issued in an amount and on terms

acceptable to Provider by a letter of credit issuing bank acceptable to Provider, or (ii) the pledge to Provider of a certificate of deposit owned by Merchant in amount satisfactory to Provider and provided all agreements (including agreements of third parties) in form and substance satisfactory to Provider and all filings and/or other actions necessary in order to perfect in Provider a continuing first priority security interest therein on terms acceptable to Provider, are entered into, made and/or taken as the case may be. Provider may require that all or any part of the additional collateral take the form of a Reserve Account (defined below), established as hereinafter set forth in this Section 16, at any time when: (a) this Agreement, or the provisions of the Services hereunder, shall have terminated for any reason or any party hereto shall have given notice of terminate thereof, or (b) there shall have occurred an event which entitles Provider to terminate this Agreement or the provision of the Services hereunder or which, with the giving of notice and/or passage of time would entitle Provider to terminate this Agreement or the provision of the Services hereunder, and Merchant has not provided alternative additional collateral security of a kind, and in amounts, satisfactory to Provider as set forth above in this Section, or (c) neither (a) nor (b) above in this Section is applicable, but Provider has determined that additional collateral security is required, has requested that Merchant provide the same, and Merchant has failed to provide alternative additional collateral security of a kind, and in amounts satisfactory to Provider as set forth above in this Section. Any Reserve Account that is established shall be subject to the terms and conditions of Section 17 and all other terms and conditions of this Agreement relating to the Reserve Account. Whenever Provider requires that additional collateral security take the form of a Reserve Account, the following provisions of this Section 16 shall apply:

16.1.1 Reserve During Term of Agreement. Merchant may be required to deposit, or Merchant Bank may deposit by deducting from any payment due to Merchant or from any funds in the Settlement Account or any other deposit account of Merchant, into an account maintained by Merchant Bank (or at another approved depository institution) (the "Reserve Account") initially or at any time in the future as requested by Provider, sums sufficient to satisfy Merchant's current and/or future obligations as determined by Provider in its sole and absolute discretion. The Reserve Account will be separate from the Settlement Account. Merchant shall have no right of withdrawal from the Reserve Account. The Reserve Account shall be under the sole control of Merchant Bank, and processor shall not have access to or hold funds in the Reserve Account. Any and all earnings from deposits of the Merchant to the Reserve Account shall be the sole property of the Provider.

16.1.2 Reserve Account Deposits. At any time in Provider's sole and absolute discretion, Provider may (i) designate the minimum balance required to be deposited in the Reserve Account, (ii) require that the amount on deposit in the Reserve Account be increased, (iii) require that the Merchant deposit, or Merchant Bank may deposit for Merchant into the Reserve Account a percentage of, or a fixed amount from each Transaction processed, or (iv) otherwise determine the amount to be deposited in the Reserve Account. Provider at its sole and absolute discretion may require that each month Merchant deposit, or Merchant Bank may deposit by deducting from any payment due to Merchant or from any funds in the Settlement Account or any other deposit account of Merchant sums into the Reserve Account no later than the twentieth (20th) day of the month. Provider shall notify the Merchant as to the amount of the funds to be deposited each month. Merchant acknowledges and agrees that the Reserve Account may contain both funds deposited by the Merchant and funds of other merchants of Provider.

16.1.3 Deductions from Reserve Account. If funds are not available in the Settlement Account, Provider without prior notice to Merchant may deduct from the Reserve Account any obligation of Merchant to Provider under this Agreement, including all Processing Fees, Chargebacks, Credit Vouchers, Liquidated Damages, and any and all

additional fees, fines, assessments, penalty amounts and charges due the Card Networks.

16.1.4 Replenishment of Reserve Account Deficiencies. Whenever the balance in the Reserve Account is less than the minimum balance required, or is otherwise deficient, Merchant Bank may, without prior notice, deposit the deficiency into the Reserve Account by reducing any payment to Merchant required by this Agreement or deduct the deficiency from the Settlement Account or any other deposit account of Merchant with another depository institution (including accounts of general partners if Merchant is a partnership) and deposit it into the Reserve Account. Merchant authorizes deductions from its accounts by ACH entry, sight draft, preauthorized check, reverse wire, or otherwise as Provider deems appropriate under the circumstances. In addition, Merchant will deposit any deficiency into the Reserve Account within one (1) Business Day after receiving Provider's oral or written request. Without limiting Provider's remedies, Merchant's failure to deposit any deficiency on time will permit Provider, without advance notice, to suspend or cease processing additional Transactions and Credit Vouchers. Provider will give Merchant written notice of any suspension or cessation of processing.

16.1.5 Additions to Reserve Account. If Provider has reason to believe that Merchant may be liable to customers or to Provider for Chargebacks exceeding the balance in the Reserve Account, Merchant Bank may, (i) immediately place in the Reserve Account payments due to Merchant and/or stop processing transactions for Merchant until such time as the extent of Merchant's obligations to Provider, or Merchant's liability for Chargebacks, or Merchant's liability to customers are known, and Provider no longer deems itself insecure, and/or (ii) demand from Merchant an amount that in Provider's judgment is needed to ensure payment of Merchant's obligations and liabilities. Merchant's failure to pay any amount will permit Merchant Bank or Processor to terminate this Agreement immediately without advance notice.

16.1.6 Reserve Account After Agreement Terminates. Merchant Bank may continue to hold or deposit funds in the Reserve Account after termination of this Agreement, regardless of whether termination is by Merchant or Provider. Upon termination of the Agreement by Merchant or Provider, Provider may retain sufficient funds to satisfy any and all Processing Fees, Chargebacks, Credit Vouchers, Liquidated Damages, and any and all additional fees, fines, assessments, penalty amounts and charges due the Card Networks. If no funds have been deposited into the Reserve Account before termination, Provider, at Provider's option, may notify Merchant to deposit funds into the Reserve Account upon termination of this Agreement. All provisions which apply to a pre-termination Reserve Account will apply after termination, including replenishment of deficiencies. The funds will be held by Provider or its designated agent for a period of not less than one hundred eighty (180) days from the date of the last Transaction processed under this Agreement, plus the period of any warranty, guarantee, and/or return policy on goods and/or services sold. Provider will return the balance in the Reserve Account to Merchant after Provider reasonably determines that the risk of Chargebacks and other Processing Fees has ended and after deducting all amounts that Merchant owes to Provider under this Agreement or any other agreement.

## 17. Security Interest

17.1 To secure Merchant's performance of its obligations under this Agreement, and any other agreement with Provider, Merchant grants Provider a security interest in each Transaction and its proceeds, the Settlement Account, the Reserve Account and any other demand deposit accounts (DDAs) of Merchant held by Merchant Bank, whether now existing or established in the future, and in the proceeds of all those accounts, any funds due Merchant from Provider and any of Merchant's property held by Provider. Provider may enforce these security interests without notice or demand. The security interests granted under this Agreement will continue after this Agreement terminates, until Merchant satisfies all its obligations to Provider. Furthermore, and with respect to any security interests granted herein, Provider will have all rights afforded under the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of Georgia; provided, however, in the event that, by reason of mandatory provisions of law, any or all of

the attachment, perfection or priority of the security interests granted herein is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Georgia, then Provider will have all rights afforded under the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions relating to such attachment, perfection or priority of the security interests, as well as any other applicable law.

- 17.2 Upon request of Provider, Merchant will execute one or more financing statements or other documents to evidence the security interests granted to Provider under this Section 17. Merchant shall cooperate with Provider in obtaining any control agreement or similar agreement with a depository bank necessary to perfect the security interests granted herein. In addition, Merchant agrees that its signature on the Application will be considered Merchant's signature agreeing to any control agreement as defined in Article 9 of the Uniform Commercial Code among Merchant, Provider and any other financial institution under which Provider, Merchant and any other financial institution agree to the disposition of funds in the Settlement Account, the Reserve Account or any other deposit account without further consent by Merchant.

## 18. Customer Claim

- 18.1 To the extent that Provider has paid or may pay a Chargeback or Credit Voucher, Merchant will be obligated to reimburse Provider for any sums Provider pays. If Merchant does not reimburse Provider, Provider will have all of the rights and remedies of Cardholders. Provider may assert any claim on behalf of a Cardholder individually or on behalf of all Cardholders as a class.

