

## Merchant Processing Agreement Terms and Conditions

This Merchant Processing Agreement is entered into by and between National Processing Company, a Nebraska corporation, located at 5100 Interchange Way, Louisville KY 40229 (hereinafter "Processor"), Member Bank (as defined below), and the legal entity or sole proprietorship (hereinafter "Merchant") identified in and having its principal office at the address (hereinafter "Merchant Address") specified in the Merchant Application (aka "Application") submitted to/on this website/portal (hereinafter "Site"). The Merchant Processing Agreement, together with any and all addenda, schedules, exhibits, policies, and other documents that are made a part of the Merchant Processing Agreement by attachment, incorporation by reference or otherwise, (including without limitation, the Merchant Application, Bank Rules and the Operating Regulations) are collectively referred to in these Terms and Conditions as "the Agreement" or "this Agreement." This Agreement is being executed and agreed to by Merchant pursuant to the E-Sign Notice (referred to in Section 18(C) and as made available on the Site. This Agreement shall be binding upon Merchant and Bank, respectively, in accordance with Section 6 below. As an integral part of the Agreement, Bank and Merchant hereby agree as follows:

The Processor and Member Bank are jointly or individually assert or exercise any rights or remedies provided to Processor and/or Member Bank hereunder and any obligations of Merchant to Processor shall also be deemed obligations of Merchant to Member Bank. Processor and Member Bank reserve the right to allocate duties and obligations assigned hereunder to Processor between them, as they deem appropriate in their sole discretion. "Member Bank" shall mean a member of VISA®, MasterCard® and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement, and Member Bank has certain obligations to Merchant pursuant to the Operating Regulations (defined below). In the event of any conflict between this Agreement and the Operating Regulations on the subject of Member Bank's obligations, the Operating Regulations shall control. This Agreement shall be deemed accepted by Member Bank as of the date the first transaction is acquired under this Agreement. As of the commencement of this Agreement, Member Bank shall be Fifth Third Bank, an Ohio Banking Corporation, located at 38 Fountain Square Plaza, Cincinnati, OH 45263. The Member Bank may delegate certain or all of its duties to an affiliate of the Member Bank at any time, without notice to Merchant. The Member Bank may be changed, and its rights and obligations assigned to another party by Processor at any time without notice to Merchant. For purposes of this Agreement, "Service" or "Services" shall mean any and all services described herein, and provided by Processor and/or Member Bank pursuant to this Agreement.

**IRS W-9 Certification:** As a substitute Form IRS W-9 and on behalf of the business ("payee" as defined by the Internal Revenue Service), I certify under penalties of perjury that: (a) the Federal tax identification number (TIN) shown on the Merchant Application is the correct TIN; (b) I am not subject to backup withholding due to a failure to report all interest or dividend income; and (c) I am a U.S. citizen or other U.S. person. The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

**USA PATRIOT ACT Disclosure:** To help the government fight the funding of terrorism and money laundering activities, federal law (including but not limited to the PATRIOT Act) requires all financial institutions (including Member Bank) to obtain, verify and record information that identifies each individual or business that opens an account, including any and all information provided by Merchant upon submission of the Merchant Application.

**Guaranty Agreement.** In exchange for Processor and Member Bank's acceptance of this Merchant Processing Agreement, by checking the "I AGREE" box below and clicking the "SUBMIT" button on the Site page provided, I acknowledge, as an officer, owner, and/or principal of Merchant, that I am signing this Merchant Processing Agreement as a "Guarantor" of such Merchant, and, as Guarantor, hereby: (i) accept and agree to be bound by the Continuing Unlimited Guaranty provisions contained in Sections 10 through 6 of the Merchant Processing Agreement Terms and Conditions, and (ii) acknowledge and confirm that, prior to signing, I received and read those Continuing Unlimited Guaranty provisions. As Guarantor I hereby individually authorize Processor, Member Bank, and/or either of their representatives to conduct an initial and ongoing comprehensive credit investigation of me by utilizing a third-party credit-reporting agency.

By checking the "I AGREE" box or "I APPROVE" box and the "SUBMIT" button on the Site page provided, I represent, acknowledge and agree, on behalf of and as a duly authorized representative of Merchant:

- That I am an officer, owner, or principal of the business submitting the Merchant Application;
- That all information in the Merchant Application is true and accurate;
- That any and all information provided in the Merchant Application will be used to perform an initial and ongoing credit inquiry and investigation of the business submitting the Merchant Application including through the use of a third-party credit reporting agency/bureau;
- That the submission of the Merchant Application and this Bank Card Merchant Agreement is not a guaranty of that the application will be approved or that services will be provided unless and until the Merchant Application is completely approved;
- To the terms of the E-Sign Notice (E-Sign Consent To Use Electronic Records And Signatures) referred to herein; and,
- To the terms and conditions of this Bank Card Merchant Agreement.

Please click the "SUBMIT" button on the Site page to submit the Merchant Application and this Bank Card Merchant Agreement.

Processor is an agent of Member Bank in connection with Visa and MasterCard transactions. Merchant acknowledges that Processor may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable Association Operating Regulations. ISO/MSP is an independent contractor and not an agent of Processor. ISO/MSP has no authority to execute the Agreement on Processor's or Member Bank's behalf or to alter the terms hereof without Processor's prior written approval. Approval of the Application does not constitute a guarantee to process any transactions on Merchant's behalf. This Agreement is binding on Merchant as of the earlier of the, the date of the first electronic transaction processed under this Agreement, or the date Processor approves the Merchant Application. If Processor has approved the Merchant Application in accordance with the preceding sentence, the effective date of the Agreement will be the date that Merchant signed the Merchant Application (the "Effective Date").

The Merchant Processing Agreement, together with the application and any and all addenda, schedules, exhibits and other documents that are made a part of the Merchant Processing Agreement by attachment, incorporation by reference or otherwise, (including without limitation, the Bank Rules and the Operating Regulations) are collectively referred to in these Terms and Conditions as "the Agreement" or "this Agreement." This Agreement, constitutes the entire agreement between the parties with regard to the services provided by Processor under this Agreement, and all prior or other agreements or representations, written or oral, are merged in and superseded by this Agreement. As an integral part of the Agreement, Processor and Merchant hereby agree as follows:

A. Processor participates in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S.A., Inc. ("VISA"), DFS Services LLC d/b/a Discover Network ("Discover") (including any card issuer of payment cards processed and settled through the Discover network, which may include Japanese Credit Bureau ("JCB"), China Union Pay ("CUP") and Diners Club International ("DCI")), and

American Express Travel Related Services Company, Inc. ("American Express") and certain similar entities (collectively, "Associations") including but not limited to those appearing on the Application and/or the pricing section of this Agreement, and any other network than those defined above, which is supported by Processor, including, without limitation, debit networks (collectively, "Other Networks") that enable holders of Associations and Other Networks cards (collectively "Cards") to purchase goods and services from selected merchants via use of their Cards. Discover Cards include any valid payment card in the form issued under license from Discover and any other valid payment card processed and settled through the Discover network, which may include JCB, CUP and DCI. Notwithstanding the foregoing, if Discover classifies Merchant as a retained Discover Merchant, Processor will not process or settle Merchant's Discover cards, Processor will have no liability to Merchant for the processing and settlement of Discover cards, and Discover cards will not be included in the definition of Cards. Further, if Merchant is not placed in the American Express or ESA program or if at any time American Express declines Merchant for participation in the American Express or ESA program, Processor will not process or settle Merchant's American Express cards, Processor will have no liability to Merchant for the processing and/or settlement of American Express cards, and American Express cards will not be included in the definition of Cards.

### B. American Express Program.

Capitalized terms in this Section B, if not otherwise defined herein, are defined in the Merchant Requirements. The following will only apply to Merchant's participation in the American Express Program.

i. Merchant hereby authorizes Processor to submit Transactions to, and receive settlement from, American Express on behalf of the Merchant. If Merchant is placed in the American Express Program, Merchant shall be responsible for complying with the provisions set forth in Exhibit D hereto incorporated into this

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Section B by reference and the Merchant Requirements (located at [www.vantiv.com/amexmerchantrequirements](http://www.vantiv.com/amexmerchantrequirements))

ii. Processor may disclose Transaction Data, Merchant Data, and other information about the Merchant to American Express; and American Express may use such information (i) to perform its responsibilities in connection with the Program, (ii) to promote the American Express Network, (iii) to perform analytics and create reports, and (iv) for any other lawful business purposes, including but not limited to marketing purposes within the parameters of the Agreement. American Express may use the information from the Agreement at the time of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.

iii. Merchant may be converted from the American Express Program to a direct Card acceptance relationship with American Express if and when Merchant has either (i) greater than \$1,000,000 in Charge Volume in a rolling twelve (12) month prior or (ii) greater than \$1,000,000 in Charge Volume in any three (3) consecutive months (hereinafter "**High CV Merchant**"). Upon conversion, (i) the Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by the Merchant for Card acceptance.

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

v. Third-party beneficiary rights may be conferred to American Express, but not obligations of the Agreement, providing American Express the ability to enforce the terms of the Agreement against the Merchant in association with the American Express Program only.

vi. Merchant may elect to opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept other payment products by notifying Processor.

vii. Processor may terminate the Merchant's right to accept American Express Cards if it breaches any of the provisions in this Section C or Exhibit D.

viii. Processor has the right to immediately terminate a Merchant from the American Express Program for cause, fraudulent or other activity, or upon American Express' request.

ix. Merchant may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless Chargeback has been exercised, the Merchant has fully paid for such Charge, and it otherwise has the right to do so.

x. Upon termination of the Agreement or termination of Merchant's participation in the Program, Merchant must remove any and all American Express Licensed Marks from the Merchant's Website and wherever else the American Express Marks are displayed by Merchant.

xi. Merchant wishes to participate in the Associations and Other Networks systems in connection with the provision of goods and services to any person authorized to use the Cards or the accounts established in connection with the Cards (collectively "**Cardholders**" or individually "**Cardholder**") for the sale of goods and services through the use of Cards.

1. **Rules and Regulations.** Merchant acknowledges receipt and review of the Bank Card Merchant Rules and Regulations ("**Bank Rules**") that are incorporated into this Agreement by reference. Merchant agrees to fully comply with all of the terms and conditions in the then-current Bank Rules as changed or updated by Processor from time to time at its sole discretion. Merchant agrees to participate in the Associations and Other Networks in compliance with, and subject to, the by-laws, operating regulations and/or all other rules, policies and procedures of such organizations (collectively "**Operating Regulations**"). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, and/or the Other Networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations and/or Other Networks. The Operating Regulations may prohibit Processor from providing Merchant with a copy of the Operating Regulations and such prohibition shall not alter or limit Merchant's obligation to comply with the Operating Regulations. Merchant may review the Visa and MasterCard websites for a copy of the Visa and MasterCard Operating Regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/>. Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with all provisions of the Operating Regulations, regardless of whether Merchant has possession or knowledge of those provisions. Merchant shall take all steps necessary to review and obtain all publicly available information that relates to or references the Operating Regulations including, without limitation, all information

available on the Networks' internet sites, and to educate itself and its employees on all provisions thereof. Merchant acknowledges responsibility for any liability resulting from its decision not to participate in optional Association programs, including but not limited to any increased Data Incident liability resulting from its decision not to participate in an Association EMV program. In the event Merchant chooses to participate in an optional Association program, including but not limited to an EMV program, Merchant acknowledges and agrees that it shall be responsible for (i) ensuring compliance with any applicable program requirements and/or Operating Regulations applicable to such program, including but not limited to making any updates to its point of sale equipment and (ii) any cost associated with its participation in the applicable program, including any costs assessed to Merchant by Processor. In the event of a conflict between the Bank Rules and this Agreement, the Bank Rules shall prevail. For purposes of this Agreement, "**Service**" or "**Services**" shall mean any and all services described herein, and/or provided by Processor pursuant to this Agreement. Other defined terms and Services applicable to this Agreement may be contained in addenda, exhibits, schedules, or amendments (collectively, "**General Addenda**") to this Agreement, as may be modified from time to time by Processor. The parties agree that such General Addenda shall be incorporated into and made part of this Agreement.

### 2. **Acceptance of Cards.**

A. If appropriately indicated herein, Merchant may elect to accept only certain Visa and MasterCard card types as indicated on the Application, or via later notification ("**Limited Acceptance**"). Processor has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to Limited Acceptance. Processor's obligations do not include policing card types at the point of sale. Merchant will be solely responsible for the implementation of its decision for Limited Acceptance including, but not limited to, policing the card type(s) of transactions at the point of sale submitted for processing by Processor, responsibility for any Visa or MasterCard charges assessed as a result of Merchant's Limited Acceptance, and any and all costs incurred by Processor as a result of Merchant's election. Should Merchant submit a transaction for processing for a card type it has indicated it does not wish to accept, Processor may process that transaction and Merchant will pay the applicable fees, charges, and assessments associated with that transaction. For Merchant's convenience, a general description of Visa and MasterCard card types are: (i) "Debit Card" – Visa or MasterCard cards issued by a U.S. bank and/or a non-U.S. bank, or a Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, or consumer check cards; (ii) "Other Card" – all Visa and MasterCard cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and Visa and MasterCard business debit cards. These acceptance options apply only to U.S. issued Cards. The Visa and MasterCard Operating Regulations require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue to accept both debit and credit card products issued by non-U.S. members.

