

## Merchant Card Processing Terms and Conditions

### This agreement contains a limitation of liability and an arbitration clause.

Thank you for selecting NCR Payment Solutions, LLC (“**Processor**”). These Merchant Card Processing Terms and Conditions along with any attachments, exhibits, schedules, or Addendum hereto (collectively, the “**Terms and Conditions**”), and the Merchant Application (together with the Terms and Conditions, the “**Agreement**”), will govern the legal relationship under which Processor, in conjunction with Bank, will provide or make available the Services described herein to Merchant. Processor and Bank may be collectively referred to as, “**Service Provider.**” Each of Bank, Processor, and Merchant may be referred to as a “**Party**” and collectively referred to as the “**Parties.**”

**1. Definitions.** The following terms will have the meanings set forth below.

1.1. “**Access Credentials**” has the meaning set forth in Section 3.4.

1.2. “**ACH**” has the meaning set forth in Section 2.2.

1.3. “**Addendum**” (and the plural, “**Addenda**”) means each Addendum attached hereto, if any, or any other Addendum otherwise executed or agreed to among the Parties.

1.4. “**Affiliate**” means an entity that directly or indirectly controls, is controlled by, or is under common control with a Party. For purposes of this definition, “control” means ownership of more than fifty percent (50%) of the voting stock or other voting ownership interest in an entity.

1.5. “**Agreement**” has the meaning set forth in the preamble.

1.6. “**American Express**” means American Express Travel Related Services Company, Inc. or its successors or assigns.

1.7. “**American Express Merchant Regulations**” means the Merchant Regulations published by American Express, as the same may be modified, supplemented, or replaced from time to time. For the avoidance of doubt, “American Express Merchant Regulations” are considered Operating Rules.

1.8. “**Applicable Law**” means all applicable federal, state, and local laws, statutes, ordinances, case law, regulations, and regulatory guidance, as the same may be modified, supplemented, or replaced from time to time.

1.9. “**Audit**” has the meaning set forth in Section 3.11.

1.10. “**Auditor**” has the meaning set forth in Section 3.11.

1.11. “**Bank**” means the acquiring bank identified in the Merchant Application, or such other acquiring bank(s) as Processor may contract with to provide sponsorship with the Payment Networks, as well as any successors and assigns of such acquiring bank(s).

1.12. “**Card**” means an account, or evidence of an account, authorized and established between a Cardholder and a Payment Network, or representatives or members of a Payment Network, that Merchant accepts from Cardholders as payment for a good or service.

1.13. “**Card Information**” means all information related to any Cardholder or Card obtained by Merchant or provided by a Cardholder in connection with a Transaction, including, without limitation, customer names, addresses, zip codes, card numbers, expiration dates, security codes, PIN numbers, credit limits, or account balances.

1.14. “**Cardholder**” means the person or entity to whom a Card is issued or who is authorized to use a Card.

1.15. “**Chargeback**” means the reversal of any Transaction pursuant to the Operating Rules for whatever reason.

1.16. “**Claim**” means any proceeding, action, claim, litigation, complaint, or demand initiated by a Person.

1.17. “**Critical Provider**” has the meaning set forth in Section 3.8.

1.18. “**Data Compromise Event**” means any event that results, or could result, directly or indirectly, in the unauthorized access or disclosure of Card Information, Transaction information, or Cardholder information.

1.19. “**Data Compromise Event Losses**” has the meaning set forth in Section 13.4.

1.20. “**Discover**” means DFS Services, LLC (a subsidiary of Capital One Financial Corporation) or its successors or assigns.

1.21. “**Early Termination Fee**” has the meaning set forth in Section 4.4.

1.22. “**EBT Program**” means any electronic benefit transfer program, including the electronic women, infant and children’s services, sponsored by a state or federal entity.

1.23. “**Guarantor**” means each Person who executed the guaranty set forth in the Merchant Application.

1.24. “**Identifiers**” has the meaning set forth in Section 11.1.

1.25. “**Indemnified Party**” has the meaning set forth in Section 16.1.

1.26. “**Initial Term**” has the meaning set forth in Section 4.1.

1.27. “**Losses**” means any losses, liabilities, damages, judgments, assessments, fines, fees, penalties, costs, expenses (including reasonable attorneys’ fees), and any other amounts.

1.28. “**Mastercard**” means Mastercard International Incorporated or its successors or assigns.

1.29. “**Merchant**” means the legal entity identified in the Merchant Application.