## 19. Indemnification; Limitation of Liability; Warranty

- 19.1 Merchant agrees to indemnify Provider, including their officers, directors, employees, and agents against and to hold them harmless from any and all claims and demands of any party arising from or based upon any act or omission of Merchant, Merchant's employees, Merchant's designated representatives or agents, or Merchant's Merchant Servicers in connection with or arising out of this Agreement, the duties to be performed by Merchant pursuant to this Agreement, any Transactions which Merchant submits to Provider, or Merchant's violation of the Operating Rules or any applicable law. In the event that Provider shall be made a party to any litigation, proceeding, arbitration, bankruptcy proceeding, or other legal process (collectively "Actions") commenced by any third party, Merchant shall protect and hold Provider harmless from and with respect to the Actions and shall pay all costs, expenses, and attorney's fees incurred or paid in connection with the Action, together with any judgments rendered. Merchant shall indemnify, defend, and hold harmless Provider for any hacking, infiltration, or compromise of Merchant's systems or the systems of Merchant's Merchant Servicers, designated representatives, or other agents.
- 19.2 Provider will not accept responsibility for errors, acts, or failure to act by others, including but not limited to, agents, third party suppliers of software, equipment or services; or, banks, communication common carriers, data processors or clearinghouses through which Transactions may be passed, originated and/or authorized. Provider will not be responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, power surges or failures, acts of governments, acts of terrorism, labor disputes, failures in communication networks, legal constraints or other events beyond the reasonable control of Provider. Provider undertakes no duties to Merchant other than the duties expressly provided for in this Agreement, and any and all other or additional duties that may be imposed upon Provider in law or equity are hereby irrevocably waived and released to the maximum extent permitted by law. In any event, Provider's cumulative liability to Merchant, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of \$10,000 or, an amount equal to the aggregate of monthly net Processing Fees paid by Merchant in the three (3) month period prior to the month that the incident giving rise to liability occurred.
- 19.3 IN NO EVENT SHALL PROVIDER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY

DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR PROVIDER WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. PROVIDER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT GUARANTEE OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

## 20. Notices

- 20.1 Except to the extent oral or electronic notice is explicitly authorized herein, each notice required by this Agreement will be in writing and will be effective when delivered, addressed to Merchant Bank at the address designated on the Application, to Processor at the address designated on the Application and to Merchant at Merchant's address designated in the Application, or at such other address as any party may provide by written notice to the other parties. Any address Merchant designates will also be the address to which Provider mails Merchant's statements, if a mailed statement is required. Otherwise, Merchant's statements are made available to Merchant by Processor through Processor's website. Delivery by facsimile transmission will be considered effective when the sender receives electronic confirmation of the transmission.

## 21. Georgia Law; Jurisdiction; Venue

- 21.1 This Agreement is governed by Georgia law, without reference to conflicts of law provisions. Any action or proceeding to which Merchant or any Guarantor is a party and which relates in any way to this Agreement may be brought and enforced in the courts of Fulton County in the State of Georgia or of the United States for the Northern District of Georgia, subject to Section 22.2 hereunder. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Merchant as provided for notices hereunder.

## 22. Attorney Fees; Arbitration

- 22.1 Merchant and/or Guarantor will be liable for and will indemnify and reimburse Provider for all attorneys' fees and other costs and expenses paid or incurred by Provider in the enforcement of this Agreement or in matters relating to this Agreement, in collecting any amounts due from Merchant to Provider, or arising from any breach by Merchant of this Agreement, or any other wrongdoing by Merchant or Guarantor.
- 22.2 Any controversy or claim between or among the Merchant and/or any Guarantor, on the one hand, and Processor and/or Merchant Bank, on the other hand, including, but not limited to, those arising out of or relating to this Agreement or any agreements or instruments relating hereto and any claim based on or arising from an alleged tort, shall at the request of a party be determined by arbitration. The arbitration shall be conducted in Atlanta, Georgia in accordance with the United States Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision in this Agreement, and under the auspices and rules of the American Arbitration Association then in effect. Each party may serve a single request for production of documents. If disputes arise concerning these requests, the arbitrators shall have sole and complete discretion to determine the disputes. The arbitrators shall give effect to statutes of limitation in determining any claim, and any controversy concerning whether an issue is arbitrable shall be determined by the arbitrators. The arbitrators shall deliver a written opinion setting forth findings of fact, conclusions of law and the rationale for the decision. Judgment upon the decision rendered by the arbitrators may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of either party to submit the controversy or claim to arbitration if the other party contests such action for judicial relief.

## 23. Continuing Guaranty

- 23.1 As a primary inducement to Provider to enter into this Agreement, and to approve the Application of Merchant, the Guarantor(s), individually and severally, who signed (including any electronic signature) on the Guarantor signature line(s) on the Application, agree to be bound by all

terms and provisions of this Agreement to the same extent and in the same manner as Merchant, and unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each and all of Merchant's duties and

obligations to Provider under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its Principals and Provider, as such agreements now exist or are amended from time to time, with or without notice to Guarantor(s).

- 23.2 Merchant and Guarantor(s) further agree to be bound by the terms and provisions of any agreement between Provider and any Merchant Affiliate, regardless of whether such agreement currently exists or is executed, amended or supplement at some future date. Merchant and Guarantor(s) unconditionally and irrevocably guarantee the full payment and performance of each and all duties and obligations owed to Provider by Merchant Affiliate pursuant to any agreement between Provider and any Merchant Affiliate. The provisions of Section 23.3 apply to the guarantee by Merchant and Guarantor(s) of the Merchant Affiliate's obligations to Provider under any agreement between Provider and any Merchant Affiliate.
- 23.3 Guarantor(s) understands that Provider, without notice to Guarantor(s), may from time to time renew or extend the Agreement, modify rates, limits, charges and fees, or modify the amount or type of services provided to Merchant all of which may increase the Guarantor's obligations under this Guaranty. Guarantor(s) further understands that Provider may proceed directly against Guarantor(s) without first exhausting Provider's remedies against the Merchant, any other person or entity responsible to Provider or any security held by Provider. This Guaranty is a continuing guaranty and will not be discharged or affected by the release or discharge of Merchant or the death of the Guarantor(s). This Guaranty will bind all heirs, administrators, and representatives of the Guarantor(s) and may be enforced by or for the benefit of any successor of Provider. To the fullest extent permissible under applicable law, Guarantor(s) waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant, all other rights and defenses available to Merchant, and all other rights and defenses available to Guarantor(s).

## 24. Merchant Taxpayer Certification and Processor's Reporting Obligations

- 24.1 Pursuant to 26 USC 6050W, Processor is a "payment settlement entity", obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant shall provide Processor with the appropriate taxpayer certification documentation. Merchant shall promptly notify Processor if there are any changes in this information. Processor may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this Agreement where required under applicable law. Processor may, in accordance with applicable law and from time to time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of Processor hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Processor.

## 25. Final Agreement; Effective Date

- 25.1 This Agreement is the complete and final agreement between Merchant and Provider for the Services covered by this Agreement and supersedes all prior or contemporaneous negotiations, stipulations or agreements. If any provision of this Agreement is invalid or unenforceable, the other provisions remain effective. This Agreement becomes effective upon the first to occur of (a) the date on which the Application is signed and approved by Processor and Merchant Bank, or (b) the date on which Processor and Merchant Bank process the first Transaction (which may be a test Transaction) for Merchant.

## 26. Definitions

Capitalized terms used in this Agreement have the meaning provided in this Section 26. Capitalized terms not otherwise defined in this Agreement may be found in the Operating Rules.

"Acceptance" is the process by which Merchant allows a Card or

electronic debit or credit entry to be used by a Cardholder as a means of payment.

"ACH" means the Automated Clearing House Network.

"ACH Rules" means, collectively, the National Automated Clearing House Association ("NACHA") Operating Rules and NACHA Operating Guidelines, as the same are amended from time to time.

"Address Verification Service" (AVS) is a Card fraud prevention tool designed for mail order, telephone order and electronic commerce (internet) merchants and other electronic Transactions. Use of AVS is not a guarantee that a Transaction is valid.