B. In the event Processor for whatever reason is unable to obtain, or due to system delays chooses not to wait to obtain, authorization from VISA, MasterCard, Discover, American Express or Other Network, Processor may at its option "stand-in" for such entities and authorize the sales transaction based on criteria established by Processor, and Merchant remains responsible for such sales transaction in accordance with this Agreement. Merchant shall note each authorization obtained in the appropriate place on the sales record.

### 3. **Processor's Responsibilities.**

A. Processor will initiate payment to Merchant of the amount of each Card sales transaction acquired and accepted hereunder after Processor receives payment for such transaction. Notwithstanding anything herein to the contrary, any such payment shall be subject to the terms and conditions of this Agreement, the Bank Rules, the Operating Regulations, and the Laws. Unless otherwise agreed to in writing by Processor, Merchant shall electronically deliver to Processor, in a format acceptable to Processor, all sales records and credit records within two (2) business days after the transaction date for such record (or such shorter period as required by the Associations or Other Networks), except (i) in the case of a delayed merchandise delivery, when the sales transaction record shall be delivered within two (2) business days of the merchandise delivery or (ii) as specified otherwise in the Bank Rules. Merchant agrees that it shall deliver sales records to Processor at least once every business day. The preparation and delivery to Processor by Merchant of sales records constitutes an endorsement by Merchant to Processor of each sales transaction evidenced thereby, and Merchant authorizes Processor or its representative to place Merchant's endorsement on any such sales transaction at any time. Processor may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Merchant pursuant to this Agreement, if it had acquired the sales transaction or claim. Merchant waives notice of dispute related to any individual sales transaction. The Services shall be provided in accordance with Processor's then current systems, standards, and procedures and Processor shall not be required to perform any special

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programming, to provide any special hardware or software, or to implement any other system, program, or procedure for Merchant.

B. Processor may honor the request(s) or instruction(s) of any qualified representative, as determined by Processor, of Merchant or its Agent at any time during the term of this Agreement, and Processor may act in reliance upon such request(s) or instruction(s) in connection with Processor's provision of the Services hereunder. Further, in the event Processor receives returned mail intended for Merchant, Processor may follow its standard operating procedures with respect to procuring a replacement address, which will then be deemed the official address for notices.

C. **Provisional Credit.** Notwithstanding the above, under no circumstance will Processor be responsible for processing credits or adjustments related to sales transactions not originally processed by Processor. All sales transactions and deposits are subject to audit and final checking by Processor, and may be withheld and adjusted for inaccuracies. Processor may, upon receipt of verbal or written instructions, from any Association and/or Other Network to which Processor is providing access hereunder, immediately cease to provide to Merchant, including Merchant's clients, access to such Association and/or Other Network. Processor shall use reasonable efforts to promptly notify Merchant of such interruption in Association and/or Other Network access.

D. Processor may report information about Merchant's account to credit bureaus. Late payments, missed payments, or other defaults on Merchant's account may be reflected in Merchant's credit report.

E. **Breach or Suspicious Activity.** If Merchant breaches this Agreement or if Processor, in its sole discretion, identifies suspicious or irregular transaction, settlement or banking activity, Processor may refuse to process Card transactions and/or may avail itself to all contractual remedies provided in this Agreement, including but not limited to (i) termination and/or (ii) the retention of such transactions or other funds in the Reserve Account, pending the cure of such breach or resolution of such activity to Processor's satisfaction.

#### 4. **Certain Merchant Responsibilities.**

A. Merchant agrees to reacquire and pay Processor the amount of any sales transaction, and Processor shall have the right at any time to charge Merchant's Designated Account therefore, without notice, in any appropriate situation, including but not limited to those relating to such sales transaction where: (i) merchandise is returned, whether or not a credit voucher is delivered to Processor; or (ii) any sales transaction without a valid authorization response; or (iii) the sales transaction is alleged to have been drawn, accepted, or endorsed improperly or without Cardholder's authority; or (iv) the sales transaction record is illegible; or (v) the Cardholder disputes the sale, quality, or delivery of merchandise or the performance or quality of services covered by the sales transaction; or (vi) the sales transaction was drawn by, or depository credit given to, Merchant in circumstances constituting a breach of any term, condition, representation, warranty, or duty of Merchant hereunder; or (vii) the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local, or otherwise; or (viii) Processor has not received payment for any sales transaction, notwithstanding Processor's prior payment to Merchant for such sales transaction; or (ix) there is an alleged failure of Merchant to comply with the Operating Regulations, the Bank Rules, or the Laws; or (x) any other Association or Other Network action including but not limited to chargebacks, compliance cases, or otherwise; (xi) as the result of any claims, damages, or losses incurred by Processor as a result of claims asserted by Card issuers. Without limiting the foregoing, Merchant is fully liable to Processor for all transactions returned to Processor for any reason, otherwise known as "chargebacks" (or, for PIN debit Card transactions, "reversals"). Merchant will pay Processor on demand the value of all chargebacks/reversals. It is Merchant's obligation to monitor any and all chargeback-related notices and reports provided by Processor, including but not limited to reports or notices provided via Processor's online reporting tool and/or to Merchant's Designated Account. Merchant's failure to respond to a chargeback within the applicable deadline may forfeit Merchant's chargeback rights. Merchant authorizes Processor to offset from incoming transactions or to debit the Designated Account, the Reserve Account, or any other account of Merchant the amount of all chargebacks/reversals. Merchant will fully cooperate with Processor in complying with the Rules regarding chargebacks/reversals. Any operational and/or other Services performed on behalf of Merchant, including but not limited to, responses to compliance cases, transaction stand-in, and retrieval, etc. shall in no way affect Merchant's obligations and liability in this Agreement including those in the foregoing sentences. Merchant is solely responsible for the defense of any allegation of non-compliance with the Operating Regulations made by any Association, any Card issuer, or any Other Network and Processor shall have no duty to Merchant in accordance therewith.

B. Merchant acknowledges and agrees that all information provided in the Agreement is true and correct and that the name and tax identification number (TIN) on the Application matches the name and TIN used to file Merchant's tax returns. Merchant shall immediately provide Processor with any updates to the name or TIN

used to file Merchant's tax returns. Merchant also acknowledges that Processor may be required to report certain information regarding Merchant, including, but not limited to, Merchant's TIN, entity name, DBA, processing volume, and principal's social security number to governmental agencies such as the Internal Revenue Service (IRS). Merchant agrees to fulfill any request from Processor for additional information which may be required or requested by any government agency. Notwithstanding the foregoing, Merchant understands that Processor may be required to withhold processing funds and forward such funds to the IRS as a result of incorrect information provided by Merchant or at the direction of a government agency or as otherwise required by the Laws. Merchant expressly agrees and releases Processor from any and all liability hereunder resulting from incorrect information being submitted to any government agency and/or the withholding of funds. Merchant is responsible for any fines or penalties which may be assessed to Merchant and/or Processor.

C. Merchant shall not sell, purchase, provide, or exchange Cardholder name, address, account number, or other information to any third party other than to Processor, Associations or Other Networks for the purpose of completing a sales transaction. Without limiting the foregoing, Merchant shall not provide any such information to its Agent.

D. Each day Merchant will balance and reconcile the Designated Account and Reserve Account to ensure that all funds due Merchant have been deposited into the Designated Account, and to ensure that no funds have been improperly withheld or withdrawn from the Designated Account. Further, Merchant must review all reports, notices, and invoices prepared by Processor or its agent and made available to Merchant, including but not limited to reports, notices, and invoices provided via Processor's online reporting tool. Processor reserves the right to send some or all of the reports and/or invoices via electronic transmission (e.g., via e-mail) which Processor may change from time to time without notice. Further, Merchant agrees to verify Merchant has received all statements and promptly examine all statements relating to the Designated Account and to immediately notify Processor in writing of any errors. Merchant's failure to reject any report, notice, or invoice in writing within thirty (30) business days from the date the report, notice, or invoice is made available to Merchant shall constitute Merchant's acceptance of the same. If Merchant believes that 1) Processor has failed in any way to provide the Services, 2) any error exists in a report provided to Merchant, or 3) any error exists in an amount billed or paid to Merchant, Merchant agrees to provide Processor with written notice, specifically detailing any alleged failure, within thirty (30) days of the date on which the alleged failure or error first occurred; failure to so provide notice shall be deemed an acceptance by Merchant and a waiver of any and all rights to dispute such failure or error. Merchant may not make any claim against Processor for any loss or expense relating to any asserted error for 60 days immediately following Processor's receipt of Merchant's written notice. During that 60 day period, Processor will be entitled to investigate the asserted error. If Merchant notify Processor that a Card sales batch has not processed, Processor may, at its option, attempt to re-present such missing Card batches dated during the 90 day period immediately preceding the date Processor receives Merchant's notice. Processor shall bear no liability and have no obligations to correct any errors resulting from Merchant's failure to comply with the duties and obligations of the preceding sentence.

E. Merchant shall provide Processor with audited quarterly and annual financial statements for Merchant's business prepared according to generally accepted accounting principles consistently applied and such other financial information as Processor may request as soon as commercially practicable but in no event later than fifteen (15) business days following any request by Processor.

F. Merchant agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws") and to assist Processor in complying in a complete and timely manner with all Laws and Operating Regulations applicable to any Card transaction or this Agreement. The Operating Regulations are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. **Merchant agrees that, under no circumstance, will Merchant store Cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.** Merchant will execute and deliver to Processor all instruments Processor deems necessary pursuant to Merchant's obligations hereunder. Merchant will be solely responsible for the quality, accuracy, and adequacy of all transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the quality and delivery of such data. Merchant warrants to Processor that it has implemented and will maintain secure systems for transmitting information to Processor. Merchant shall allow the auditors (third-party or internal) of Processor, any Association, or any Other Network to review the documents, files, records, procedures, systems, controls, equipment, and physical assets related to the transactions contemplated herein at any reasonable time and upon reasonable notice to Merchant. Merchant will assist such auditors as may be necessary for them to complete their audit.

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G. Unless otherwise agreed in writing by Processor, all sales transaction, settlement and other data and information used in connection with the Services shall be provided to Processor in Processor's then current data formats and by means of Processor's then current telecommunications configurations and protocols. Merchant shall comply with all time deadlines, equipment and software maintenance and upgrading requirements reasonably imposed on Merchant by Processor from time to time.

H. Merchant may elect to use a third party as Merchant's agent ("**Agent**") to perform some of Merchant's obligations under this Agreement. Agents include, but are not limited to, Merchant's software providers and/or equipment providers. Merchant shall bear all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of an Agent for a particular purpose and for determining the extent of an Agent's compliance with the Bank Rules, the Operating Regulations, and the Laws. Processor may approve or deny the use of an Agent in Processor's sole discretion and at any time. Merchant acknowledges and agrees that Merchant shall cause its Agent to complete any steps or certifications required by any Association (e.g., registrations, PABP, PCI, audits, etc.) If an Agent is designated a service provider under any applicable Operating Regulation, Merchant shall cause such Agent to cooperate with Processor in completing any due diligence and/or steps required for registration and/or certification. Merchant is solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. Merchant expressly agrees that Processor shall in no event be liable to Merchant or any third party for any actions or inactions of any Agent used by Merchant (even if such Agent is introduced, recommended, or resold by Processor), and Merchant hereby expressly assumes all such liability.

I. The use of any software application that has connectivity to the Internet or any external network poses an increased risk, and Merchant assumes all liability for such increased risks. If Merchant utilizes software or hardware with a connection to the Internet or an external network and such hardware or software interacts in any capacity with the provision of services contemplated pursuant to this Agreement, Merchant is solely liable without limitation for any and all consequences of such interaction.

J. Merchant may present Card transactions to Processor only for the activities and in the volumes described on the Merchant Application, including the percentage of mail order/telephone order/Internet order transactions. Merchant agrees to provide Processor with at least thirty (30) days prior written notice of Merchant's intent to change its business form or entity in any manner (e.g., a change from a sole proprietorship to a corporation), and/or of Merchant's intent to sell its stock or assets to another entity, and/or any changes to the information on the Merchant Application. Merchant will also notify Processor of any judgment, writ, warrant of attachment, execution or levy against any substantial part (valued at 25% or more) of Merchant's total assets not later than three (3) days after Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy. In addition, should Merchant, at any time after the Effective Date, wish to change or add additional locations for the receipt of the services contemplated herein, Merchant shall do so according to Processor's then-current standards and procedures. Merchant's receipt of any services hereunder after such change or addition shall be deemed a warranty and representation as to the quality and accuracy of such change or addition and Merchant agrees that Merchant will be obligated for such change or addition thereafter pursuant to the terms and conditions of this Agreement. Any Card transaction volume exceeding the volume indicated on the Merchant Application by more than twenty five percent (25%) must be approved in writing by Processor's authorized officer before Merchant submits Card transactions. Any variance in the stated average ticket size and monthly volume could result in increased fees, delayed and/or withheld settlement of funds, or termination of this Agreement. Merchant is liable to Processor for all losses and expenses incurred by Processor arising out of Merchant's failure to report changes to Processor. Processor may immediately terminate this Agreement upon notification by Merchant of a change to the information in the Merchant Application. Processor retains the right to review Merchant's processing activity for conformance to the information provided and to re-price or terminate any services provided to reflect any nonconformance.