1.30. “**Merchant Application**” means the application, including all schedules, exhibits, attachments, and addenda thereto, that Merchant completed and signed (including by electronic signature or otherwise electronically indicating acceptance of the terms) and which is subsequently accepted by Processor and Bank, whether evidenced by their execution of the Agreement or by the processing of presented Transactions.

1.31. “**Merchant Liabilities**” has the meaning set forth in Section 8.4.

1.32. “**MID**” has the meaning set forth in Section 3.4.

1.33. “**NACHA**” means the National Automated Clearing House Association.

1.34. “**Operating Rules**” means all rules, bylaws, programs, and regulations of the Payment Networks, including the Security Standards, as the same may be modified, supplemented, or replaced from time to time. Operating Rules for Visa, Mastercard, and American Express may be available online, including for Visa at [usa.visa.com](http://usa.visa.com), for Mastercard at [www.mastercard.us](http://www.mastercard.us), and for American Express at [https://icm.aexp-static.com/content/dam/gms/en\\_us/optblue/us-mog.pdf](https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf) and <https://www.americanexpress.com/us/merchant/merchant-regulations.html>, as such links may change from time to time.

1.35. “**Party**” and “**Parties**” has the meaning set forth in the preamble.

1.36. “**Payment Network**” means each of Visa, Mastercard, American Express, Discover, any other card network, or EBT Program provider supported in connection with the Services.

1.37. “**PCI DSS**” means the Payment Card Industry Data Security Standards.

1.38. “**Person**” means any individual, any corporation, partnership, limited liability company, association, trust, unincorporated organization, any other legal entity or organization.

1.39. “**Processing Fees**” means the fees and charges set forth on the fee schedule that is part of the Agreement, as modified, supplemented, or replaced from time to time, whether by the Payment Networks or by Service Provider pursuant to the Agreement, including, without limitation, by messages included on any processing statement or merchant portal.

1.40. “**Processor**” has the meaning set forth in the Preamble.

1.41. “**Regulatory Authority**” means any applicable governmental, regulatory, judicial, legislative, or administrative authority having jurisdiction over any Party or the Services.

1.42. “**Renewal Term**” has the meaning set forth in Section 4.1.

1.43. “**Representative**” means, with respect to a Party, the employees, officers, directors, consultants, contractors, subcontractors, agents, and representatives of such Party.

1.44. “**Reserve Fund**” has the meaning set forth in Section 9.1.

1.45. “**Security Standards**” means all rules, regulations, standards, or requirements adopted or published by the Payment Networks relating to data security and the protection of Card Information, including PCI DSS, Visa’s Cardholder Information Security Program and Payment Application Best Practices, Mastercard’s Site Data Protection Program and POS Terminal Security Program, American Express’s Data Security Operating Policy, Discover’s Information Security & Compliance Program, and any successor rules, regulations, standards, or requirements, in each case, as any of the same may be modified, supplemented, or replaced from time to time.

1.46. “**Service Provider**” has the meaning set forth in the preamble. As context requires, references to Service Provider may mean Processor and Bank, or Processor and/or Bank.

1.47. “**Service Provider Confidential Information**” has the meaning set forth in Section 12.1.

1.48. “**Services**” means those services provided by Processor and/or Bank, whether directly or through its and/or their Affiliates or Representatives, necessary and required to facilitate the authorization, processing, and settling of Transactions.

1.49. “**Settlement Account**” has the meaning set forth in Section 8.1.

1.50. “**Term**” has the meaning set forth in Section 4.1.

1.51. “**Terms and Conditions**” has the meaning set forth in the preamble.

1.52. “**Transaction**” means any interaction between a Cardholder and a Merchant in which a Cardholder uses a Card to purchase Merchant’s goods or services and which results in activity on the Cardholder’s account.

1.53. “**Transaction Dispute**” has the meaning set forth in Section 7.

1.54. “**Visa**” means Visa Inc. or its successors or assigns.

## 2. Services

2.1. Subject to Applicable Law and the Operating Rules, Processor, in conjunction with Bank, whether directly or through its and/or their agents, Affiliates, designated representatives, or third-party vendors, will provide the Services to Merchant to enable

Merchant to accept Cards in connection with the sale of Merchant’s goods or services pursuant to the terms of the Agreement. Merchant agrees to abide by, and to use the Services in strict compliance with, Applicable Law, the Operating Rules, and the Agreement.

2.2. Upon request, Processor may elect to provide Automated Clearing House (“ACH”) processing services to Merchant at the rates specified in the Merchant Application and under the terms set forth in the Agreement. To the extent Merchant uses such ACH processing services, it agrees to abide by all NACHA operating rules, regulations, standards, and requirements as the same may be modified, supplemented, or replaced from time to time.