"Adjustment" is one or more transactions involving a Credit Voucher, a Chargeback, or a correction to the Settlement Account resulting from a Transaction processing error, or from Merchant's failure to follow the Operating Rules.

"Agreement" means the Application and the Merchant Agreement among Merchant, Processor and Merchant Bank, including the appendices, addenda, schedules and FEE SCHEDULE incorporated thereto, as amended from time to time as provided therein.

"American Express" means American Express Travel Related Services Company, Inc., its affiliates, successors or assigns.

"Application" is the Application for Merchant Agreement that Merchant completed and signed (including any electronic signature) and which is subsequently individually accepted by both Processor and Merchant Bank by execution or as otherwise provided herein.

"Authorization" is the process whereby Merchant in compliance with the Operating Rules for each Card obtains approval of a Transaction from the Card Issuer. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.

"Authorization Code" is a message obtained through the Card Networks' Authorization networks that informs Merchant that a Transaction has been approved.

"Batch" is a term that collectively refers to Transactions delivered for processing in a file and processed within a given period of time, usually daily.

"BIN" is the Bank Identification Number or Interbank Card Association Number, as applicable, which is a number assigned to a Card Issuer that is used for Card issuing, Authorization, clearing, and settlement processing.

"Business Day" is Monday through Friday excluding Merchant Bank holidays. Each Business Day ends at the cut-off time specified by Merchant Bank. Transactions submitted for processing on a holiday, weekend, or after the cut-off time are treated as received the following Business Day.

"Card" is any Visa-branded, MasterCard-branded or American Express-branded Credit and Business Cards or Debit Cards, private-label credit card, ATM/debit Card, or any other card issued by a member of a Card Network which Provider may at any time specify in writing as an additional Card payment option available to Merchant (See also "Valid Card").

"Card Not Present" or "CNP" is a Transaction wherein neither the Cardholder nor the Card is physically present at the Point of Sale. Mail order and telephone order (MO/TO), electronic commerce and Preauthorized Transactions are collectively referred to as "CNP Transactions".

"Card Program" is one or more programs of financial service Cards honored by Merchants and financial institutions for presentment and collection of Cardholder indebtedness.

"Cardholder" is the person issued a Card and a corresponding account by a Card Issuer. "Cardholder" is sometimes referred to as "Cardmember" or "Card Member" in some of the Card Network materials.

"Cardholder Account" is the account of a Cardholder as represented by a Card.

"Card Network" means any entity formed to administer and promote Cards, including, without limitation, Visa, MasterCard, Discover, American Express, other credit and debit card providers, Debit



Networks, and gift card and other stored value and loyalty program providers. Card Network also includes the Payment Card Industry Security Standards Council.

"Card Issuer" is the institution authorized by a Card Network to issue Cards to Cardholders and that has issued a Card presented to Merchant for a Transaction or Credit Voucher.

"Card Verification Value (CVV)/Card Validation Code 2 (CVC2)/Card Identification Data (CID)" is a unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

"Card Verification Value 2 (CVV2)/Card Validation Code 2 (CVC2)/Card Identification Data (CID)" is a code derived by the Card Issuer and printed on the reverse side of a Card. The CVV2/CVC2/CID is used to deter fraudulent use of an account number in a CNP Transaction.

"Charge" is the evidence of an obligation of a Cardholder arising from a Transaction with Merchant which is submitted by Merchant in paper or electronic form to Provider for processing through a Card Network's interchange system so that payment may be made to Merchant and the amount of the Transaction posted to the Cardholder Account. A Charge also may be referred to as a "Charge Record," "Sales Draft" or "Sales Slip."

"Chargeback" is a return of a Transaction to Merchant, typically initiated by a Cardholder through a Card Issuer, for transmittal to and payment by Merchant under Operating Rules.

"Confidential Information" includes (i) information about operations, technology, employees, products or services, sales, clients, customers, pricing, business or marketing plans of Provider or their affiliates; (ii) any technical information, design, process, procedure, or enhancement that is commercially valuable over Provider's competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, databases, inventions, know-how, and trade secrets, whether or not patentable or copyrightable.

"Credit and Business Cards" are any Visa-branded or MasterCard-branded Cards that are adopted by Visa or MasterCard for use in connection with their consumer credit and charge Card Programs, any Visa-branded or MasterCard-branded business, corporate, or commercial Card (includes business, corporate and public sector credit, charge or debit Cards), and any other Visa-branded or MasterCard-branded Card that is not defined as a Debit Card.

"Credit Voucher" is the evidence of a partial or total refund of a Transaction submitted by Merchant to Provider in paper or electronic form for processing through a Card Network interchange system so that credit may be made to a Cardholder Account. A Credit Voucher may also be referred to as a "Credit Slip".

"Debit Cards" are Visa-branded or MasterCard-branded consumer Cards issued by U.S. Card Issuers that when presented for payment, access, debit, hold or settle funds from a consumer's demand deposit, investment or other asset account. Examples of Debit Cards include: Visa Classic, Gold and Platinum Check Cards; Visa Check Card II Check Cards; Visa Buxx Cards; Visa Payroll Cards; Visa Gift Cards; and MasterCard Standard, Gold, and Platinum debit Cards.

"Debit Network" is an online data processing system used to support PIN based Debit Card Transactions.

"Discover" means Discover Financial Services or its successors or assigns.

"Initial Term" will have the meaning set forth in Section 14.1 of the Merchant Agreement.

"Installment Billing Transaction" is a single purchase of goods that is divided into two or more installment payment transactions made in a Card Not Present environment.

"Magnetic Stripe" refers to a stripe of magnetic information affixed to the back of a plastic credit or debit Card. The magnetic stripe

contains essential Cardholder and account information.

"MasterCard" means MasterCard International Incorporated, doing business as MasterCard Worldwide, or its successors or assigns.

"Merchant" means the legal entity identified in the Application.

"Merchant Affiliate" is any entity or account designated as "affiliated" on the Application and, in addition, any person or entity which is owned or controlled, in whole or in part, by Merchant or any of Merchant's principal business owners identified in the Application ("Principals").

"Merchant Bank" is the merchant acquiring sponsor bank first identified above.

"Merchant Outlet" is a location where Merchant accepts Transactions.

"Merchant Identification Number (MID)" is the identification number assigned to Merchant by Provider for the purposes of participation in the Services. Merchant may be assigned multiple MIDs.

"Merchant Servicer" means any contractor, agent, hardware provider, software provider or service provider who is engaged directly or indirectly by Merchant or who otherwise acts for or on behalf of Merchant in connection with Merchant's Acceptance of Cards or the submission of Transactions or Credit Vouchers to Provider, or who otherwise assists Merchant in the performance of Merchant's obligations under this Agreement, and includes without limitation any "Agent", "Merchant Servicer", "Third Party", "Merchant Processor", "Data Storage Entity", "Payment Service Provider", "Internet Payment Service Provider", or "Payment Facilitator" or "Internet Payment Facilitator" who acts for or on behalf of Merchant within the meaning of the Operating Rules, and any other person or entity who will store, transmit, process, or otherwise have access to, any Cardholder or Transaction data in connection with Merchant's performance of Merchant's obligations under this Agreement.

"On-line Debit Card Transaction" is a Debit Card Transaction between the Merchant and the Cardholder that is initiated with a Debit Card that is processed through a Debit Network, and that requires entry of a Cardholder's personal identification number ("PIN") during the transaction process.

"Operating Rules" are relevant portions of Operating Regulations, Operating Manuals, Official Rules, Bulletins, Notices, and similar documents issued by Card Networks, Debit Networks, Merchant Bank or Processor. (Merchant acknowledges that MasterCard has published a "Rules Manual" and a "Chargeback Guide", which are available at the MasterCard web site; and that Visa has published a public version of the "Visa Core Rules and Visa Product and Services Rules" and a "Card Acceptance Guidelines for Visa Merchants" and a "Chargeback Management Guidelines for Visa Merchants", which are available at the Visa website). Merchant represents, warrants and agrees that Merchant has accessed each of these documents, and that Merchant will at all times continue to maintain the capability to access, and will access, each of these documents as in effect from time to time, including any changed versions thereof as may be published from time to time by the applicable Card Network. In the event there shall be any inconsistency between any such published version of a Card Network's Operating Rules and the version made applicable to Merchant Bank from time to time by the applicable Card Network, the version made applicable to Merchant Bank from time to time by the applicable Card Network shall control to the extent of the inconsistency. The Operating Rules, as in effect from time to time, are incorporated herein by this reference. References herein to any particular sections of any Operating Rules of a Card Network, are deemed to include any future changed, supplemented and/or re-numbered versions of those sections, when and as made effective from time to time by the applicable Card Network.