K. **Wireless Service Acknowledgement.** Processor is not responsible for verifying wireless service coverage for Merchant, and Processor will not be held responsible if Merchant loses coverage in any particular area or if Merchant's wireless coverage is terminated. By selecting wireless service and by executing this Agreement, Merchant acknowledges and understand that (1) wireless coverage is not guaranteed, (2) if the wireless service selected is lost in Merchant's respective area, the equipment will not operate with another wireless carrier, and (3) Processor has no control over the wireless service providers and the business decisions made by them. Merchant further acknowledges that Processor would not be liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

L. **Optional Services.** From time to time and at Processor's sole discretion, Processor may offer and Merchant may decide to utilize certain products and services provided by a third party, including but not limited to POS services ("**Optional Services**"). In such circumstances, Merchant acknowledges and agrees that the use of an Optional Service is at Merchant's own risk and that Processor shall have no liability whatsoever related to or arising out of Merchant's election to use an Optional Service. Merchant acknowledges and agrees that all Optional Services are supplied and supported solely by the applicable third party provider ("**Provider**") and not Processor. Processor is not a party to Merchant's contracts with Providers and Processor has no control over Merchant's contractual relationship with those companies. Providers will provide their own statements and Merchant is responsible for notifying them of any discrepancies or errors. Processor is not responsible or liable for any errors made in connection with establishing and maintaining such account relationships with Providers. Merchant is responsible for ensuring that all account numbers are correct. Merchant must notify the Providers of any changes, including but not limited to changes in ACH information, address and account information. Without limiting the generality of the foregoing, Processor shall have no obligation to provide any specific type or level of service to Merchant with respect to the Optional Services, even if such Optional Services are referred or resold to Merchant by Processor. Merchant shall be solely responsible and liable for the performance of the obligations described above and for any fees, fines, damages, losses or expenses arising in connection with Merchant's possession and/or use of an Optional Service. Merchant shall bear all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of an Optional Service for a particular purpose and for determining the extent of an Optional Service's compliance with the Bank Rules, the Operating Regulations, and the Laws. Processor's decision to offer an Optional Service shall in no way limit Merchant's duties and obligations contained in this paragraph. In conformance therewith, Merchant agrees to indemnify and hold Processor harmless for any damage, loss, claim, or liability arising in connection with Merchant's possession and/or use of any Optional Service. Merchant acknowledges that provision of any Optional Service to Merchant is subject to availability from the applicable Provider, and Processor shall have no obligation to provide any Optional Service to Merchant. Merchant shall not acquire any property or any other right, claim or interest including any patent right or copyright interest in any Providers' systems or in any of the equipment, software, processes, programs or data utilized by a Provider in connection with such systems other than data and equipment supplied to Merchant for use in connection with such systems. Merchant's right to use a Provider's systems and any equipment and software used in connection with an Optional Service shall not be assignable and Merchant's duties with respect to them shall not be delegable in any way without prior written consent of the applicable Provider. Each Provider shall have the right to require Merchant to enter into an agreement directly with the applicable Provider prior to the delivery of any software, equipment, or any documentation to such Merchant associated with an Optional Service. The agreement may set forth terms and conditions regarding the use of the software, equipment, and/or documentation by such Merchant which a Provider deems necessary in order to fully protect the proprietary rights of such Provider. Merchant shall observe complete confidentiality with regard to all Provider-owned software and documentation, whether supplied by a Provider directly or through Processor, and Merchant shall not disclose or otherwise permit use of or access to it by any person or entity other than an employee of the Merchant with a need to know.

M. In no way limiting the provisions of the immediately preceding section, Merchant agrees to pay Processor all fees and assessments of any nature as imposed by Providers in connection with Merchant's use of the Optional Services. Merchant acknowledges and agrees that until: (i) the applicable Provider(s) receive written notice from Merchant of the cancellation of all Optional Services and Merchant has returned all equipment and software to the applicable Provider(s); (ii) Processor receives written notice (including a copy to NPC Counsel) from Merchant wherein Merchant represents and warrants that Merchant has ceased receiving all Optional Services, has notified the applicable Provider(s) of the same and has returned all equipment and software to the Providers; and (iii) the Providers no longer assess Processor for Merchant's receipt of services or possession of equipment or software; Merchant shall continue to be responsible for and pay all amounts assessed by Processor to Merchant for the Optional Services. Until Processor has determined that Merchant has satisfied all of the express conditions set forth in the immediately preceding sentence, Merchant agrees that it shall not, and Merchant hereby waives all rights to, contest, challenge or withhold payment for any fees assessed to Merchant by Processor for Optional Services.

N. **End-to-End Encryption.** If available, Merchant may utilize end-to-end encryption products and services as provided wholly or partially by a third party with the support of Processor ("E2EE Service"). The E2EE Service is designed to: (i) encrypt (make unreadable) card data information at the origin of the payment transaction, which is a point-of-sale (POS) terminal that has licensed application software which supports the E2EE Service; and, (ii) decrypt card data information at the destination of the transaction, which are the Processor's processing systems.

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Card data information protected by the E2EE Service may include Track 1 or Track 2 data (Magnetic Stripe Data obtained through a magnetic card swipe read) or PAN Data (Manually Entered Personal Account Number (card data) as appropriate to the type of transaction processed on the terminal. The terminal application software supporting the E2EE Service is designed to generate encryption keys which are used in conjunction with the terminal application to encrypt card data during transmission of the transaction authorization request from the point of sale terminal. The E2EE Service applies only to transactions sent from the terminal to Processor's authorization and settlement systems pursuant to this Agreement. The service supports transactions associated with credit (signature), debit (signature), debit (PIN), and specifically excludes Visa POS Check transactions, gift card transactions, and transactions originated from terminal application software installed in the terminal that is provided by a third party. Merchant bears all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of E2EE Service for a particular purpose and for determining compliance with the Bank Rules, the Operating Regulations, and the Laws. Accordingly, Merchant's use of E2EE Service is at Merchant's own risk. Processor's sole responsibility to Merchant in connection with E2EE Service will be to communicate service or other issues to the applicable licensed encryption software provider as documented by Merchant in writing to Processor. Processor's decision to offer E2EE Service shall not limit Merchant's duties and obligations contained in this provision or the Agreement. Merchant acknowledges that provision of E2EE Service to Merchant is subject to several factors, including, without limitation, the availability of the licensed encryption software from the applicable third party provider and Merchant's compliance with the terms of this paragraph and the Agreement. Merchant acknowledges that the receipt of E2EE Service may require the use or upgrading of certain terminals and/or equipment (which shall be at Merchant's sole expense) and may not be supported on all terminals/equipment. Processor does not warrant or guaranty that use of the E2EE Service, in itself, will: (i) result in Merchant's compliance with Bank Rules, Operating Regulations, and/or Laws; (ii) prevent any and all unauthorized breaches of Merchant's terminals, systems or facilities; or, (iii) be uninterrupted or error-free. Merchant agrees that it shall not acquire any interest in (ownership, intellectual property or otherwise) any of the third party provider software used to provide the E2EE Service. Merchant shall not, and shall have no right to, own, copy, distribute, sub-lease, sub-license, assign or otherwise transfer any portion of such third party provider software used to provide the E2EE Service or any materials provided by Processor or to modify, decompile, or reverse engineer any such software, materials, or the Services. Merchant acknowledges and agrees that Processor has no obligation to provide E2EE Services and Processor has no liability for any failure to make the E2EE Services available to Merchant.

O. Merchant authorizes Processor to contact Merchant's customers or their Card issuing bank if it determines that such contact is necessary to find out information about any Card transaction between Merchant and the customer. Merchant may not contact a Discover Network Cardholder in connection with the services provided under this Agreement except as authorized under this Agreement or the Operating Regulations or except as required by Law.

P. **Bankruptcy.** Merchant will immediately notify Processor of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include Processor on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination of this Agreement or any other action available to Processor under applicable Rules or Law. Merchant acknowledges that this Agreement constitutes an executory contract to make a loan or extend other debt financing or financial accommodations to or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code § 362 to Processor, Merchant must create or maintain the Reserve Account as required by Processor, and Processor will have the right to offset against the Reserve Account for any and all obligations which Merchant may owe to Processor, without regard to whether the obligations relate to Card transactions initiated or created before or after the filing of the bankruptcy petition. Merchant agrees that this is a contract of recoupment and Processor is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Processor. Merchant agree to execute and deliver to Processor such instruments and documents Processor may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement.

### 5. Fees and Other Services.

A. Merchant will pay Processor fees and charges for Services, forms, and/or equipment in accordance with the pricing detailed in this Agreement, any schedules, exhibits, or addenda incorporated or referenced herein, and Processor's then-current standards. Such fees and charges will be calculated and debited from the account(s) designated by Merchant (a "Designated Account"). Fees and charges

will be assessed to Merchant by Processor on a daily, monthly and/or other periodic basis with such period initially and prospectively determined in Processor's sole discretion. Processor has the right to round interchange and other fees and amounts in accordance with its standard operating procedures. Processor reserves the right to assess some or all of the fees and charges via a separate or combined Services invoice(s) for Merchant's use of the services herein. Processor will charge Merchant for any and all fines, fees, penalties, loss allocations, assessments, registration expenses, certification expenses, and other amounts assessed by third parties (including but not limited to certain telecommunication expenses) incurred as a result of Merchant's actions, omissions, or use of the services contemplated herein or incurred by Processor on Merchant's behalf pursuant to the Operating Regulations, the Bank Rules, and the Laws.

B. If the Application states that the VISA, MasterCard and Discover Interchange fees, assessments and other fees will be passed through to Merchant, all such Interchange fees, assessments and other fees will be passed through to Merchant in addition to the Discount Rate, Transaction Fee and other fees set forth on the Application. Certain of these fees are available on the VISA, MasterCard and Discover websites. Merchant expressly acknowledges and agrees that it is responsible to pay the Interchange fees, assessments and other fees whether Merchant has possession or knowledge of such fees. If the Application does not state that the VISA, MasterCard and Discover Interchange fees, assessments and other fees will be passed through separately to Merchant, the current VISA, MasterCard and Discover fees are included in the Discount Rate and Transaction Fee set forth on the Application. Regardless of whether the VISA, MasterCard and Discover fees are assessed separately or incorporated into Merchant's Discount Rate and Transaction Fee, the VISA, MasterCard and Discover Interchange fees, assessments and other fees are based on the current Interchange rates, assessments and fees set by the VISA, MasterCard and Discover and are subject to change from time to time. For American Express Card transactions, all American Express interchange fees, assessments and other fees will be passed through to Merchant in addition to the Authorization Transaction Fee and other fees set forth on the Application. Merchant acknowledges that whenever its transactions fail to qualify for any reduced fees, Processor will process such transactions at the applicable rate as set forth on the Application, and Merchant will pay the corresponding amount. Merchant acknowledges that to receive the lowest Discount Fee and Transaction Fee on a Card transaction, the Card transaction must exactly meet certain processing criteria or "qualify" for basic fees. Criteria for determining qualification will include, but not be limited to, whether (i) a Card transaction is: (1) hand entered (the required data is not electronically captured by a point-of-sale device reading the information encoded in or on a Card); (2) voice authorized; (3) not authorized; (4) transmitted for processing within twenty-four (24) hours of the Card transaction; (5) a Card transaction involving a Consumer Reward, Commercial Reward, Visa Signature, and MasterCard World Elite Card, or (6) deemed "Non-Qualifying" by the Operating Regulations, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or (ii) for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (iii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Processor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed five percent (5%) of the total monthly sales drafts processed under this Agreement. For certain non-qualifying transactions, Processor assesses a surcharge of a certain percent of the transaction amount as set forth in the Merchant Processing Agreement/Application on all sales transactions that do not qualify at Merchant's base rate. **In the event that Card transactions submitted to Processor for processing only partially qualify or do not at all qualify for the qualified discount rate quoted in accordance with the Merchant Application and/or the Operating Regulations, Merchant may be assessed and agrees to pay an additional Mid-Qualified Exception Fee or Non-Qualified Exception Fee if set forth on the Application.** Further, Merchant will pay, in accordance with this Agreement, all fees, cost escalations, assessments, tariffs, penalties, fines or other items that may be charged, assessed or imposed under this Agreement and/or the Operating Regulations. Several factors affect the best rate Merchant may achieve on any given transaction, including but not limited to the type of Card used, the number of days between the sale and the date Merchant submits the transaction to Processor, obtaining authorization, capturing all transaction data, submitting the transaction in the correct format, and proper functioning of Merchant's point of sale terminal, software, and communications lines. Further, the Associations change the transaction qualification criteria from time to time, and Merchant's terminal or software may not meet the new criteria. Processor makes no representation or warranty that Merchant's transactions qualify for any given rate, and Processor disclaims all responsibility and liability for a transaction's failure to so qualify. Merchant will release and hold Processor harmless from any loss, cost or damage, including legal fees and court costs, resulting from transactions' failure to qualify for

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a particular rate. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

C. Merchant shall pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. In the event Processor pays such taxes, Merchant shall immediately reimburse Processor or Processor may, at Processor's sole option, charge Merchant's Designated Account for such amounts in Processor's sole discretion.