## 3. Certain Merchant Responsibilities

3.1. **Representations, Warranties, and Covenants.** Merchant represents, warrants, and/or covenants, at the time of signing the Merchant Application and on each day during the Term, that:

3.1.1. The Person signing the Merchant Application has full legal power and authority to enter into the Agreement;

3.1.2. Each statement made by Merchant on the Merchant Application is and, except as has been disclosed in writing to Processor, remains true, accurate, and complete;

3.1.3. Each time Merchant submits any instruction to Service Provider through the Services: (a) the instruction and any corresponding Transaction has been properly authorized in accordance with Applicable Law and the Operating Rules and such authorization has not been revoked or terminated; (b) all information and data provided by Merchant in connection with the instruction is true, accurate, and complete; and (c) Service Provider and any applicable third party may rely and act on the information and data in the instruction; and (d) Service Provider’s or any applicable third party’s reliance on the information and data contained in the instruction and the execution of the instruction (including any corresponding Transaction) will not cause Service Provider or any applicable third party to violate Applicable Law, the Operating Rules, or the Agreement or otherwise result in any liability or Losses to Service Provider or such third party.

3.1.4. Each time Merchant submits any Transaction to Service Provider through the Services:

(a) The Transaction is legal and genuine and arises from a bona fide sale of goods or services by Merchant; except as otherwise permitted by the

Operating Rules, the goods have been shipped or delivered and/or the services performed; and the Transaction represents a valid obligation for the amount submitted and does not involve the use of the Card for any other purpose;

(b) The Transaction is not one that Merchant knows or should have known to be fraudulent, unauthorized, the product of collusion between the Cardholder and Merchant, or unlawful or impermissible under Applicable Law, the Operating Rules, or the Agreement;

(c) Merchant has taken reasonable steps to ensure the validity of the Card and the identity of the Cardholder;

(d) The Transaction is not subject to liens, encumbrances, disputes, set-off, or counterclaim;

(e) The Transaction has not been previously submitted for processing (except as the same may be permitted under the Operating Rules);

(f) Merchant has not disbursed or advanced any cash to the Cardholder in connection with the Transaction (except as the same may be permitted under the Operating Rules);

(g) The Transaction is not a refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible;

(h) The Transaction does not arise from the acceptance of a Card at a scrip-dispensing terminal;

(i) The Transaction does not arise from the dishonor of a Cardholder's personal check;

(j) Merchant has the legal right to sell the goods and services purchased by Cardholder via the Transaction;

(k) Merchant has made no representation or agreement for the issuance of refunds except as stated in Merchant's refund policy;

(l) Any Transaction submitted to Processor to credit a Cardholder's account represents a refund for a Transaction previously submitted to Processor; and

(m) The Transaction will not damage the goodwill of Service Provider or the Payment

Networks or reflect negatively on any Service Provider Identifiers or Payment Network Identifiers.

(n) Merchant will be solely responsible for obtaining a copy of the then-current Operating Rules for each EBT Program in which Merchant elects to participate, no fewer than thirty (30) days prior to the commencement of Merchant's participation in each such EBT Program. Merchant agrees to abide by and does fully comply with the Operating Rules applicable to the EBT Program as may be in effect from time to time, and to perform and fulfill any and all obligations and responsibilities, and discharge any and all duties and liabilities to which it may be subject in accordance with such Operating Rules or other regulations adopted by EBT Program sponsors, and in accordance with Applicable Law.

3.1.5. Merchant does and will continue to comply with the Operating Rules, including the following requirements:

(a) Merchant will not disparage the Payment Networks or any of their products, programs, services, networks, or systems;

(b) Merchant may request, but will not require a Cardholder to provide additional identification information as a condition of Card acceptance, unless such information is required to complete the Transaction, such as for shipping purposes or if the Operating Rules specifically permit or require such information to be collected;

(c) Merchant will ensure that each Cardholder is easily able to understand that Merchant is responsible for the applicable Transaction, including the delivery of the goods (whether physical or digital) or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Transaction;

(d) Merchant will maintain a written refund policy and will disclose such policy to Processor and all its customers (including customers making purchases online by displaying such policy on the website), which policy and disclosure will be consistent with Applicable Law and the Operating Rules. The amount of any refund will not exceed the original Transaction except to the extent a Merchant agrees to reimburse a Cardholder for return shipping.

(e) Merchant will not take any actions that could interfere with or prevent the exercise of

the rights of the Payment Networks provided under the Agreement;

(f) Merchant will only accept Cards at the Merchant locations disclosed to Service Provider in the Merchant Application;

(g) Merchant will not display Payment Network Identifiers at any POS that dispenses scrip.