Merchant may find the Visa Operating Rules at: <https://usa.visa.com/support/small-business/regulations-fees.html>

Merchant may find the MasterCard Operating Rules at: <https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>.

"Point of Sale" or "POS" is each Merchant Outlet where Merchant and Cardholder can jointly complete a Transaction or Credit Voucher in connection with the Cardholder's purchase of goods or services provided by Merchant.

"Preauthorized Health Care Transaction" is a Transaction for which a Cardholder has given a health care Merchant written permission to the Cardholder Account for services.

"POS Equipment" is equipment for processing Transactions, including electronic terminals, PIN pads, and other processing equipment, including software.

"Preauthorized Transaction" is a Transaction for which a Cardholder has given advance permission to periodically charge the Cardholder Account. Preauthorized Transactions include Recurring Transactions, Installment Billing Transactions, and Preauthorized Health Care Transactions.

"Processing Fees" are the fees payable by Merchant to Provider for the Services Provider provides to Merchant in connection with this Agreement, as specified in the FEE SCHEDULE to the Application or as otherwise provided for in this Agreement or an Addendum thereto as modified by Processor from time to time. These fees also include, but are not limited to, Card Network fees, Sponsor Bank or other third-party gateway fees, which will be passed-through to Merchant and invoiced monthly at a rate determined by BillingTree, the Card Network or the Sponsor Bank.

"Processor" Electronic Payment Providers, Inc., d/b/a BillingTree.

"Provider" Processor and Merchant Bank collectively.

"Recurring Transaction" is a Transaction where the Cardholder provides permission, in either written or electronic format, to a Merchant to periodically charge the Cardholder Account for recurring goods or services, including, but not limited to, insurance premiums, subscriptions, monthly internet access fees, membership fees, tuition, or utility charges.

"Regulation E" means the regulations, together with all staff interpretations issued thereunder, published by the Consumer Financial Protection Bureau to implement The Electronic Funds Transfer Act.

"Regulation E" includes specific rules for all parties involved governing the issuance and use of Debit Cards and the processing of On-line Debit Card Transactions.

"Renewal Term" will have the meaning set forth in Section 14.1 of the Merchant Agreement.

"Security Standards" means all rules, regulations, standards, or guidelines adopted or required by the Card Networks or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Card Information, including, without limitation, PCI DSS, Visa's Cardholder Information Security Program (CISP), Discover's Information Security & Compliance Program (DISC), American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program (SDP), Visa's Payment Application Best Practices, the Payment Card Industry's Payment Application Data Security Standard, MasterCard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program, in each case as they may be amended from time to time. Merchant may find the PCI-DSS requirements at:

[https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php).

Merchant may find details on CISP at:

<https://usa.visa.com/partner-with-us/pci-dss-compliance-information.html#1>

Merchant may find details of the DISC program at:

<http://www.discovernetwork.com/fraudsecurity/disc.html>.

Merchant may find the American Express Data Security Requirements at:

[www.americanexpress.com/dsr](http://www.americanexpress.com/dsr).

Merchant may find details of the SDP program at:

<https://www.mastercard.us/en-us/merchants/safety-security/security-recommendations/site-data-protection-PCI.html>

"Services" The activities undertaken by Processor and/or Merchant Bank, as applicable, to facilitate Card Programs offered by Card Networks, including authorizing, processing and settling all Transactions undertaken by Cardholders at Merchant's applicable Merchant Outlet(s), and all other activities necessary for Provider to perform the functions required by this Agreement.

"Settlement Account" is the checking account or other acceptable deposit account Merchant maintains at a depository institution acceptable to Provider for credit of Transactions by Merchant Bank and debit of Credit Vouchers, Chargebacks, Processing Fees, any fines, assessments or fees assessed by Card Networks or other governmental agency or entity having authority, and other reimbursement to which Provider may be entitled under this Agreement.

"Term" will have the meaning set forth in Section 14.1 of the Merchant Agreement.

"Transaction" is any interaction between a Cardholder, using a Card, and Merchant to purchase Merchant's goods or services that results in activity on the Cardholder's account.

"Valid Card" is a Card that is (i) properly issued under the authority of a Card Network (not counterfeit); (ii) "current" according to any beginning and expiration dates on the Card; (iii) signed by the Cardholder named on the front or other authorized signer, or in the case of CNP Transactions, in compliance with the applicable Operating Rules; (iv) not listed at the time of a Transaction in a warning bulletin or notice issued by a Card Network; and (v) not visibly altered or mutilated when physically present at the POS.

"Visa" means Visa Inc. or its successors or assigns.

## Part II: Addenda

The following Addenda are made a part of this Agreement: CARD NOT PRESENT (CNP) ADDENDUM, SPECIAL SERVICES ADDENDUM, MERCHANT RESTRICTIONS ADDENDUM (including the "Merchant Use and Disclosure of BIN Information"), DISCOVER CARD ACCEPTANCE ADDENDUM, VISA ACCOUNT UPDATER ADDENDUM, and MASTERCARD ACCOUNT BILLING UPDATER ADDENDUM. The applicability of these Addenda depends upon the Merchant's business, and the Services requested by Merchant. In its sole and absolute discretion (except as otherwise set forth in the Merchant Use and Disclosure of BIN Information), Processor or Merchant Bank may accept or reject Merchant's request for services provided in the Addenda. Merchant understands and agrees that any attached Addendum is considered a part of the Agreement and Merchant will comply with the terms therein. In the event of conflict between the provisions of this Agreement and the provisions of an Addendum, the provisions of the Addendum will control.

## Card Not Present (CNP) Addendum

This CARD NOT PRESENT (CNP) ADDENDUM is made a part of the terms and conditions of the Agreement, and Merchant has agreed to comply with all terms and conditions of the Addendum. The following terms and conditions describe the procedures for CNP Transactions. All capitalized terms used in this Addendum and not otherwise defined herein shall have the meanings assigned to them in the Agreement. Requirements set forth herein are in addition to requirements set forth in the Agreement and the Operating Rules.

### 1. Additional Definitions

- 1.1 3-D Secure - A Visa-approved method that is the global authentication standard for Electronic Commerce Transactions.
- 1.2 Electronic Commerce Transaction - A Transaction conducted over the Internet or other network.
- 1.3 Deferred Payment Transaction - A CNP Transaction for which the Cardholder is billed once no more than 90 days after the first shipment of merchandise.
- 1.4 Delayed Delivery Transaction. - A single Transaction where a Cardholder completes two separate Transactions. The first Transaction functions as a deposit (such as a down payment) for goods or services; the second is to pay the balance due the Merchant.
- 1.5 Installment Billing Transaction – The single purchase of goods or services billed to an account in multiple segments over a period of time agreed to between a Cardholder and a Merchant.
- 1.6 Order Form - A document bearing the Cardholders signature, either written or electronic, authorizing goods or services to be charged to his or her account. An Order Form may be: (i) a mail order form, (ii) a Recurring Transaction form, (iii) a Preauthorized Health Care Transaction form, or (iv) an e-mail or other electronic record that meets the requirements of applicable law.
- 1.7 Permanent Establishment - A fixed place of business through which an Electronic Commerce or Mail Order/Phone Order Merchant conducts its business, regardless of its Web site or server locations.