D. Processor will initially provide, in accordance with this Agreement the described products and services (the "Initial Services"). Merchant acknowledges and agrees that the Initial Services shall always include Services related to Association credit card transaction processing, and that Merchant shall be solely responsible for any use of such Services, and that Processor shall have no obligation to prevent Merchant from using such Services. If at any time Merchant utilizes any Services other than the Initial Services, such use of Services shall be provided according to Processor's standard terms and conditions associated with such Services and, unless otherwise agreed to by Processor, Merchant will pay Processor its standard fees and charges for such Services in accordance with Processor's then-current standards. Merchant's use of Services other than the Initial Services ("Additional Services") shall be deemed Merchant's acceptance of the fees and charges and the terms and conditions associated with such Services. Processor may also charge Merchant for any non-specified Service it provides Merchant or expense it incurs on behalf of Merchant (also deemed an Additional Service) in conjunction with Merchant's receipt of an Additional Service, and, unless otherwise agreed to by Processor, Merchant agrees to pay the standard rate for the Additional Services in accordance with Processor's then-current standards. Merchant shall not dispute, and shall be unconditionally obligated to pay for, any Additional Service charges for any such Additional Service that Merchant has received. Services such as enhancement or customization of any standard services, customized reporting, or special requests will be provided at Processor's option and on an "as-quoted" basis. Merchant acknowledges and agrees that it shall be solely responsible for all telecommunication lines, equipment, and any related items deemed necessary by Processor in connection with the Initial Services and any Additional Services and for any and all fees, costs, or expenses related to the same, whether incurred by Merchant, Processor, their affiliates, and/or agents; such fees, costs and/or expenses may include, but are not limited to, those associated with, circuits and their installation, software to support Merchant's operating environment, data transmissions, equipment, and software upgrades, modems, sharing devices, controllers, protocol converters, routers, router maintenance, maintenance, other telecommunication equipment, etc. In the event Merchant uses Optional Services, Processor may collect and Merchant agrees to pay all fees and charges associated with the Optional Services including but not limited to those assessed by third parties related to the use of an Optional Service.

E. If Processor reasonably believes Merchant is not fully compliant with the Bank Rules, Operating Regulations (including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations), or any Laws, or in the event Merchant fails to prove such compliance upon request from Processor, Processor reserves the right to charge Merchant a reasonable fee until Merchant proves compliance with the Bank Rules, Operating Regulations, and Laws, and Merchant shall pay such amount to Processor. This fee will be in addition to any other amounts due under the Agreement, including but not limited to all fines, fees, penalties, loss allocations, assessments, registration expenses, certification expenses, and other amounts assessed by third parties.

F. Transaction fees are fees charged on each sales draft and each credit draft regardless of the stated total. A Transaction Fee may be charged for any transaction activity that utilizes a point-of-sale ("POS") device for transmission or reception of data or information, including but not limited to, signature-based debit card transactions, PIN-based debit card transactions, batch closing, authorizations, and any other communication using the POS device.

G. Merchant agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by Processor, its affiliates and/or agents) in connection with and/or related to Merchant's conversion from Processor at the termination of this Agreement and/or related to any conversion or programming effort affecting the Services after Merchant's initial conversion to Processor.

H. If Processor for any reason advances settlement or any amounts and/or delays the assessment of any fees (individually or collectively a "Float Event"), Processor reserves the right to assess to Merchant, and Merchant shall pay to Processor, a cost of funds associated with the Float Event (which Processor may at its option assess as a transaction surcharge), the amount of which shall be determined by Processor in its reasonable discretion, and which may be changed by Processor from time to time, and such cost of funds shall be effective as of the start of the Float Event and shall be immediately payable by Merchant when assessed by Processor.

I. Additional Provisions for Personal identification number (PIN) debit Cards. Processor will charge the transaction fee for PIN debit Card transactions set forth on the Application for each PIN debit Card transaction submitted regardless of whether such transaction is approved, declined, or determined invalid. In addition, Merchant will be assessed for each PIN debit Card transaction all debit network Interchange fees and other fees, sponsorship, switch and gateway fees. In addition to the charges set forth on the Application, Merchant agrees to pay for all PIN debit network setup fees, chargeback fees and adjustment fees, including but not limited to, late fees that may be imposed by the debit networks. Merchant hereby delegates to Processor the authority to decide to which debit network a given PIN debit Card transaction will be routed.

J. Monthly recurring charges will be assessed upon approval of the Merchant Application. Minimum Monthly Bill is calculated each month by taking the Minimum Bill fee as described on the Merchant Application, less actual charges for Visa, MasterCard, Discover Network and, if Merchant were placed in and approved for the American Express program, American Express, net discount rate and gross transaction fees for such month's processing. Minimum Monthly Bill shall never be a negative number (i.e. a credit). The Annual Fee or Semi-Annual Fee, as applicable, will not be prorated or refunded if this Agreement is cancelled or terminated for any reason. Processor may assess the ACH/DBA Fee set forth on the Merchant Application for administrative services, including, but not limited to, changing Merchant's Designated Account information or processing returned ACH items. MasterCard issuers may collect a handling fee for specific authorization chargebacks for certain Merchant Industry types.

### 6. Term and Termination.

A. This Agreement shall be binding upon Merchant upon the earlier of Merchant's execution or Merchant's submitting a transaction to Processor. This Agreement shall only be binding upon Processor as of the earliest of (i) the date that Processor accepts this Agreement by issuing Merchant a Merchant Identification Number or (ii) Processor's processing of any transaction submitted by Merchant. The initial term of this Agreement shall be for the time period specified in the Merchant Processing Agreement/Application, or elsewhere in this Agreement ("Initial Term"). In the event no Initial Term is indicated in the Merchant Processing Agreement/Application or elsewhere in this Agreement, the Initial Term will be deemed to be thirty-six (36) months. After the expiration of the Initial Term, this Agreement will automatically renew for successive 2 year terms, provided that if a different Renewal Term is set forth on the Merchant Processing Agreement/Application, such Renewal Term will control (the "Renewal Term") unless terminated as set forth below; provided that if automatic renewal of this Agreement for such terms violates the provisions of applicable law, the Renewal Term will be 30 days, shall automatically be renewed for periods equal to the Initial Term (each a "Renewal Term"), unless otherwise provided herein or unless either party gives written notice to the other party at least thirty (30) days prior to the expiration of the then-current term of a party's intention to terminate or not to renew the Agreement. In addition, this Agreement may be terminated at any time by Processor, without cause, on fifteen (15) days' notice to Merchant. Termination of this Agreement does not terminate Merchant's equipment lease, which may be non-cancelable, it only terminates Merchant's agreement with Processor with respect to Card processing and any other electronic transactions that are settled through the Member Bank as designated on Merchant's monthly statement from Processor.

B. Default Event. Merchant shall be in default under this Agreement ("Event of Default") if: (i) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Merchant, or Merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or (ii) Merchant fails to comply with the Bank Rules, the Operating Regulations, or applicable Law; or (iii) Merchant is in breach of any other terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; or (iv) in the event of irregular card sales or any other circumstances, which, in the Processor's discretion, may increase the Processor's exposure for chargebacks or other financial, reputation, or security risk(s); or (v) Processor reasonably believes that there has been a material deterioration in Merchant's financial condition; or (vi) any standby letter of credit, if and as may be required pursuant to this Agreement, will be cancelled, will not be renewed, or is not in full force and effect; or (vii) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than ten percent (10%) of either the legal or beneficial ownership of Merchant, or (viii) Processor's reasonable determination that fraud is or may be occurring, or (ix) if Merchant's business name and/or the name of Merchant's principals are listed on the MATCH (Membership Alert To Control High Risk Merchants) System and/or other security/credit alert systems, or (x) in the event that an Association identifies Merchant, its principals, or associated parties under a program designed to monitor merchants or otherwise instructs Processor to close Merchant's account, or (xi) for any circumstances that could cause harm or loss of goodwill to the Associations and/or Other Networks systems or Merchant no longer

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meets the eligibility requirements of an Association or Other Network, or (xii) Merchant's volume in any month in excess of 120% of the average Annual Volume indicated on the Merchant Application, (xiii) Merchant has non-card present transactions in any month in excess of 120% of the MO/TO and Internet volume indicated on the Merchant Application, (xiv) Merchant experiences excess returns greater than 3%, (xv) Merchant does not do business as specified in the Merchant Application, (xvi) splitting tickets, (xvii) laundering tickets or (xiii) any other action constituting Merchant fraud. Upon the occurrence of an Event of Default, Processor automatically, and without notice, shall be entitled to exercise and enforce (in concert with and in addition to any other rights or remedies granted to it herein) any and all of the following rights and remedies: (a) those provided for in Section 6.C. below, (b) cease providing any or all Services to Merchant, (c) establish a Reserve Account, and/or (d) otherwise proceed to collect amounts that are due and owing from Merchant under this Agreement by means of setoff, recoupment, or any other means authorized by applicable Laws. Processor will also have the right to assess fees and recover all costs associated with the investigation of any suspected fraudulent activity or an Event of Default. Processor will not have any liability to Merchant for any losses, either direct or indirect, which Merchant may suffer as a result of any such suspension of funds disbursement or failure to pay for transactions connected with an Event of Default. If Merchant accepts or processes transactions in connection with an Event of Default, processing funds may be held and subject to a per month fraudulent transaction fee equal to 15% of the dollar volume held by Processor. In addition, if Merchant has engaged in an Improper Transaction, Merchant agrees Processor may retain all amounts in the Reserve Account as liquidated damages. The determination of the existence of an Event of Default or Improper Transaction shall be made by Processor and shall be conclusive unless Merchant contests such determination in writing to Processor within one year of the determination. In addition, upon the occurrence of an Event of Default, Processor may terminate this Agreement by giving Merchant written notice thereof. Termination of Merchant for any reason shall not relieve Merchant from any liability or obligation to Processor.

**C. Early Deconversion Fee/Liquidated Damages.** If, prior to the date on which the then current term of this Agreement is scheduled to expire, either this Agreement is terminated by Processor as specifically permitted by this Agreement, or terminated or breached by Merchant, Merchant shall:

i. pay Processor the Early Deconversion Fee set forth on the Merchant Application for each Merchant identification number and Merchant location for certain costs, such as but not limited to, costs and expenses to provide certain routine services following termination of the Agreement, including processing Chargebacks, and restocking of equipment, deletion of Merchant numbers related to Merchant's deconversion, etc., and

i. pay Processor, upon demand, an amount for liquidated damages in accordance with the following:

ii. if the Merchant Application states that all Card Organization fees will be passed through to Merchant, an amount equal to (a) the average monthly fees paid by Merchant to Processor under this Agreement (excluding Card Organization interchange and assessment fees) for the three calendar months in which such revenue was the highest during the preceding twelve calendar months, or such shorter period if this Agreement has not been in effect for twelve months, multiplied by (b) the number of months remaining in the then current term of this Agreement, on a pro rata basis, or

1) if Merchant is not a pass through merchant governed by a. above, an amount equal to (a) the average monthly fees paid by Merchant to Processor under this Agreement for the three calendar months in which such revenue was the highest during the preceding twelve calendar months, or such shorter period if this Agreement has not been in effect for twelve months, less (b) two percent (2%) of the average monthly sales dollar volume during the three calendar month review period, multiplied by (c) the number of months remaining in the then current term of this Agreement, on a pro rata basis.

iii. Notwithstanding the foregoing, the Early Deconversion Fee and liquidated damages fee will not exceed the maximum amount set forth by applicable law. Merchant acknowledges and agrees the liquidated damages are fair and reasonable because it is difficult or impossible to estimate Processor's damages resulting from any breach or improper termination. Merchant shall also reimburse Processor for any damage, loss or expense incurred by Processor, including all past due, unpaid and/or future invoices for services rendered by Processor in connection with this Agreement. Notwithstanding anything in this Agreement to the contrary, however, after termination, Merchant will remain liable for chargebacks and other adjustments and for other fees, fines, penalties, charges or losses incurred by Processor in connection with this Agreement. Merchant authorizes Processor to debit Merchant's Designated Account for, or deduct from any settlement funds otherwise owed to Merchant, the Early Deconversion Fee, plus any and all losses (including costs, expenses and liabilities) incurred by Processor in connection with termination. If Merchant's settlement funds or the balance in the Designated Account is insufficient to cover the Early Deconversion Fee and all such losses, Merchant agrees to pay

Processor such amounts immediately upon receipt of invoice. All amounts due pursuant to this section shall be immediately due and payable by Merchant without notice or demand. Merchant will be responsible for all collection and legal fees and expenses Processor incurs in the collection of any delinquent amounts Merchant may owe Processor.

**D.** Processor may immediately cease providing services to Merchant without notice if (i) Merchant has failed to pay any amount to Processor when due, (ii) in Processor's opinion, provision of a service to Merchant may be a violation of the Operating Regulations, Bank Rules, or the Laws; or (iii) Processor believes that Merchant has violated or is likely to violate the Operating Regulations, Bank Rules, or the Laws.

**E. Return of Equipment/Materials.** Within 14 business days of the date of termination, Merchant must return all equipment owned by Processor and immediately pay Processor any amounts Merchant owe it for equipment costs. All promotional materials, advertising displays, emblems, sales drafts, credit memoranda and other forms supplied to Merchant and not consumed in use will remain the property of Processor and will be immediately returned to Processor upon termination of this Agreement. Merchant will be fully liable for any and all losses, costs, and expenses suffered or incurred by Processor, arising out of any failure to return or destroy such materials following termination of this Agreement.