(h) Merchant will not transfer, or attempt to transfer, any financial liability by asking or requiring Cardholders to waive their dispute rights in connection with any Transaction.

(i) Merchant will not request or require any Cardholder to waive any dispute rights that the Cardholder may have as a matter of Applicable Law or the Operating Rules.

(j) Except to the extent permitted by both Applicable Law and the Operating Rules and as authorized in writing by Processor, Merchant will not (i) apply an additional charge for accepting Cards as an alternative to other payment methods (referred to at times as a “surcharge”); or (ii) set minimum or maximum transaction amounts.

(k) Merchant will prominently and clearly display and disclose to Cardholders at all times (i) the name of the Merchant; and (ii) Merchant’s physical address.

(l) Merchant will prominently display the appropriate Payment Network acceptance Identifiers at the POS and any other locations where payment options and/or access Identifiers are presented in accordance with the Operating Rules.

(m) In the event Merchant operates an ecommerce website or application, then such website will comply with all requirements under the Operating Rules, including: (i) displaying the customer service contact information (including email address or telephone number), (ii) clearly and prominently displaying the country of the Merchant’s location on the same screen view as the checkout screen used to present the final Transaction amount or within the sequence of web pages that the Cardholder accesses during the checkout process, (iii) displaying the address for Cardholder correspondence, and (iv) displaying the policy for delivery of multiple shipments.

(n) Subject to Applicable Law, Merchant agrees to accept all categories of Visa and Mastercard Cards unless Merchant has notified Processor on the Merchant Application of its election to limit such acceptance. Any limitations on acceptance must comply with Applicable Law and the Operating Rules. Furthermore, Merchant will not engage in any practice that discriminates against or discourages the use of any Card in favor of another Card.

(o) Merchant will immediately notify Processor of any changes in the goods and services for which Cards are accepted as payment from Cardholders.

3.2. **Payment Network Rights.** Merchant acknowledges and agrees that any Payment Network may enforce any provision of the Operating Rules against Merchant in connection with the Services or the Agreement, including by prohibiting Merchant from engaging in any conduct that could injure, or could create a risk of injury to, the Payment Network or that could adversely affect the integrity or the confidential information of the Payment Network. Merchant authorizes Processor to provide any applicable Payment Network with such information about Merchant as requested or required according to the Operating Rules.

3.3. **Certification.** Merchant acknowledges and agrees that Bank, Processor, or any Payment Network may request or require Merchant to make certifications regarding Merchant’s access to and use of the Services. Upon request, Merchant will provide any certifications requested or required by Service Provider or any Payment Network, including a written certification statement signed by one or more of Merchant’s duly authorized senior executives or officers attesting that: (a) the country identified by Merchant to Service Provider as Merchant’s location complies with the Operating Rules, and (b) the address disclosed to Cardholders and appearing in Transaction messages is a location in the specified country and is an address from which Merchant is conducting business activity and operations.

3.4. **Access Credentials; MID.** Merchant acknowledges that Merchant may be provided with logins, usernames, or passwords (“**Access Credentials**”) to obtain electronic access to the systems or portals of Processor or to otherwise access or use the Services. Merchant further acknowledges that Merchant will be assigned a merchant identification (“**MID**”) to facilitate the provision of Services to Merchant, and that as a security measure, Merchant may be requested to identify itself by its MID when contacting Service Provider, including to request changes to Merchant’s account. Merchant is responsible and liable for: (a) securing and limiting the disclosure of the Access Credentials and MID; (b) any access to and use

or disclosure of the Access Credentials or MID, whether authorized or unauthorized; and (c) for promptly notifying Processor of any unauthorized access to or use or disclosure of the Access Credentials or MID. Merchant acknowledges and agrees that any Person that uses the Access Credentials or correctly identifies the MID will be presumed by Service Provider to have the authority to take actions on behalf of Merchant, and Merchant will be solely liable for any Losses incurred by Merchant as a result of any unauthorized access to or use or disclosure of the Access Credentials or MID.

3.5. **Cardholders.** Merchant is responsible for all aspects of Merchant's relationship with any Cardholder, including for verifying the identity of the Cardholder and obtaining and maintaining all authorizations and consents to submit Transactions initiated with the Cardholder's Card.

3.6. **Merchant Goods and Services.** Merchant is responsible for all aspects of providing or otherwise making available Merchant's goods and services to Cardholders and otherwise fulfilling its obligations to Cardholders.