### 2. Acceptance of Card Not Present (CNP) Transactions.

- 2.1 Merchant may accept CNP Transactions based upon the description of Merchant's business ("Business") on the Application and as authorized by Processor and Merchant Bank. Processor and Merchant Bank reserve the right to terminate CNP Transactions in the event that there is any material change in the Business, including any material change in the customers, products, management or employees of the Business.
- 2.2 Merchant agrees that, except as expressly permitted by the Operating Rules, no CNP Transactions shall be submitted for processing prior to shipping of the product purchased and/or the implementation of the service offered.
- 2.3 Merchant understands and agrees that CNP Transactions: (i) do not require the Cardholder's signature on the Charge Record, sales draft or sales slip (with the exception of Order Forms set forth in Section 1.6 above, as applicable); (ii) require the Merchant to obtain the valid Expiration Date for each Card used for a CNP Transaction; and (iii) require the Expiration Date of the Card be submitted as part of the Authorization process.
- 2.4 It is understood that Authorizations for CNP Transactions are subject to Chargeback and such Authorizations do not guarantee the validity or collectability of the Transaction. Merchant agrees to take reasonable additional steps to verify the identity of the authorized Cardholder on these types of Transactions, especially when merchandise is shipped to a third party. Merchant acknowledges and agrees that the receipt of an Authorization Code indicating approval does not guarantee Merchant against Chargebacks. Merchant is

encouraged to use (when not prohibited under applicable law) fraud reduction systems offered by the Card Networks, such as AVS and CVV2/CVC2 in CNP Transactions.

- 2.5 Generally, in order to satisfy a retrieval request for CNP Transactions, the following Charge Record information must be provided by Merchant: (i) the Cardholder Account number, (ii) the Card expiration date, (iii) the Cardholder name, (iv) the Transaction date, (v) the Transaction amount, (vi) the Authorization Code, (vii) Merchant's Name, (viii) Merchant's location, (ix) a description of the goods or services, (x) the "ship to" address, and (xi) the AVS response code (if AVS was used). Merchant is responsible for ascertaining whether applicable law requires copies of transaction receipts retained by Merchant to truncate card numbers and suppress expiration dates, and for complying with all such laws.

### 3. Processing Restrictions.

- 3.1 If at any time the volume of CNP Transactions, substantially exceeds the projected annual volume stated on the Application, or if at any time Processor or Merchant Bank suspects fraud, money laundering or violations of the Operating Rules, Processor or Merchant Bank may, in their sole and absolute discretion and in addition to other remedies that Processor or Merchant Bank may have:
  - 3.1.1 refuse to process the excessive or suspect CNP Transactions;
  - 3.1.2 process the CNP Transactions and retain the funds received from processing until such time as the excess or suspect charges are found to be valid or invalid and processed in accordance with the Operating Rules;
  - 3.1.3 suspend the CNP Transactions and/or terminate the Agreement; or
  - 3.1.4 amend the Agreement to protect the interests of Processor or Merchant Bank.

### 4. Electronic Commerce Transactions.

- 4.1 If Processor or Merchant Bank authorize Merchant to accept Electronic Commerce Transactions, Merchant agrees to comply with all the provisions of the Operating Rules pertaining to Electronic Commerce Transactions.
- 4.2 Merchant shall at all times maintain a secure site for the transmission of data relating to the processing of Electronic Commerce Transactions. Merchant shall be responsible for ensuring, obtaining and maintaining site security, for the encryption of all data, and for any and all storage of data both in electronic and physical form.
- 4.3 Each Electronic Commerce Transaction must be identified as such when submitted by Merchant by using the appropriate Electronic Commerce Transaction indicator values specified by the Card Networks.
- 4.4 Merchant may not submit a request for Authorization for an Electronic Commerce Transaction that has failed a 3-D Secure authentication request.
- 4.5 Merchant shall display on Merchant's web site in a prominent manner: (i) the address of the Merchant's Permanent Establishment, including Merchants country of domicile, located 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; (ii) a complete and accurate description of the goods or services offered; (iii) Merchant's merchandise return and

refund policy clearly displayed on either the checkout screen, or on a separate screen that allows the purchaser to click an acceptance button; (iv) Merchant's consumer data privacy policy and the method of transaction security used to secure Cardholder account data during the ordering and payment process; (v) a customer service contact, including electronic mail address or telephone number; (vi) transaction currency; (vii) export restrictions (if known); and (viii) Merchant's delivery/fulfillment policy.

- 4.6 Merchant shall provide Cardholders a secure transaction method, such as Secure Socket Layer or 3-D Secure.
- 4.7 Each web site operated by Merchant must display the marks of the Card Networks for the Card types which are accepted by the Merchant, as specified in the Operating Rules.
- 4.8 Merchant cannot refuse to complete an Electronic Commerce Transaction using a MasterCard-branded Card solely because the Cardholder does not have a digital certificate or other secured protocol.
- 4.9 Merchant agrees to include, in addition to the other data required under the Operating Rules, the following data on a Charge Record completed for an Electronic Commerce Transaction: (i) Merchant's name most recognizable to the Cardholder, such as: Merchant "doing business as" name or Merchant's "universal resource locator" (URL), or Merchant name used in the VisaNet Clearing Record; (ii) Customer service contact information including telephone country code and area code. If Merchant delivers goods or services internationally, Merchant must list both local and internationally accessible telephone numbers; (iii) Terms and conditions of sale, if restricted; (iv) The exact date any free trial period ends, if offered; (v) Cancellation policies; (vi) Merchant's online address; (vii) A unique Transaction identification number. For receipts completed by internet payment service providers, payment service providers, internet payment facilitators or payment facilitators, see additional requirements set forth in the Operating Guide and Operating Rules.
- 4.10 Merchant will provide a completed copy of the Charge Record to the Cardholder at the time the purchased goods are delivered or services performed. Merchant may deliver the Charge Record in either of the following formats: (i) electronic (e.g., e-mail or fax), or (ii) paper (e.g., hand-written or terminal-generated). Merchant may not transmit the Cardholder Account number or card expiration date to the Cardholder over the Internet or on the Charge Record. Merchant is responsible for ascertaining whether applicable law requires copies of transaction receipts retained by Merchant to truncate card numbers and suppress expiration dates, and for complying with all such laws.
5. Installment Billing Transactions. If Merchant is so permitted by Processor or Merchant Bank, Merchant may offer Cardholders involved in Electronic Commerce Transactions or mail order/telephone order Transactions an Installment Billing Transaction option. If Merchant offers an Installment Billing Option, Merchant must comply with the requirements set forth in the Operating Rules, including without limitation, those set forth in the Visa Operating Rules.
6. Deferred Payment Transaction. Merchant shall comply with all applicable Operating Rules, including without limitation those set forth in the Visa Operating Rules.
7. Recurring Transactions. Merchant must complete a Recurring Transaction in accordance with the requirements set forth in the Operating Rules, including without limitation, those set forth in the Visa Operating Rules.
8. Delayed Delivery Transactions. Merchant must comply with the requirements set forth in the Operating Rules, including without limitation, those set forth in the Visa Operating Rules.
9. Delegation of Duties. Card Program duties may, from time to time, be delegated to and among Processor's business units without giving notice to Merchant, provided, however, Processor will remain responsible for any obligation owed by Processor under the

Agreement.

10. Suspension and Termination. Should Merchant, at any time, fail to agree or comply with this Addendum, Processor or Merchant Bank shall have the right to immediately and without prior notice suspend and/or terminate CNP Transactions and/or the Agreement.

## Special Services Addendum

This SPECIAL SERVICES ADDENDUM is made a part of the terms and conditions of the Agreement, and Merchant has agreed to comply with all terms and conditions herein. This Addendum describes additional requirements that Merchant is to follow for the special card processing services referred to below. Requirements set forth herein are in addition to requirements set forth in the Agreement and the Operating Rules. All capitalized terms used in this Addendum and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

Merchant may be eligible to participate in a number of additional services provided by Visa (the "Visa Services"), as listed below and as further described in the Visa Operating Rules and other official publications from Visa regarding such Visa Services. Merchant's eligibility for, and participation in, these services is subject at all times to the terms of the Operating Rules and any other official publications from Visa governing such Visa Services, as such may be changed from time to time, and Merchant agrees that it will at all times comply with the Operating Rules when receiving or utilizing any of these services. Merchant must receive Processor's or Merchant Bank's prior approval before participating in any of the Visa Services, including, without limitation, those listed below.