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

**G. Terminated Merchant File.** Merchant acknowledges that Processor is required to report Merchant's business name and the name of Merchant's principals to the Associations, including the MATCH (Membership Alert to control High Risk Merchants) System, the Discover Network Consortium Negative File and other security/credit alert systems, when Merchant is terminated due to the reasons listed in the Operating Regulations, which include, but are not limited to violation of the Operating Regulations, breach of this Agreement, and Fraudulent Transactions. Merchant expressly agrees and consents to such reporting and will waive, indemnify and hold harmless Processor for all claims and liabilities Merchant may raise as a result of such reporting.

### **7. Authorization, Set-off, Reserve, and Security Interest.**

**A.** Merchant authorizes Processor or its Processors or agents, and Providers, to initiate ACH credit/debit entries to or from the Designated Account, the Reserve Account or any other account maintained by Merchant at any institution that is a receiving member of ACH, all in accordance with this Agreement. Merchant hereby agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association, as are in effect from time to time. This authorization extends to payments for all amounts owed by Merchant to Processor. This ACH authorization will remain in effect after termination of this Agreement, and until Processor has received written notice terminating this authorization and all Merchant's obligations to Processor have been paid in full. If Merchant changes the Designated Account, this authorization will apply to the new account. Processor's authority to debit or credit the Designated Account(s) shall remain in effect for a period of two (2) calendar years following any termination of this Agreement, regardless of whether Merchant has notified Processor of an Account Change as defined below. Merchant shall always maintain the Designated Account(s) with funds sufficient to satisfy Merchant's duties and obligations pursuant to this Agreement whether contingent or accrued. If Merchant desires to change or alter the Designated Account(s) (an "Account Change"), Processor shall use reasonable efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Processor actually makes such Account Change on Processor's system. The Merchant should not close the old account until the new account receives the third deposit. Processor shall not be responsible for checking the accuracy of any Account Change submitted by any purported representative (whether authorized or unauthorized) of Merchant and Processor shall not incur any liability associated with any Account Change unless such change is the result of Processor's gross negligence or willful misconduct. Merchant shall be solely liable for all fees and charges assessed by Merchant's financial institution, including all overdraft and NSF charges, and Merchant irrevocably releases Processor and holds Processor harmless from the same fees and charges, regardless of cause. Processor is not liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties including but not limited to the Associations, Other Networks, a clearing house or Merchant's financial institution. All sales and credits accepted by Processor are subject to audit and verification by Processor. Merchant agrees that Processor may debit or credit Merchant's Designated Account for any inaccuracies.

**B.** All amounts due Processor under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant as of the date Processor originates an ACH debit transaction record to Merchant's Designated Account. Any fees not collected from Merchant by Processor when due shall bear interest at highest rate

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permitted by the Laws. Merchant agrees that Processor may set off any amounts due to Processor from amounts due to Merchant, including but not limited to demand deposit accounts and any other amounts due to Merchant from Processor and/or any of its affiliate(s).

C. The acceptance by Member Bank, Member Bank's affiliate or other financial institution of Merchant's closing (or termination of) its Designated Account shall not constitute a mutually agreed upon termination of this Agreement.

D. As a specifically bargained for inducement for Processor to enter into this Agreement with Merchant, Processor shall have the right, exercisable at its option at any time either before or after an Event of Default has occurred, to (i) establish from amounts that otherwise would be payable by Processor to Merchant including but not limited to demand deposit accounts and any other amounts due to Merchant from Processor and/or any of its affiliate(s) whether or not such amounts are related to this Agreement, or to cause Merchant to prepay to Processor, a reserve of funds, in an amount satisfactory to Processor (a "**Reserve Account**"), to cover any and all amounts which are, or reasonably are anticipated by Processor to become, due to Processor from Merchant, including without limitation amounts arising from or otherwise relating to existing or anticipated chargebacks, fees, fines, returns, monetary awards or other charges and assessments imposed or anticipated to be imposed by an Association or Other Network under the Operating Regulations, or liquidated damages as provided for in Section 6.C. above, or (ii) require Merchant to establish an irrevocable standby letter of credit, including additional and/or replacement letters of credit if required by Processor, with a beneficiary designated by Processor, and which are issued from a financial institution other than Member Bank or any of its affiliates, in a format, with an expiration date, and in an amount acceptable to Processor in its sole reasonable discretion. Processor may, at any time, require that the amount of the letter of credit or the amount on deposit in the Reserve Account be increased. Reserve Account funds may be commingled with other funds, and need not be maintained in a separate account designated in the name of the Merchant. Subject to the other terms of this Agreement, Processor shall have the right and discretion to retain funds placed into the Reserve Account until requested by Merchant in writing following the later of (a) 270 days following the effective date of termination of this Agreement, or (b) 180 days from the date of the last chargeback (the latter of such dates shall be referred to as the "**Refund Request Date**"). If at any time Processor in its discretion should determine that (1) Merchant has engaged in illegal business activities, (2) Merchant is suspected of being or confirmed to be involved in a collusive fraudulent transaction with a Cardholder, (3) Merchant has laundered or aggregated illegal and/or brand damaging transactions, (4) the Merchant account was established as a result of identity theft, and/or (5) the Merchant has engaged in any other action constituting Merchant fraud (each an "**Improper Transaction**") Merchant shall be provided notice of the same, and balances in the Reserve Account shall become the property of Processor and shall otherwise be forfeited in the nature of liquidated damages without prejudice to Processor's other continuing contractual remedies. If Merchant fails to provide written notice and objection within 90 days of either the Refund Request Date or notification by Processor of an Improper Transaction event, as the case may be, Merchant agrees that it shall be deemed to have voluntarily waived contractual rights, claims and all interest in any subject Reserve Account balances, if any.

E. Processor may monitor Merchant's daily credit card transaction activity and may, upon reasonable grounds as determined by Processor in its sole discretion, divert into a Reserve Account the disbursement of Merchant's funds and/or temporarily suspend processing under this Agreement. If Merchant's funds are diverted by Processor or Processor has temporarily suspended processing under this Agreement, such diversion or suspension shall be for any reasonable period of time required by Processor to fully investigate Merchant's account activity and resolve, to its sole satisfaction, Merchant's subject transaction or activity. Upon completion of such investigation, Processor may maintain the suspended funds in the Reserve Account to be held in accordance with Section 7.D. Processor will not have liability for any losses, either direct or indirect, which Merchant may attribute to any diversion of funds, or suspension of processing.

F. This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant grants to Processor a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds, (ii) all funds at any time in the Reserve Account, regardless of the source of such funds, (iii) any amount which may be due to Merchant under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement, and (iv) the proceeds thereof (collectively, the "**Secured Assets**"), to secure all of Merchant's obligations under this Agreement. With respect to any Secured Assets maintained by Member Bank, Merchant authorizes Member Bank to comply with all demands made by Processor with respect to the Secured Assets without further consent or direction from Merchant, and Member Bank agrees to comply with the same. As such, Processor has control and a perfected security interest in the Secured Assets with Member Bank. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, Processor has control

over and may direct the disposition of the Secured Assets, without further consent of Merchant. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Processor will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Processor written consent prior to granting a security interest of any kind in the Secured Assets to a third party. In addition to the security interest in the Secured Assets, Processor shall have a contractual right of setoff against the Secured Assets. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action by Processor or notation in the Processor's records, although Processor may enter such set off on its books and records at a later time.

### 8. Indemnification and Limitation of Liability.

A. Merchant shall indemnify and hold harmless Processor, and its directors, officers, employees, affiliates, and agents from and against all proceedings, claims, demands, losses, liabilities, damages and expenses (including but not limited to, any fines, fees, assessments, audit fees, card replacement cost, or penalties levied against the Processor by an Association, any Card issuer, or any Other Network, and attorneys' and collection fees and expenses) resulting from or otherwise arising out of (i) the Services in this Agreement, (ii) any breach of any term or condition of this Agreement, (iii) any misrepresentation by Merchant herein under this Agreement, (iv) Merchant's or Merchant's employees and agents acts or omissions in connection with the services provided pursuant to this Agreement, (v) Merchant's processing activities and provision of goods and services to Cardholders, (vi) any violation of the Operating Regulations, the Bank Rules, or the Laws, (vii) any guarantees provided by Processor to any third party for the benefit of Merchant, including without limitation any lease guarantees, or (viii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of, or in any way related to Merchant's ability to use the services provided herein including but not limited to Merchant's use of an Agent or any other third party processor or system, or Merchant's ability to connect to the Internet or an external network (ix) any action or omission of any third party with which Merchant has contracted, (x) any bankruptcy proceeding, (xi) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card, (xii) any action Merchant institutes against any Association, Other Network or Card issuer following a chargeback or fine, or (xiii) any action Processor takes against the Designated Account, Reserve Account, or any other account Merchant owns, pursuant to this Agreement. Merchant will also defend, indemnify and hold harmless the institution at which Merchant maintains the Designated Account for acting in accordance with any instruction from Processor regarding any such account. This indemnification shall survive the termination of the Agreement.

B. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, PROCESSOR DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Merchant hereby acknowledges that there are risks associated with the acceptance of cards, and Merchant assumes all such risks except as may be expressly set forth herein. Processor shall not be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by Processor) suffered by Merchant, its customers or any third party in connection with the services provided hereunder. In no event shall Processor be liable for any damages or losses that are wholly or partially caused by the Merchant, or Merchant's employees or agents. In no event shall Processor be liable for any damages or losses that Merchant may sustain as a result of Processor's exercise of any post-default rights or remedies authorized under this Agreement, so long as Processor, at the time of exercising such rights or remedies, has a good faith reasonable basis to believe that an Event of Default has occurred and is continuing. Processor's liability related to or arising out of this Agreement shall in no event exceed fees paid to Processor for the particular services in question for the calendar month immediately preceding the date on which any act or omission of Processor for which Merchant alleges liability on the part of Processor. The parties acknowledge that the limitations set forth in this section are integral to the amount of fees charged by Processor for the services provided hereunder, and recognize that if Processor were to assume any further liability beyond that set forth in this section, such fees would be substantially higher. Except as otherwise set forth in this Section 8, Merchant's exclusive remedy for any and all claims against Processor arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. Processor shall not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from errors in data provided by Merchant or others, or any event beyond Processor's reasonable control including but not limited to international, domestic, or economic terrorism. Should Processor be required to defend a claim brought by Merchant and Processor prevails, Processor will be entitled to reimbursement from Merchant, and



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Merchant agrees to pay all costs, attorneys' fees and any other expenses incurred in connection with those proceedings.

C. Processor shall not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from a Force Majeure Event. For purposes herein, a "Force Majeure Event" shall mean errors in data provided by Merchant or others, labor disputes, fire, weather, acts of God, public enemy, or other casualty, power outages, and funding delays, however caused, governmental orders or regulations, or any other cause, whether similar or dissimilar to the foregoing, beyond Processor's reasonable control.

D. Except for an action related to Merchant's failure to pay any amount due hereunder, no cause of action shall be brought by either party more than one (1) year after the cause of action occurred.

### 9. Confidentiality.

A. Merchant acknowledges that Processor will be providing Merchant with certain confidential information, including but not limited to, this Agreement and information relating to the methods, techniques, programs, devices and operations of Processor and/or Providers and/or Associations and/or Other Networks (collectively "Confidential Information"). Merchant shall not disclose Confidential Information to any person or entity (other than to those employees and agents of Merchant who participate directly in the performance of this Agreement and need access to such information). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the Bank Rules, the Laws, and the Operating Regulations including but not limited to the Visa Cardholder Information Security Program ("CISP") found at [www.visa.com/cisp](http://www.visa.com/cisp), the MasterCard Site Data Protection Program ("SDP"), found at [www.mastercard.com/sdp](http://www.mastercard.com/sdp), and the American Express Data Security Operating Policy ("DSOP"), found at [www.americanexpress.com/merchant/](http://www.americanexpress.com/merchant/) and any similar program requirement of the Associations, or Other Network. Merchant acknowledges that it is subject to the Vantiv Privacy Notice ("Privacy Notice"), which can be found at [www.NPC.net](http://www.NPC.net) ("Privacy Notice"). Merchant should direct any questions or requests for a copy of the Privacy Notice to Customer Service or its primary relationship manager if applicable. Notwithstanding anything to the contrary in any privacy notice/policy or this Agreement, Processor may use, disclose, share, and retain any information provided by Merchant and/or arising out of the Services, during the term and thereafter: (i) with Merchant's franchisor, Merchant's franchisee(s), association(s) to which Merchant belongs and/or belonged as of the commencement of this Agreement; (ii) with any affiliate of Merchant; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable laws or regulations; (vi) with Processor's affiliates, partners and agents; (vii) to Associations and Other Networks and their designees, (viii) to Providers and their designees; (ix) to any other referral source or Processor, including, without limitation, the applicable referrer, ISO/MSP, or independent sales office; (x) to perform analytic services for Merchant, Processor and/or others including but not limited to analyzing, tracking, and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving Processor's products and services; and/or (xi) to offer or provide the Services hereunder. Merchant acknowledges and agrees that Processor may make public the execution of this Agreement by Merchant and/or any of Merchant's affiliates, and/or the Services that may be or have been provided under the Agreement. Merchant agrees that Processor may include Merchant's name and logo on a list of Processor's customers, which may be made public. Merchant agrees that, upon Processor's request, Merchant will provide testimonial information related to the Services received by Merchant hereunder.