1. Account Funding Transaction - Use of a Card to fund another account, such as a prepaid Card account.
2. Advance Payment Service - A Visa service that allows a Cardholder to use his or her Card for a partial or complete advance payment for recreational services or activities provided by an Advance Payment Service Merchant.
3. Advance Payment Service Merchant - A non-T&E Merchant participating in the Advance Payment Service, whose primary function is to provide recreational services to tourism and travel.
4. Advance Payment Service Transaction - A Transaction completed by an Advance Payment Service Merchant.
5. Car Rental Company - A merchant whose primary business is the rental of passenger vehicles.
6. Central Reservations Service - An entity that acts as a reservations resource for lodging establishments located in close proximity to each other.
7. CPS/Small Ticket - A Visa-offered service designed to meet the special Card acceptance and operating procedures of certain Merchants involving small dollar Transactions.
8. Dynamic Currency Conversion - A conversion of currency in which goods or services are normally priced into a different currency, as agreed upon by the Cardholder and Merchant.
9. Visa Easy Payment Service - A Visa service that permits certain Merchants to process specified types of small dollar Card Transactions using special procedures as outlined in the Visa Operating Rules.
10. Lodging Merchant - A merchant that sells overnight accommodations intended for a limited period of time.
11. Visa ReadyLink - A Visa processing service that enables the Authorization and Settlement, through VisaNet, of funds associated with an Issuer-approved load Transaction to a Visa Prepaid Card or to another Non-Visa Branded Account at a Prepaid Partner.
12. Priority Check-Out Service - A Visa service provided that allows

a Cardholder to authorize the use of the Cardholder's Card for payment of the total obligation to the Lodging Merchant with or without prior knowledge of the total amount, by signing a completed Priority Check-Out Agreement.

13. Priority Check-Out Agreement - A written agreement that, when bearing the Cardholder's signature, authorizes a Lodging Merchant participating in Visa's Priority Check-Out Service to deposit a Transaction without the Cardholder's signature for the total amount of the Cardholder's obligation.
14. Supermarket Incentive Program - A Visa program that permits certain supermarket merchants to qualify for reduced interchange reimbursement fees.
15. T&E Advance Deposit Service - A Visa service that a Lodging Merchant or Car Rental Company provides to a Cardholder, allowing use of a Visa Card to pay in advance deposit required to reserve accommodations or a vehicle.
16. T&E Merchant - A merchant whose primary function is the provision of travel related services.
17. Telephone Service Transaction - A Card Transaction in which a Cardholder uses a Visa Card to purchase a telephone call.
18. Visa Cash Back Service - A Visa service whereby cash is obtained from a qualified Merchant through the use of a Visa Debit Card or Visa Business Check Card and processed as a PIN-Authenticated Visa Debit Transaction.
19. Visa Fleet Card – A Visa Commercial Card used for the purchase of fuel and vehicle maintenance services at Merchants classified with Visa specified MCCs.
20. Visa Reservation Services – Visa services provided by either a (i) Lodging Merchant to guarantee accommodations or (ii) Card Rental Company to guarantee a Specialized Vehicle or Peak-Time reservation.
21. Preauthorized Health Care Transaction – A Transaction completed by a Health Care Merchant for which a Cardholder has provided written permission to the Merchant to charge the Cardholder's Visa account for services.

### Merchant Restrictions Addendum

This MERCHANT RESTRICTIONS ADDENDUM is made a part of the terms and conditions of the Agreement, and Merchant has agreed to comply with all terms and conditions of the Addendum.

1. Merchant agrees (in the case of each of the following, to the extent such agreement is not prohibited by mandatory provisions of applicable law) that Merchant will not:
  - 1.1 Refuse to honor any valid, properly presented Card of a type specified by Merchant for acceptance on the Application.
  - 1.2 Accept Cardholder payments for previous Transactions incurred at the Merchant location.
  - 1.3 Establish a minimum or maximum Transaction amount as a condition for honoring a Card, unless otherwise required or allowed by the Operating Rules.
  - 1.4 Require a Cardholder to complete a postcard or similar document that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
  - 1.5 Add any surcharge or convenience fee to Transactions if the surcharge or convenience fee is prohibited by the Operating Rules (Travelers cheque and Foreign Currency fees are not surcharges).
  - 1.6 Add any tax to Transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the Transaction amount and not collected separately.
  - 1.7 Enter any Transaction for a Transaction that was previously charged back to Merchant Bank and subsequently returned to Merchant, irrespective of Cardholder approval. Merchant

may pursue payment from the customer outside the Visa system.

- 1.8 Request or use an account number for any purpose other than as payment for its goods or services.
- 1.9 Require a Cardholder to provide fingerprints or other personal information, such as address, license, telephone number or social security number as a condition for honoring a Card, unless required to do so by the Operating Rules;
- 1.10 Submit Transactions for processing without physical possession of the Card, unless Merchant is registered with Processor or Merchant Bank, as applicable, to submit CNP Transactions and does so in accordance with the CNP ADDENDUM.
- 1.11 Require a Cardholder, as a condition of honoring a Card, to sign any statement that waives the Cardholder's rights to dispute the Transaction with the Card Issuer.
- 1.12 Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant.
- 1.13 Disburse funds in the form of cash, unless: (i) Merchant is dispersing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency. In this case, the Transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Cards, or Foreign Currency plus any commission or fee charged by the Merchant, or (ii) Merchant is participating in the Visa Cash Back Service.
- 1.14 Accept a Card for the purchase of scrip.
- 1.15 Accept a Card for a manual cash disbursement.
- 1.16 Accept a Card to collect or refinance an existing debt that has been deemed uncollectible by Merchant providing the associated goods or services.
- 1.17 Enter a Transaction that represents collection of a dishonored check.

2. Merchant must not, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Transaction information to third parties. Merchant must return this information to Provider or provide acceptable proof of the destruction of this information to Provider.

### 3. Merchant Use and Disclosure of BIN Information

- 3.1 Processor or Merchant Bank may provide BIN information or other product-identifying data to the Merchant or its Service Provider solely for purposes of identifying Visa or MasterCard Card product types at the point of sale. Processor or Merchant Bank must provide this Visa BIN information to any Merchant requesting it for the permitted purpose.
- 3.2 Processor or Merchant Bank must provide a complete list of the BINs that apply to Debit MasterCard Cards to Merchants upon any form of reasonable request.
- 3.3 A U.S. Merchant or its Service Provider that receives BIN information or other product-identifying data from Processor or Merchant Bank must not use such information for any reason other than to identify Visa or MasterCard Card product types at the point of sale and to implement acceptance practices permitted by the Visa or MasterCard Operating Rules based on such information, unless authorized by Visa or MasterCard, as applicable.
- 3.4 A U.S. Merchant or its Service Provider must not disclose BIN information or other product-identifying data to any

third party without prior written permission from Visa or MasterCard, as applicable. If Merchant provides BIN or other product data information to a Service Provider, Merchant must: (i) Ensure that the Service Provider complies with the substance of these "Merchant Use and Disclosure of BIN Information" requirements, and (ii) Include the substance of these requirements in Merchant's agreement or contract with its Service Provider.

#### 4. Submission Requirements and Restrictions

- 4.1 Merchant must submit only Transactions that directly result from Cardholder Transactions with Merchant.
- 4.2 An Internet Payment Service Provider (ISP) may deposit Charge Records on behalf of Merchant, as long as the ISP has been approved by the Merchant Bank. (i) The ISP name may appear in the clearing record only if both these conditions are met: Cardholder accesses the web site of the ISP directly, and the name of the ISP is visible to the Cardholder during the selection, order, and payment processing services. (ii) If the Cardholder accesses the Merchant's web site and is then linked to the web site of the ISP for payment, the ISP's name must appear in the clearing record in conjunction with the Merchant's name.
- 4.3 Merchant must not submit a Transaction until it does one of the following: (i) Completes the Transaction, (ii) Ships or provides the goods, (iii) Performs the purchased service, or (iv) Obtains the Cardholder's consent for a recurring Transaction.
- 4.4 Merchant must not submit a Transaction that it knows or should have known to be either fraudulent or not authorized by the Cardholder.
- 4.5 Merchant is responsible for its employees' actions while in Merchant's employ.
- 4.6 Merchant may submit a Transaction for a prepayment, within the time limits specified in section 5 below, if the Merchant advises the Cardholder of the immediate billing at the time of the Transaction, for (i) prepayment of services, excluding estimates for services to be provided, and (ii) full prepayment of custom-ordered merchandise, manufactured to the Cardholder's specifications. For prepayment of services, the Transaction date is considered to be the date of Cardholder prepayment.
- 4.7 An Advance Payment Service Merchant must only submit a Transaction representing a partial or complete advance payment, provided Merchant informs the Cardholder of the following: (i) the total price of the services or activity, (ii) the advance payment amount, (iii) the advance payment confirmation code, and (iv) the cancellation terms.
- 4.8 For more information on restrictions related to Advance Payment Service Transactions, see the Operating Rules.
- 4.9 If Merchant has multiple outlets, Merchant must ensure that Processor and Merchant Bank are able to: (i) Identify the location of each Transaction on the Charge Record, and (ii) Include this identification in the clearing record.