B. Merchant must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must destroy in a manner that will render the data unreadable all such media that Merchant no longer deem necessary or appropriate to store (except for sales drafts maintained in accordance with this Agreement, Laws or Operating Regulations). If Merchant uses any third parties who will have access to Cardholder data ("Merchant Provider(s)"), Merchant must notify Processor of their identity. In addition, Merchant must (i) only allow the Merchant Providers access to the Cardholder data for purposes that are authorized by the Operating Regulations, (ii) have proper security measures in place for the protection of Cardholder data, (iii) ensure that Merchant Providers have proper security measures in place for the protection of Cardholder data, (iv) comply with and assure that Merchant Providers comply with the PCI DSS, and (v) have written agreements with Merchant Providers requiring the compliance set forth herein. Merchant will immediately notify Processor of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. Merchant is responsible for demonstrating Merchant's and Merchant Providers' compliance with the PCI DSS programs, and providing reasonable access to Merchant's locations and ensuring

Merchant Providers provide reasonable access to their locations to verify Merchant's and their ability to prevent future security violations. Any fees, fines or penalties from non-compliance will be passed through to Merchant. Merchant agrees to indemnify Processor against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information. In addition, in the event of a suspected or confirmed loss or theft of information, Merchant agrees, at Merchant's cost, to provide all information requested by Processor, an Association, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation, including without limitation, any forensic investigation. Any information provided in response to such investigation will (as between Merchant and Processor) be considered Processor's confidential information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether Merchant processes transactions via Internet, mail, phone, face-to-face or any other method.

C. Processor will, in its sole discretion, allow access to Processor's proprietary and confidential online Merchant reporting portal service (collectively "Direct Services"). Merchant must maintain the confidentiality of any user passwords to Direct Services. Direct Services provide reporting detail of Merchant's use of the services herein. Direct Services are subject to change without notice and are solely controlled by Processor. Processor's only obligation will be to make the Direct Services available on Processor's system in accordance with Processor's then-current timeframes, standards, scheduling, and procedures ("SOP's") including but not limited to SOP's for set-up, account access, and suspension of Direct Services. Processor reserves the right to suspend access to Direct Services without notice if Processor reasonably believes that a violation of the SOP's has occurred, is likely to occur, or for any reason that may present a risk to Processor or Merchant. Merchant shall provide Processor with prompt written notice of all user IDs that are no longer active, should be deleted, and/or should otherwise be changed. Merchant shall be solely responsible for any unauthorized access to Direct Services, and Merchant's data therein including but not limited to unauthorized Merchant employee or agent access, action taken on behalf of Merchant or at the request of any of Merchant's employees or agents (even if not authorized) and/or failure to notify Processor in writing and independently verify suspension of a password on a user ID or inactivation and/or deletion of a User ID. If Merchant accesses Direct Services through a third party (e.g., through the internet, a third party provider, etc.), Processor shall have no responsibility or liability whatsoever for any actions or inactions of such third parties, including but not limited to inability to (i) access the Direct Services, (ii) interruption in access to Direct Services, or (iii) errors or inaccuracies in data received by Merchant.

**CONTINUING UNLIMITED GUARANTY.** The provisions contained in Sections 10 through 16 below (collectively, "Continuing Unlimited Guaranty") apply to each person who signs this Agreement as a Guarantor (each such person, a "Guarantor").

10. For the purpose of inducing Processor to provide to Merchant the Services contemplated in the preceding provisions of this Agreement, each Guarantor jointly and severally, hereby absolutely and unconditionally guarantees the prompt and full payment to Processor when due, whether by acceleration or otherwise, of all Obligations, as defined below.

11. The word "Obligations" is used in its most comprehensive sense and includes, without limitation, all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) of Merchant to Processor, either created by Merchant alone or together with another or others, primary or secondary, secured or unsecured, absolute or contingent, liquidated or unliquidated, direct or indirect, whether evidenced by note, draft, agreements of guaranty or otherwise, whether now existing or hereinafter arising, and any and all renewals of, extensions of or substitutes therefor. The word "Obligations" shall include, but not be limited to, all obligations of payment, obligations of indemnification, and indebtedness owed by Merchant to Processor arising from or related to the transactions or services contemplated in this Agreement.

12. Guarantor hereby promises that if one or more of the Obligations are not paid promptly when due, Guarantor will, upon request of Processor, pay the Obligations to Processor, irrespective of any action or lack of action on Processor's part in connection with the acquisition, perfection, possession, enforcement or disposition of any or all Obligations or any or all security therefor or otherwise, and further irrespective of any invalidity in any or all Obligations, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefor. Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against the Merchant or the Processor, except payment or performance of the Obligations.

13. Guarantor waives notice of any and all acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest, notice of protest, and notice of dishonor or other nonpayment of any and all Obligations and further waives notice of sale or other disposition of any collateral or security now

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held or hereafter acquired by Processor. Guarantor agrees that no extension of time, whether one or more, nor any other indulgence granted by Processor to Merchant, or to Guarantor, or any of them, and no omission or delay on Processor's part in exercising any right against, or in taking any action to collect from or pursue Processor's remedies against Merchant or Guarantor, or any of them, will release, discharge or modify the duties of Guarantor. Guarantor agrees that Processor may, without notice to or further consent from Guarantor, release or modify any collateral, security or other guaranties, and no such action will release, discharge or modify the duties of Guarantor hereunder. This is a guaranty of payment and not of collection and the Processor shall not be required or obligated, as a condition of the Guarantor's liability, to make any demand upon or to pursue any of its rights against the Merchant, or to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations, or to pursue, exhaust or preserve any of its rights or remedies with respect to any collateral, security or other guaranties given to secure the Obligations, or to take any action of any sort, prior to demanding payment from or pursuing its remedies against Guarantor. Guarantor hereby waives all defenses based upon suretyship or impairment of collateral. After any default hereunder, Processor may apply and/or set off against amounts due it hereunder any deposits, account balances or other credits of Guarantor in the possession of or in transit to Processor, and Guarantor hereby grants Processor a security interest in all of the foregoing.

14. The obligations of the Guarantor hereunder, if more than one, shall be joint and several. This Continuing Unlimited Guaranty is secured by the property described in any collateral security documents that the Guarantor executes and delivers to the Processor and by such other collateral as previously may have been or may in the future be granted to the Processor to secure any obligations of the Guarantor to the Processor. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, transferees and assignees. Each Guarantor expressly authorizes (i) Processor to collect any amounts that are at any time due and owing from Guarantor to Processor under this Continuing Unlimited Guaranty by debiting any checking, savings or other deposit account that Guarantor at any time maintains with Processor or with any affiliate of Processor (any such account, a "Guarantor Account") and (ii) any affiliate of Processor to collect any amounts that are at any time due and owing from Grantor to such affiliate by debiting any Guarantor Account.

15. This Continuing Unlimited Guaranty shall be interpreted and construed in accordance with and governed by the laws of the State of Ohio. Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this Continuing Unlimited Guaranty may be instituted in a state or federal court of appropriate subject matter jurisdiction in the State of Ohio; waives any objection which he may have now or hereafter to the venue of any such suit, action or proceeding; and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding; provided, however, that nothing contained herein shall prevent Processor from bringing any action or exercising any rights under this Continuing Unlimited Guaranty within any other state or country. Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by serving a copy of the Summons and Complaint upon Guarantor at its address set forth in the Agreement in accordance with the applicable laws of the State of Ohio.

16. **GUARANTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS CONTINUING UNLIMITED GUARANTY.**

**MISCELLANEOUS TERMS AND CONDITIONS. The following terms and conditions shall also apply.**

17. **Title to the Services.** Merchant agrees the Services are licensed not sold and that it is acquiring only a nontransferable, revocable, non-exclusive right to use the Services during the term of the Agreement and solely for the purposes of accepting payments and managing the payments Merchant receives. Processor shall at all times retain all rights, title, and interest in and to the Services, including without limitation, all rights to any materials delivered to Merchant hereunder and any invention, development, product, trade name, trademark, service mark, software program, or derivative thereof, developed or used in connection with providing the Services. Merchant agrees that it shall not: (i) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material or information from Processor; (ii) permit any third party to use and benefit from the Services via a rental, lease, timesharing, service bureau or other arrangement; (iii) work around, bypass, or circumvent any of the technical limitations of the Services, use any tool to enable features or functionalities that are otherwise disabled in the Services, or decompile, disassemble or otherwise reverse engineer the Services, except to the extent that such restriction is expressly prohibited by law; (iv) perform or attempt to perform any actions that would interfere with the proper working of the Services, or prevent access to or use of the Services; or (v) otherwise use the Services except as expressly allowed under this Agreement.

18. **Notices.**

A. All notices, requests, demands and other communications to be delivered by Merchant hereunder—unless otherwise specified— shall be in writing and shall

be delivered to Processor via certified mail, postage prepaid or reputable overnight courier to Processor at the following address: Vantiv, LLC, Attention: General Counsel/ Legal Department, 8500 Governors Hill Drive, Mail drop 1GH1Y1, Symmes Township, OH 45249-1384. Notices so delivered shall be deemed given upon Processor's actual receipt thereof.

B. All notices, requests, demands and other communications to be delivered by Processor hereunder—unless otherwise specified—shall be delivered to Merchant via facsimile, ordinary mail, certified mail, reports, or reputable overnight courier. Notices, so delivered shall be deemed given: (i) for facsimile when transmission confirmation is obtained, (ii) for ordinary mail and certified mail, on the seventh calendar day following mailing, (iii) for reports when transmitted or otherwise made available by Processor, and (iv) for reputable overnight courier, on the first business day following submission to the courier.

C. All notices, requests, demands and other communications to be delivered by Bank hereunder—unless otherwise specified—shall be delivered by Bank in accordance with Bank's E-Sign Notice (E-Sign Consent To Use Electronic Records And Signatures) which is posted on the Site utilized by Merchant to apply for the Services covered in this Agreement and which may be updated by Bank from time to time. To receive a copy of the E-Sign Notice, contact a Support Professional at 1-877-742-7741 (Option 2 then Option 1), email Vantiv at MerchantReferralsSupport@Vantiv.com, or write to us at 8500 Governor's Hill Dr., Symmes Township, Ohio 45249-1384 (Attn: Merchant Strategic Support 4x)

19. **Requirements Contract.** This Agreement is a "requirements contract" which means that Processor shall be Merchant's exclusive provider for all services contemplated herein. Notwithstanding the foregoing, Processor will not be obligated to process any Visa or MasterCard Card transactions beyond the authority of a U.S. member of Visa and MasterCard or any Discover Network Card or American Express transaction outside the United States of America and other U.S. territories. Prior to any Merchant termination or non-renewal, Merchant warrants that before entering into any agreement with any third party for the services contemplated herein, Processor shall have the right of first refusal of entering into agreements with Merchant for all such services under the substantially similar terms and conditions (except for the length of the term) in lieu of Merchant entering into such agreement with a third party.

20. **Processor Affiliate Accounts/Account Debiting Authorization.** In addition to any other rights or remedies that may be available to Processor or any of its affiliates, by entering into this Agreement, Merchant expressly authorizes (i) Processor to collect any amounts that are at any time due and owing from Merchant to Processor under this Agreement by debiting any checking, savings or other deposit account that Merchant at any time maintains in any affiliate of Processor (any such account, a "Processor Affiliate Account") and (ii) any affiliate of Processor to collect any amounts that are at any time due and owing from Merchant to such affiliate by debiting any Processor Affiliate Account or any checking, savings or other deposit account that Merchant maintains with Processor.

21. **Amendments; Modification of Agreement.**

A. Processor may amend this Agreement, including without limitation, rates, rate descriptions, rate categories and other terms, at any time. Processor will inform Merchant of a proposed change in a periodic statement or other notification method pursuant to the notification section of this Agreement. Merchant will be deemed to have agreed to any such amendment if Merchant continues to present transactions to Processor after seven (7) days following receipt (deemed or actual) of the notice. Notwithstanding the foregoing, in the event any Association or Other Network increases interchange, fees or assessments, Processor may increase Merchant's fees and charges to reflect such increases without notice to Merchant, and Merchant shall pay such increased fees and charges.

B. Except as provided in this Agreement, this Agreement including any addendum or schedule or exhibit hereto shall only be modified or amended by an instrument in writing signed by Merchant and Processor. Any changes, additions, stipulations or deletions, including lining out, by Merchant, except where indicated by a space to be filled in (e.g., the space for Merchant's name and address), shall not be deemed to be agreed to or binding upon Processor unless agreed to in writing in the form of an amendment signed by each party hereto.

22. **Assignment.**

A. This Agreement may be assigned by Processor, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, transferees and assignees. If Merchant assigns this Agreement without Processor's consent, the Agreement will be binding on the assignee. If Merchant sells its business, and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners. Merchant shall not sell, assign, transfer or encumber all or any part of its interest in the Reserve Account, if any, or any present or future rights under this Agreement, including but not limited to, Merchant's right to receive any payments or funds. Neither Processor nor Member Bank shall be obligated to honor

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any such purported attempt to sell, assign, transfer or encumber such interest, rights, payments or funds unless both Processor and Member Bank consent in writing.

B. In the event Merchant breaches this Section 22, then, in addition to any other rights and remedies Processor may have under this Agreement and otherwise, Processor shall have the right, at its option, to withhold any or all funds or payments which would otherwise be payable to Merchant under this Agreement until it shall have received instructions concerning the disposition of such payments or funds, satisfactory in form and substance to Processor and signed by both Merchant and any purported assignee. Merchant shall indemnify Processor and hold it harmless from and against any and all claims, liabilities and damages which may be asserted against Processor by any purported assignee or any other person arising out of Merchant's purported sale, assignment, transfer or encumbrance of all or any of Merchant's present or future rights under this Agreement.

**23. Independent Contractors.** Processor and Merchant will be deemed independent contractors and none will be considered an agent, joint venturer or partner of the other.

**24. No Third-Party Beneficiary.** This Agreement is for the benefit of, and may be enforced only by Processor and Merchant and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

**25. Employee and Agent Actions.** Merchant is responsible for the acts or omissions of its employees and agents including but not limited to such acts or omissions as such relate to the use of the services provided by Processor herein.

**26. Severability and Non-Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor to exercise, or partially exercise, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement.

**27. Signature.** Merchant's signature, a facsimile copy of signature, a digitally stored image of signature, or a unique digital signature on or captured within (as applicable) the Application serves as the signature for this Agreement. The parties expressly acknowledge and agree that the parties may choose to contract via electronic means and that such contracts shall have the same force and effect as if conducted via conventional form. The parties also expressly acknowledge and agree that any duplicate original (whether digital, photographic, or otherwise) or electronic record of this Agreement shall have the same force and effect as the original form of this Agreement.

**28. Governing Law and Arbitration.** This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. Subject to and without waiver of the Arbitration provision in this Section, Merchant irrevocably agrees to all of the following: (i) that any legal suit, action or proceeding arising out of, in any way relating to this Agreement, or pertaining in any way to the relationship between Merchant and Processor shall be exclusively instituted in a state or federal court of appropriate subject matter jurisdiction in Hamilton, County, Ohio; and (ii) a waiver of any objection which Merchant may have now or hereafter to the venue of any such suit, action or proceeding; and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Notwithstanding the foregoing, nothing contained herein shall prevent Processor from bringing any action or exercising any rights under this Agreement within any other state or country. Merchant irrevocably agrees that service of process may be made, and personal jurisdiction over Merchant obtained, by serving a copy of the Summons and Complaint upon Merchant at its address set forth in this Agreement in accordance with the applicable laws of the State of Ohio. In the event that Merchant has a claim against Member Bank in connection with the services provided under this Agreement, Merchant shall proceed against Processor (subject to the limitations and restrictions herein), and not against Member Bank, unless otherwise specifically required by the Rules. The parties agree that any dispute, controversy or claim between the parties of whatever type or manner, including, without limitation, any claim arising out of or relating to this Agreement, that is not resolved in the ordinary course of business shall be submitted to binding arbitration in lieu of litigation or other court or administrative proceeding by either party. ANY ARBITRATION UNDER THIS AGREEMENT WILL BE ONLY BE ON A INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND MERCHANT IS WAIVING ITS RIGHTS TO HAVE ITS CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST PROCESSOR AND MEMBER BANK. The Federal Arbitration Act shall govern the interpretation and enforcement of this section and all arbitration proceedings which take place pursuant to this section. Any arbitration will be filed and take place in Cincinnati, Ohio and in accordance with and pursuant to the Commercial Arbitration Rules of the American Arbitration Association before a panel of three (3) arbitrators unless the amount of damages claimed by the filing party is \$50,000.00 or less, in which event the arbitration shall be before one (1)

arbitrator. The arbitrator(s) shall be experienced in the subject matter of this Agreement or the dispute and shall not have been previously an employee, agent, consultant or counsel to either party. The arbitrators shall render their award in writing, sign the award, and state in writing the reasons supporting the award. Each party shall pay an equal share of the costs, fees and expenses of both the arbitration and the arbitrators. A party shall be entitled to the recovery of attorney's fees, costs and expenses as may be determined by the arbitrators. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under this section and the commencement of any arbitration proceeding tolls such statute of limitations. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or equitable relief without regard to this section.

**29. Waiver of Jury Trial and Covenant Not to Participate in a Class Action.** MERCHANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY ACTION, LAWSUIT, CLAIM, COUNTERCLAIM OR OTHER ACTION RELATING TO, OR ARISING UNDER THIS AGREEMENT AND/OR ANY TRANSACTION GOVERNED BY THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, VOLUNTARILY AND INTENTIONALLY BY MERCHANT, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE BE AVAILABLE. PROCESSOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MERCHANT. MERCHANT ALSO COVENANTS NOT TO PARTICIPATE IN ANY CLASS ACTION AGAINST PROCESSOR BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT.

**30. Headings and Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. In the event of an inconsistency between the Application and this Merchant Processing Agreement, the terms of the Application (unless left blank) will control. In the event of a conflict between the Bank Rules and this Merchant Processing Agreement, the Bank Rules shall prevail.

**31. Attorney's Fees.** Merchant will be liable for and will indemnify and reimburse Processor for all attorneys' fees and other costs and expenses paid or incurred by Processor in the enforcement of this Agreement, or in defending its rights under this Agreement, or in collecting any amounts due from Merchant to Processor or to any agent of Processor, or resulting from any breach by Merchant of this Agreement.

**32. Survival.** Any and all provisions of this Agreement that impose or could be construed to impose a continuing obligation, duty, or requirement upon Merchant including but not limited to liability for chargebacks/reversals and duties of indemnification and/or account maintenance shall survive the expiration or termination, for any reason, of the Agreement.

**33. Other Networks.** Merchant's election to receive Services from any Other Network may require the execution of an agreement (an "Other Merchant Agreement") between an Other Network and Merchant. The parties acknowledge and agree that Other Merchant Agreement with any Other Network shall be deemed separate and independent agreements solely between such Other Network and Merchant, and that Processor shall not be responsible for any Other Network or Merchant breach of such Other Merchant Agreements. Processor bears no liability whatsoever for terms and conditions of Other Merchant Agreements and Processor's liability for Services subject to an Other Merchant Agreement shall be limited both (i) as otherwise provided herein, and (ii) to the Services actually provided by Processor. Processor may, in its sole discretion, cease to provide any Services for Other Networks. If Merchant for any reason begins receiving any Services in connection with any Other Network, Processor may route Other Network transactions according to its standards and at its sole discretion. Merchant agrees that it has or will, prior to commencing participation in each Other Network, obtain all necessary approvals and execute any applications and/or agreements necessary for, required by or affecting Merchant's participation in such Other Network(s). In addition, Merchant shall obtain such other approvals or execute such other documents as may be required from time to time in connection with Merchant's participation in such Other Networks. Merchant agrees to participate in Other Network(s) in compliance with, and subject to, the Bank Rules and the Operating Regulations. Merchant agrees to pay all fees, fines, assessments and penalties as they are currently in effect or may be changed from time to time, imposed by the Other Network(s), whether billed directly to Merchant by such Other Network(s) or through Processor or its affiliates or agents. Processor may allocate any such fees, fines, assessments or penalties in such manner as it deems advisable in its sole

## Merchant Processing Agreement Terms and Conditions

discretion. Merchant attests that all POS terminals are operating with unique keys as mandated by Other Networks.

**34. Representations and Warranties.** Merchant represents and warrants to Processor at the time of execution and throughout the term of this Agreement the following:

A. **Information.** Merchant is a corporation, limited liability company, partnership, governmental agency or sole proprietorship validly existing and organized in the United States. All information contained in this Agreement or any other document submitted to Processor is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. Merchant is not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless Merchant obtains the prior written consent of Processor.

B. **Corporate Power.** Merchant and the person signing this Agreement on behalf of Merchant have the power to execute and perform under this Agreement and Merchant represents and warrants that the person executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person is authorized to execute any documents and to take any action on behalf of Merchant, which may be required by Processor now or in the future.

C. **No Litigation.** There is no action, suit or proceeding pending or to Merchant's knowledge threatened which, if decided adversely, would impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would adversely affect Merchant's financial condition or operations. Merchant has never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File except as disclosed in writing to Processor.

D. **Transactions.** For all Card transactions submitted to Processor: (i) the transaction must represent obligations of the person to whom the Card has been issued and/or the authorized Cardholder for the amounts in the transaction (including tax, but without any surcharge) and only for merchandise actually sold or rented or services actually rendered by Merchant (except for any delayed delivery or advance deposit authorized by the Rules and this Agreement) and must not involve any element of credit for any other purpose; (ii) the transaction must represent a bona fide sale/rental of merchandise and/or services not previously submitted and may not represent a refinancing of any prior obligation; (iii) the price charged for the transaction must not be subject to any dispute, set off or counterclaim; (iv) Merchant must have no knowledge or notice of any fact, circumstances or defense which would indicate that the transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation or relieve the Cardholder from liability for the transaction; (v) except as otherwise provided in the Rules, the transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to Merchant by a Cardholder, or arising from the dishonor of a personal check); and (vi) the transaction does not result from any sale outside of Merchant's normal course of business, as described in the Application.

E. **Products and Services.** (i) Merchant has the full power and authority to sell the products and services Merchant offers and to display the advertisements Merchant uses; (ii) no products or services offered by Merchant constitute a violation of any applicable law and Merchant will not accept a Card for any illegal transaction; (iii) Merchant will prominently and unequivocally inform each Cardholder of Merchant's identity at all points of the interaction between the Cardholder and Merchant so that the Cardholder can readily distinguish Merchant from any other party such as a supplier of goods or services to Merchant; (iv) the products and services offered by Merchant and the name of Merchant's business do not infringe upon the rights of any other person, including, without limitation, trademark, copyright, confidentiality or patent rights; and (v) Merchant will not sell, market or display any products or services that would jeopardize Processor's reputation.

**35. NPC PCI Program.** The Card Organizations have mandated that all merchants must comply with the PCI DSS found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) (see [www.visa.com/cisp](http://www.visa.com/cisp) for additional information). Processor has developed a PCI DSS program (the "PCI Program") to assist merchants with PCI DSS validation. Member Bank is not a party to or liable for the PCI Program. If the Merchant Application contains a fee for the PCI Program, then Merchant are enrolled in the PCI Program. If the Merchant Application does not contain a fee for the PCI Program, then Merchant is not currently enrolled in the PCI Program and the provisions of this Section 35 will only apply if Merchant subsequently enrolls in the PCI Program or utilizes the benefits of the PCI Program.

A. **Benefits of the PCI Program.** Upon enrollment in the PCI Program, Merchant is eligible to receive:

(i) Access to an online PCI certificate validation system, where Merchant can complete Merchant's Self-Assessment Questionnaire (SAQ);

(ii) Access to remote scanning services, which includes monthly vulnerability scanning for up to five (5) of Merchant's computer website (IP) addresses (additional fees apply if Merchant has more than 5 IPs). This applies to PC/IP merchants only; and

(iii) Access to MyNPCdata.net.

### B. PCI Compliance Validation Process

(i) **Validation Requirement.** In order to take full advantage of the PCI Program, Merchant must validate Merchant's compliance with the PCI DSS on an annual basis or as otherwise required by Processor or a Card Organization as more fully set forth herein. To validate Merchant's compliance with the PCI DSS, Merchant must successfully complete a SAQ and, if applicable, a vulnerability scan as provided below.

(ii) **Self-Assessment Questionnaire (SAQ).** A SAQ is a list of questions developed by the Payment Card Industry Security Standards Council ("PCI SSC"). There are 8 SAQ versions covering different types of merchants (the "SAQ Classifications"):

1. SAQ A Merchants who process credit card transactions via payment gateways and have fully outsourced all cardholder data functions to a third party service providers. This is not applicable to face-to-face channels.

2. SAQ A-EP Merchants with E-commerce websites that redirect the payment processing to a third party and the merchant website is segmented from the rest of the corporate network.

3. SAQ B Merchants who process credit card transactions via stand-alone dial terminals. Not applicable to e-commerce channels.

4. SAQ B-IP Merchants using only stand-alone payment terminals with an IP connection to the payment processor. Not applicable to e-commerce channels.

5. SAQ C Merchants who process credit card transactions via PC software systems or through an IP enabled terminal located in their merchant locations. These merchants do not store cardholder information electronically at their merchant locations.

6. SAQ D Merchants who process credit card transactions electronically and do store cardholder information electronically at their merchant locations.

7. SAQ-VT Merchants who process credit card transactions using only web-based virtual terminals and who do not store cardholder information electronically. Not applicable to e-commerce channels.

8. SAQ P2PE-HW Merchants using only hardware terminals that are a PCI approved point-to-point encryption (P2PE) solution. Not applicable to e-commerce channels.

Please review the eight (8) SAQ Classifications above and confirm that Merchant completes the appropriate SAQ. Merchant may go to [www.NPC.net](http://www.NPC.net) to print the desired SAQ or call Processor merchant services at 877.479.6649. To successfully complete a SAQ, Merchant must answer each control statement in the affirmative and sign the merchant attestation on the SAQ. For SAQ A-EP, SAQ B-IP, SAQ C and SAQ D Merchants, Merchant must also successfully pass quarterly vulnerability scans, performed by an Approved Scanning Processor (ASV).