#### 5. Visa Submission Time Limits

- 5.1 Merchant must submit Transactions within 5 calendar days of the Transaction date, except as specified below.
- 5.2 Merchant must submit Transactions for Delayed Delivery Transactions within 5 calendar days of the date of both the deposit and final payment.
- 5.3 Merchant with multiple outlets; transportation companies subject to federal or foreign regulations; oil companies; car rental companies; hotels; motels; and restaurant chains must deposit Transactions as follows: (i) Transactions within 20 calendar days of the Transaction date; and (ii) Credit Transactions within 9 calendar days of the Transaction date, if accumulated at a central office facility.

## Discover Card Acceptance Addendum

This Discover Card Acceptance Addendum ("Discover Addendum") is made between Processor and Merchant and is made a part of the terms and conditions of the Agreement. This Addendum governs Merchant's acceptance of Discover and Diners/Carte Blanche Cards ("Discover Cards"). Capitalized terms used in this Discover Addendum and not defined herein shall have the meaning given them in the Agreement. Except as specifically modified or amended in this Discover Addendum, Merchant agrees to comply with the terms of the Agreement in accepting Discover Card Transactions. Merchant understands that a request to accept Discover Cards is subject to approval by Discover and Processor. Failure to comply with the terms of this Discover Addendum or the Agreement may result in suspension of Discover Card processing services and all other payment processing services for Merchant.

### 1. Discover Terms and Conditions

- 1.1. Merchant must comply with the terms of the Discover Operating Regulations, including the Technical Specifications and the Dispute Rules Manual. The appendices, addenda, schedules and Operating Guide that accompany or are incorporated by reference into this Discover Addendum or the Agreement, as amended from time to time, are part of the terms and conditions of this Discover Addendum, as are the Application and the Discover Operating Regulations, including the Technical Specifications and the Dispute Rules Manual, and with this Discover Addendum are individually and collectively hereinafter referred to as the "Agreement" or as the "Merchant Agreement".
- 1.2. With respect to Discover Card Transactions, Processor is responsible for providing settlement funds directly to Merchant. Settlement funds will be deposited to the Settlement Account.
- 1.3. Merchant agrees to provide Transaction data and other Merchant information as requested to Discover and any entities required by Discover, including information required for the Consortium Merchant Negative File (commonly referred to as MATCH).
- 1.4. Merchant may not use, store or disclose Transaction data or Merchant information except as permitted under the terms of the Discover Operating Regulations, including the Technical Specifications and the Dispute Rules Manual.
- 1.5. Merchant may not require a minimum or maximum purchase amount for use of Discover Card or impose any surcharge or convenience fee on Discover Card Transactions except as permitted by the Discover Operating Regulations.
- 1.6. Merchant agrees to accept Discover Card Checks consistent with card checks of other card types and similar to Merchant's policies concerning personal checks.
- 1.7. A Payment Service Provider (PSP) shall be treated as a Merchant for all purposes under the Agreement, this Discover Addendum and the Discover Operating Regulations, and shall also be subject to additional requirements applicable to PSPs as set forth in the Discover Operating Regulations.
- 1.8. In the event the Agreement is terminated for any reason, whether for cause or without cause, this Discover Addendum will immediately terminate. Either Processor or Discover may terminate this Discover Addendum at any time without cause upon thirty (30) days advance written notice and may terminate this Discover Addendum for cause in either's sole discretion, effectively immediately.
- 1.9. The Discover Operating Regulations, including the Technical Specifications and the Dispute Rules Manual

may be obtained by contacting Processor customer service.

2. Discover Program Marks. Merchant is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by Processor. Program Marks mean the brands, emblems, trademarks, and/or logos that identify Discover Cards, including, without limitation, Diners Club International Cards. Additionally, Merchant shall not use the Program Marks other than to display decals, signage, advertising, and other forms depicting the Program Marks that are provided to Merchant by Processor pursuant to the Merchant Program or otherwise approved in advance in writing by Processor. Merchant may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in advance by Processor in writing. Merchant shall not use the Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Program Marks. Merchant recognizes that it has no ownership rights in the Program Marks. Merchant shall not assign to any third party any of the rights to use the Program Marks.

3. Additions to the Application

- 3.1. As to Discover Card Transactions, the Business Checking section of the Application that references the AUTHORIZATION FOR AUTOMATIC FUNDS TRANSFER (ACH) shall include the following: Processor is authorized to initiate or transmit automatic debit and/or credit entries and/or check entries to the Settlement Account identified in the Application for all services contemplated under this Discover Addendum. Merchant agrees that Processor may charge the Settlement Account for the amount of any sales draft processed under this Agreement, or any agreement Processor may have with any Merchant Affiliate that results in a Chargeback, or for any Credit Voucher or other reimbursement or Processing Fees to which Processor may be entitled.
- 3.2. By signing the Application or accepting Discover Card with Processor as the Discover Card Transaction processor, Merchant agrees to be bound by the terms of this Discover Addendum and will not receive a separate Discover Card Terms and Conditions from Discover.

4. Additions to the Merchant Agreement

- 4.1. As to Discover Card Transactions only, Section 2.1.6 of the Merchant Agreement is amended to add the following language: (i) Processor will provide provisional credit to Merchant for each valid Discover Card Transaction which Merchant submits to Processor by crediting Merchant's Settlement Account, provided Processor has received settlement for the valid Transaction through the interchange procedures specified by Discover. Processor is not obligated to provide provisional credit to Merchant for Transactions submitted that are not valid Transactions and may suspend or discontinue any provisional credit in Processor's sole and absolute discretion, including for any reason that would justify termination of this Agreement. Each provisional credit from Processor to Merchant will be subject to Adjustment, including revocation, upon Processor's further review and verification. Provisional credit to Merchant for a Transaction disputed by a Cardholder for any reason is not final. (ii) Processor may deduct from any payment to Merchant the amount of any Credit Voucher processed for Merchant, any Chargeback to Merchant, any amount to be deposited in the Reserve Account and any Processing Fees and Discover fines, assessments or charges due from Merchant. Merchant must immediately pay Processor the amount by which a Credit Voucher processed on any day exceeds valid Transaction submitted on that day. Without limiting Processor's remedies, Processor may obtain the amount due by deducting it from the Settlement Account, Reserve Account or other accounts of or funds due Merchant. (iii)

Merchant acknowledges that all payments and credits provided to Merchant are provisional and subject to suspension, to Chargebacks and to Adjustments in accordance with this Discover Addendum, the Agreement and the Discover Operating Regulations, including the Technical Specifications and the Dispute Rules Manual.

- 4.2. As a condition to Processor providing Discover Card processing services under this Discover Addendum, Merchant may be required to provide additional collateral security, beyond the amounts provided for under the Agreement, for Merchants obligations under this Discover Addendum. The additional collateral security shall be of a kind, and in amounts, satisfactory to Processor and may include delaying payments to Merchant on Discover Card Transaction settlements.

5. Discover Pricing. Merchant will pay the Processing Fees specified for Discover Card Transactions in the FEE SCHEDULE of the Application. All other terms and conditions of the Agreement apply to Processing Fees payable by Merchant for Discover Card Transactions.