(iii) Once Merchant has the appropriate SAQ, there are a number of ways to complete it:

1. Go to [www.NPC.net](http://www.NPC.net), select Online Tools under the Merchant tab, and then select PCI. Enter Merchant's MID (merchant identification number) as the login name and Merchant's Tax ID as Merchant's password. Merchant's MID is Merchant's merchant identification number assigned to Merchant upon becoming a customer of Processor.

2. Email a PDF copy of the completed SAQ to Processor at [PCIcompliance@npc.net](mailto:PCIcompliance@npc.net).

3. Fax the completed SAQ to Processor at 877.283.0630.

4. Mail the completed SAQ to Processor, Attn: PCI Department at 5100 Interchange Way, Louisville, KY 40229.

(iv) **Vulnerability Scans.** A vulnerability scan ("Scan") is necessary for PC, IP enabled terminal, or integrated ECR merchants (SAQ A-EP, SAQ B-IP, SAQ C or SAQ D Merchants). Here are the steps to receive Merchant's Scan:

1. Once Merchant has completed Merchant's SAQ, the system will guide Merchant to schedule Merchant's Scan, if applicable.

2. The Scan will identify vulnerabilities or gaps that may allow unauthorized or malicious users to gain access to Merchant's network and potentially compromise cardholder data. The Scan does not require Merchant to install any software, and no denial-of-service attacks will be performed.

3. Upon completion of the Scan, Merchant will receive a link to Merchant's full compliance report. If Merchant fails network vulnerability review, this means that the Scan discovered areas of severe vulnerability. The TrustKeeper report describes the issues found and provides Merchant with recommendations for scan resources to begin fixing the problems. The tool will guide Merchant to remediate the failed Scan and work toward achieving compliance. Once Merchant has addressed the vulnerabilities, simply schedule a

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follow-up Scan to ensure Merchant's remediation of the problem meets the PCI DSS requirements.

(v) **Certificate of Validation.** Upon successful completion of the SAQ and vulnerability scan, if applicable, Merchant's Certificate of Validation will be issued. Merchant can print Merchant's Certificate through Processor's online portal or, if Merchant completed a paper version of the SAQ, Merchant's Certificate will be mailed to Merchant.

(vi) **Re-Validation.** Merchant must maintain a current, successfully completed SAQ and timely pass quarterly vulnerability scans, if applicable, in order to take full advantage of the PCI Program. A SAQ is no longer current if the Certificate of Validation issued by Processor to Merchant is more than one (1) year old. Merchant is also required to re-validate by completing a new SAQ and passing vulnerability scans, if applicable, when Merchant makes a change in Merchant's processing environment or if Merchant fails to timely complete a required quarterly scan.

1. A change in Merchant's processing environment requiring re-validation occurs when Merchant transitions from one card-processing environment to another such that Merchant's SAQ Classification changes, necessitating re-validation under a new SAQ. With respect to a revalidation required due to a change in Merchant's processing environment, Merchant must complete the re-validation process within twenty-four (24) hours of such change in order to maintain Merchant's validation of compliance with the PCI DSS.

2. With respect to a re-validation required due to Merchant's failure to complete a required quarterly Scan, Processor will deem Merchant's failure to complete a Scan within ten (10) days of the end of the preceding quarter to require re-validation under the PCI Compliance Validation Process, in order to maintain Merchant's validation of compliance with the PCI DSS.

3. With respect to a re-validation required due to the expiration of the annual SAQ or any other reason for which Re-Validation is required, Merchant will have five (5) days to complete the PCI Compliance Validation Process, in order to maintain Merchant's validation of compliance with the PCI DSS.

Once Merchant has successfully completed the re-validation of Merchant's PCI DSS compliance, Processor will issue Merchant a new Certificate of Validation for the current validation period.

**C. Waiver; Limitations on Waiver.** Upon Merchant's successful validation of compliance with the PCI DSS under the PCI Program, Processor agrees to waive Merchant's liability to Processor, up to \$50,000, for the following fees and costs incurred as a result of a verified compromise of cardholder data that are otherwise Merchant's liability under this Agreement: (1) fees and costs associated with a required forensic audit conducted by an approved Qualified Incident Response Assessor (QIRA); (2) fines or assessments levied by a Card Organization as a result of the required forensic audit; and (3) fees and costs associated with the production and distribution of replacement credit cards for compromised card numbers (the "Waiver").

The Waiver provided under this subsection C. is also subject to the following:

(i) Processor's agreement to waive Merchant's liability to Processor for the fees and costs described in this subsection C. is only effective upon: (1) Merchant's continued validation of compliance with the PCI DSS and participation in the PCI Program; and (2) Merchant's successful completion of the PCI Compliance Validation Process described in section B. above; provided, however, that there is no change in Merchant's business practices regarding Card acceptance. Merchant's continuing qualification for the PCI Program is premised upon initial validation of Merchant's compliance with the PCI DSS as described in subsection B. above and timely re-validation of Merchant's compliance with the PCI DSS, including annual completion of a SAQ and passing quarterly vulnerability scans, if applicable, payment of the Program cost, and otherwise complying with the terms of the Program and the Agreement.

(ii) If Merchant is in compliance with the requirements of subsection (i) above, Processor agrees to waive up to \$50,000 in fees and costs described in this subsection C. for each unique Merchant Identification Number (MID). If Merchant has multiple MIDs that have the same federal tax identification number (or in the case of a sole proprietorship, the same social security number), then the maximum aggregate Waiver amount for those MIDs is limited to \$100,000. In addition, if a MID is one of a group of MIDs that are eligible for and receive a multi-merchant discount for the PCI Program fees, the aggregate Waiver for all MIDs in such group is \$100,000.

(iii) Merchant's validation of compliance with the PCI DSS through the PCI Program is required to be eligible for the Waiver. To validate Merchant's compliance, Merchant must successfully complete the PCI Compliance Validation Process described in subsection B. of this Section 35, including any required re-validation of Merchant's compliance with the PCI DSS as described in subsection B. Merchant will not be eligible for the Waiver if Merchant's SAQ is not current, if Merchant has not timely completed Merchant's quarterly vulnerability scans, or if

Merchant has otherwise failed to maintain compliance with the PCI DSS through the PCI Program.

(iv) Processor's Waiver of up to \$50,000 of the costs and fees described in this subsection C. is limited to one (1) compromise of cardholder data incident per Program year. Any subsequent incidents occurring during the same Program year are not eligible for the Waiver, and any costs and fees associated with such incident(s) remain Merchant's liability under this Agreement. Chargebacks and reversals are not eligible for the Waiver under any circumstances.

(v) To report a possible compromise of cardholder data, Merchant should immediately contact Processor at [compliance@npc.net](mailto:compliance@npc.net). Merchant will need to provide Merchant's name, MID, contact information and a brief summary of the incident in this communication, but do not include cardholder numbers or other sensitive information.

### D. Costs.

(i) If Merchant's costs for the PCI Program are set forth on the Merchant Application, the terms of this subparagraph (i) will apply. Merchant's cost for the PCI Program is assessed either per MID per PCI Program year or per MID per month as set forth on the Merchant Application. If the PCI Program fees are assessed yearly, Merchant will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of Processor's acceptance of this Agreement and will be assessed the PCI Program fee in the same month in each year thereafter. If Merchant are charged monthly, Merchant will initially be assessed the fees for the PCI Program in Merchant's first monthly statement and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program set forth on the Merchant Application is based on Merchant's representation of Merchant's processing environment. If Processor determines, at any time, that the PCI Program fee that Merchant is being assessed does not accurately reflect Merchant's processing environment, Processor may adjust Merchant's fee for the PCI Program to the PCI Program fee applicable to Merchant's current processing environment.

(ii) If the Merchant Application does not contain a cost for the PCI Program, the terms of this subparagraph (ii) will apply. Merchant's cost for the PCI Program will be provided to Merchant by Processor upon Merchant's enrollment in the PCI Program or will be Processor's standard rates if Merchant utilize the benefits of the PCI Program prior to Merchant's enrollment. Such cost is assessed either per MID per PCI Program year or per MID per month. If the PCI Program fees are assessed yearly, Merchant will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of Merchant's enrollment in the PCI Program and will be assessed the PCI Program fee in the same month in each year thereafter. If Merchant are charged monthly, Merchant will initially be assessed the fees for the PCI Program in Merchant's first monthly statement after Merchant's enrollment in the PCI Program and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program is based on Merchant's representation of Merchant's processing environment. If Processor determines, at any time, that the PCI Program fee that Merchant is being assessed does not accurately reflect Merchant's processing environment, Processor may adjust Merchant's fee for the PCI Program to the PCI Program fee applicable to Merchant's current processing environment.

(iii) NPC may assess Merchant a non-compliance fee if Merchant does not validate its compliance with the PCI DSS.

**E. Security Policy.** As part of PCI DSS, the Card Organizations require that each Merchant has a security policy that covers the security of credit card information. Merchant may obtain a sample policy by visiting [www.NPC.net](http://www.NPC.net) and selecting PCI under the other payment processing services tab. Processor will provide Merchant with a sample policy for Merchant's convenience only. If Merchant does not already have a security policy in place, Merchant may use the sample policy as a starting point. However, Merchant will need to modify it to fit Merchant's processing environment and needs. If Merchant already has a security policy in place, Merchant may want to compare it to the sample policy to verify that Merchant's security policy contains the required items

**F. Amendment.** The PCI Program is subject to change from time to time by Processor. Any changes to the Program will be effective fifteen (15) days following the date notice of such change is sent to Merchant, even if it was not received by Merchant.

**G. Further Information.** To speak with a Processor customer service representative, please call Processor at 877.479.6649. Merchant may also visit [www.npc.net](http://www.npc.net) for more information regarding the PCI Program.

**36. Regulatory Accounting Assistance Program.** The Regulatory Accounting Assistance Program Fee is for an online and paper reporting tool that will assist Merchant in reconciling on a monthly basis Merchant's gross sales processed with Processor to Merchant's net sales. Processor may assess this fee to each unique Taxpayer Identification Number (TIN).

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**37. Debit & EBT Card Processing Services; Availability of Terminals.** If so indicated on the Merchant Application, Processor will process PIN debit Card transactions and EBT Card transactions. If Merchant accepts EBT Cards, the terms set forth on Schedule IV will apply. Processor or third party banks with which Processor has a relationship are members of certain PIN debit networks and are willing to sponsor Merchant as a participant in such debit networks. Debit networks may be added or removed from time to time. Processor does not warrant the continuing availability of any debit network or EBT network. Merchant will take all reasonable steps necessary to ensure that all point-of-sale devices and PIN pads will be available for use by the Cardholders for the Cardholders' Card transactions and such devices and PIN pads will function in a reliable manner.

**38. Alternate Funding.** If Alternate Funding is selected on the Merchant Application but Merchant is not approved by Processor to receive Alternate Funding, Merchant will be set up with Premium ACH for Merchant's deposit timeframe. If Alternate Funding is selected on the Merchant Application and Merchant is approved for Alternate Funding, and Processor has not placed Merchant's account on hold, Processor will generally initiate an ACH of settlement funds due to Merchant, subject to the terms of this Agreement, to the Designated Account the business day (which, for purposes herein, will mean any day on which the Federal Reserve is open for business, other than Sundays or State or Federal holidays) after Processor processes such transactions, provided that Processor successfully receives the complete transaction data by the applicable cut off time. Notwithstanding the foregoing, Processor will not be liable to Merchant if an ACH of Merchant's settlement funds is not initiated within such one business day time period. Processor may change Merchant's deposit time frame from Alternate Funding to Premium ACH at any time and without advance notice to Merchant. Processor may, within its sole discretion, delay Merchant's settlement payments for up to seven (7) days, which period will begin after the settlement payments were received by Processor. In this event, Merchant acknowledges that Processor will, and Merchant expressly authorizes Processor to, delay Merchant's settlement payments for up to seven (7) days. This delay of Merchant's settlement funds does not preclude Processor from exercising its right to establish a Reserve Account or to suspend payments pursuant to this Agreement. The settlement payments will begin to be credited to Merchant's Designated Account, less any monies owed Processor, on the next business day following expiration of this rolling delay period. This rolling delay of the settlement payments will be ongoing and continue as long as Processor is providing Merchant's processing services. In addition, Processor has a right to delay, within its discretion, crediting the Designated Account with funds evidenced by submitted Card transactions. Merchant is responsible for verifying the amount of funds actually deposited to and available in Merchant's Designated Account on a daily basis. Processor is not responsible for the availability of funds represented by submitted Card transactions, or for any charges Merchant may incur for overdrawing the Designated Account.

Attachments to this Merchant Processing Agreement include:

- **Exhibit A** – Rules Summary
- **Exhibit B** – Agreement for American Express® Program
- **Exhibit C** – Privacy Notice
- **Exhibit D** – E-Sign Notice
- **Schedule I** – Applicable and included if Advantage Buyer Program are selected on the Merchant Application
- **Schedule II** – Applicable and included if NPC Check Services are selected on the Merchant Application
- **Schedule III** – Applicable and included if Voyager Fleet Card is selected on the applicable Merchant Addendum
- **Schedule IV** – Applicable and included if EBT is selected on the applicable Merchant Addendum
- **Schedule V** – Applicable and included if wireless terminals using GPRS services or CDMA services are selected on the Merchant Application