### Visa Account Updater Addendum

This Visa Account Updater ("VAU") Addendum is made between Merchant and Processor and is made a part of the terms and conditions of the Agreement. Merchant understands that a request for VAU service is subject to approval by Visa and the Processor. Merchant signature on the Application signifies acceptance of the terms of this Visa Account Updater Addendum, including VAU pricing, in addition to the terms of the Agreement. Failure to comply with the terms of this Visa Account Updater Addendum or the Agreement may result in suspension of VAU service and all other payment processing services for Merchant. The VAU program enables U.S. card issuers to supply the most current Cardholder account information through U.S. acquirers to U.S. acquired merchants whose businesses require electronic maintenance of customer account data. Participating merchants use updated Cardholder account information to support subscription services, recurring payments, and other account-on-file functions, such as T&E "gold", preferred check-in programs, internet and registered user "one-click" capabilities. VAU service provides an automated, dedicated, secure clearinghouse to make changes to limited Cardholder account information (such as account number, expiration date, account closure or other changes) available in a timely, efficient and cost-effective manner.

1. Merchant Security Requirements
  - 1.1 Merchant must comply with all applicable laws, such as data protection laws (including gathering specific consent of Cardholders for processing and transfer of their personal data, if applicable).
  - 1.2 Merchant must ensure that Cardholder information is securely stored, and that such information is available only to those employees of Merchant who have a legitimate business need and authorization to access the information.
  - 1.3 Merchant must ensure that employees who have access to Cardholder information are aware of, and familiar with Merchant's policies as they relate to the use of such information (and related personal data).
  - 1.4 Merchant must delete all Visa Account Updater files with Cardholder information after use to minimize the likelihood of improper access to, or use of, the data.
  - 1.5 Merchant must be in compliance with Payment Card Industry Data Security Standards at all times.
2. Merchant Participation Requirements. Merchant must continue to meet Visa Merchant Participation Requirements as established by Visa from time to time including:
  - 2.1 Merchant must be a U.S. acquired merchant.
  - 2.2 Merchant must not have been disqualified from participating in the Visa system.



- 2.3 Merchant must be in compliance with Visa Operating Rules.
- 2.4 Merchant must have a valid business need to receive updated account information, including but not limited to: (i) Subscription services (ii) "Express checkout services" (iii) Membership (club) services (iv) Recurring payment services
- 2.5 Merchant must meet the following risk management criteria: (i) Must not be engaged in business categorized by the following Merchant Category Codes: 5962, 5966, 5967, and 7995. (ii) Must not be a merchant whose sales Transactions are predominantly Quasi-Cash, Account Funding, or any combination thereof.
- 2.6 Merchant must comply with all applicable laws and regulations.
- 2.7 Merchant must be approved by Visa U.S.A. for participation.
- 2.8 Merchant will promptly notify the Processor of any change in Merchant's Participation Requirements.
3. VAU Merchant Inquiry Records
  - 3.1 Merchant must be registered with Visa for the Visa Account Updater program before merchant can submit account inquiries.
  - 3.2 Merchant must request a VAU update through the Processor for every participating Visa account in merchant's customer VAU qualified database at least once every one hundred eighty (180) calendar days.
  - 3.3 Merchant must submit inquiries only for those accounts with which the merchant has an ongoing customer relationship as defined by Visa.
  - 3.4 Merchant may not subsequently inquire on accounts that have previously returned a response of "Closed Account".
  - 3.5 Merchant may not submit VAU inquiries on behalf of any other entity.
  - 3.6 Merchant must submit account inquiries in the Processor-specified file format and manner.
4. VAU Merchant Response Records
  - 4.1 Merchant must update its customer account database within five (5) business days of a VAU update from Processor
  - 4.2 Merchant must ensure that information received from VAU is properly, completely, and accurately incorporated into the merchant's customer database for utilization in future Visa Transactions.
5. Error Resolution
  - 5.1 Merchant must correct erroneous account information within five (5) business days of receipt of an error notification from the Processor or Visa.
  - 5.2 Merchant must correct operational errors within five (5) business days of receipt of an error notification from the Processor or Visa.
6. Issuer Exclusions: Merchant understands that an issuer may request that VAU withhold account updates from one or more selected merchants.
7. VAU Pricing:
  - 7.1 Match Fees: A fee of \$0.12 is assessed by the Processor on a per match basis, with a match considered to be any of the following responses: (i) New account number provided (A) (ii) New expiration date provided (E) (iii) Closed account advice provided (C) (iv) Contact Cardholder advice provided (Q).
  - 7.2 Fee Changes: Should Visa change the fee structure for VAU, Processor will make similar changes to the merchant fee structure.

## MasterCard Account Billing Updater Addendum

This MasterCard Account Billing Updater ("ABU") Addendum is made between Merchant and Processor and is made a part of the terms and conditions of the Agreement. Merchant understands that a request for ABU service is subject to approval by MasterCard and the Processor. Merchant signature on the Application signifies acceptance of the terms of this MasterCard Account Billing Updater Addendum, including ABU pricing, in addition to the terms of the Agreement. Failure to comply with the terms of this MasterCard Account Billing Updater Addendum or the Agreement may result in suspension of ABU service and all other payment processing services for Merchant. The MasterCard Account Billing Updater program enables U.S. card issuers to supply the most current Cardholder account information through U.S. acquirers to U.S. acquired merchants whose businesses require electronic maintenance of customer account data. Participating merchants use updated Cardholder account information to support subscription services, recurring payments, and other account-on-file functions. ABU service provides an automated, dedicated, secure clearinghouse to make changes to limited Cardholder account information (such as account number, expiration date, account closure or other changes) available in a timely, efficient and cost-effective manner.

1. Merchant Security Requirements
  - 1.1 Merchant must comply with all applicable laws, such as data protection laws (including gathering specific consent of Cardholders for processing and transfer of their personal data, if applicable).
  - 1.2 Merchant must ensure that Cardholder information is securely stored, and that such information is available only to those employees of Merchant who have a legitimate business need and authorization to access the information.
  - 1.3 Merchant must ensure that employees who have access to Cardholder information are aware of, and familiar with Merchant's policies as they relate to the use of such information (and related personal data).
  - 1.4 Merchant must delete all Account Billing Updater files with Cardholder information after use to minimize the likelihood of improper access to, or use of, the data.
  - 1.5 Merchant must be in compliance with Payment Card Industry Data Security Standards at all times.
2. Merchant Participation Requirements. Merchant established by MasterCard from time to time, including:
  - 2.1 Merchant must be a U.S. acquired merchant.
  - 2.2 Merchant must not have been disqualified from participating in the MasterCard system.
  - 2.3 Merchant must be in compliance with MasterCard Operating Regulations.
  - 2.4 Merchant must have a valid business need to receive updated account information.
  - 2.5 Merchant must comply with all applicable laws and regulations.
  - 2.6 Merchant must be approved by MasterCard for participation.
  - 2.7 Merchant will promptly notify Processor of any change in Merchant's Participation Requirements.
3. ABU Merchant Inquiry Records
  - 3.1 Merchant must be registered with MasterCard for the MasterCard Billing Account Updater program before merchant can submit account inquiries.
  - 3.2 The MasterCard Automated Billing Updater application will identify account change information only for MasterCard accounts

- 3.3 Merchant must submit account inquiries in the Processor-specified file format and manner.
  - 3.4 Merchant must submit inquiries only for those accounts with which the merchant has an ongoing customer relationship.
  - 3.5 Merchant may not subsequently inquire on accounts that have previously returned a response of "Closed Account".
  - 3.6 At this time, only MasterCard-branded card programs are included in this service. Therefore, no account number should be longer than 19 digits. All account numbers should begin within the range of 51 through 55.
  - 3.7 Merchant may not submit ABU inquiries on behalf of any other entity.
4. ABU Merchant Response Records. Merchant will update Cardholder account data within ten (10) days of receipt.
  5. ABU Pricing
    - 5.1 Match Fees: A fee of \$0.12 is assessed by Processor on a per match basis, with a match considered to be any of the following responses: (i) Account Number Changes (includes Issuer Reason Codes R, B, and P), (ii) Expiration Date Changes (Issuer Reason Code E), or (iii) Closed Notifications (Issuer Reason Code C).
    - 5.2 Enrollment Fee: An enrollment fee of \$50 is assessed by MasterCard on a per merchant number basis.
    - 5.3 Changes: Should MasterCard change the fee structure for ABU, the Processor will make similar changes to the merchant fee structure.