3.7. **Representatives.** Merchant is responsible for the acts and omissions of its Representatives, including any unauthorized access to or use of the Services by its Representatives.

3.8. **Critical Providers.** To the extent Merchant uses any third party that processes, stores, receives, transmits, or otherwise accesses Card Information (a "**Critical Provider**"), Merchant assumes full responsibility and liability for such Critical Provider's compliance with Applicable Law, the Operating Rules, and the Agreement. Merchant may not use any Critical Provider without Processor's prior written approval. Merchant agrees to provide Service Provider with any documentation and information of any Critical Provider that Service Provider may request or require prior to engaging such Critical Provider and at any time thereafter. Merchant is responsible for ensuring that any Critical Provider and any third-party system, software, or hardware used by Merchant or any Critical Provider to process, store, receive, transmit, or access Card Information complies with all applicable Security Standards and is properly registered, if required to be so, with all applicable Payment Networks. Service Provider further reserves the right to require any Critical Provider to undergo testing, approval, and certification by Service Provider, and to terminate any Critical Provider's access to or ability to integrate with Service Provider's systems at any time.

### 3.9. **Equipment.**

3.9.1. Unless otherwise agreed in writing by Service Provider, Merchant is solely responsible for the provision and maintenance of Merchant's systems, software, and hardware, including ensuring that Merchant's systems, software, and hardware enable Merchant to receive the Services in accordance with the Agreement.

3.9.2. Service Provider makes no representations or warranties, and disclaims any and all responsibility and liability, with respect to any third-party provider or third-party products and services, including with respect to the compatibility of such third-party products or services with the Services or Service Provider's systems, software, or hardware. To the extent that Merchant uses any third-party products or services, including any third-party systems, software, or hardware, Merchant understands that a separate agreement may be required with the applicable third-party provider to obtain such products or services, and additional fees may be charged by the third-party provider in addition to the fees charged by Service Provider.

3.9.3. To the extent that Merchant elects to purchase, lease, or use processing equipment from Service Provider or its respective Affiliates, Merchant agrees to pay the fees charged by Service Provider for such purchase, lease, or use of equipment, along with all applicable taxes and shipping costs, and agrees that Service Provider may collect such amounts using any means set forth in Section 14.2.2.

3.9.4. Equipment provided by Service Provider or any of its Affiliates may only be used to receive the Services in accordance with the Agreement and in accordance with any licenses, restrictions, or requirements applicable to such equipment communicated to Merchant from time to time. Merchant acknowledges and agrees that Merchant's purchase, lease, or use of processing equipment provided by Service Provider or its Affiliates may be subject to additional terms and conditions.

3.9.5. Without prejudice to Merchant's other obligations under the Agreement, Merchant will be responsible and liable for any Claims, Losses, any new or increased fees (including interchange fees) arising out of or relating to Merchant's: (a) use of any third-party provider or third-party products or services; (b) failure to maintain the most current version of software that has been certified by Service Provider as being compatible with Service Provider's systems; or (c) misuse of any software that has been certified as compatible with Service Provider's systems.

### 3.10. **Underwriting and Monitoring.**

3.10.1. Merchant, on behalf of itself and its principals and beneficial owners, acknowledges and agrees that Service Provider may request and obtain external reports, including credit reports from credit reporting agencies, in connection with the consideration of the Merchant Application or at any time thereafter. Merchant further acknowledges that the Merchant Application submitted by Merchant may be rejected by Service Provider and that Service Provider will not have any liability associated with such rejection.

3.10.2. Merchant agrees to promptly provide Service Provider all documentation and information required or requested by Service Provider in connection with the Services or the Agreement, including all documentation and information reasonably necessary to evaluate Merchant's financial condition and business practices information. Merchant agrees to provide Service Provider all documentation and information necessary, appropriate, or advisable to enable Service Provider to comply with its obligations under Applicable Law, the Operating Rules, or any request from a Regulatory Authority or Payment Network within the time frame required by Service Provider. Without limiting the generality of the foregoing, but subject to Applicable Law and the Operating Rules (including the Security Standards), Merchant agrees to preserve receipts, credit vouchers, or other written evidence related to Transactions for not less than two (2) years following such Transaction and to provide such records to Service Provider upon request.

3.11. **Audits.** Merchant will maintain complete and accurate books and records sufficient to enable Service Provider to monitor and verify Merchant's performance under the Agreement. With notice and during Merchant's normal business hours, Service Provider, any Regulatory Authority, any Payment Network, and/or any designees of any of the foregoing Persons (each, an "**Auditor**") may need to investigate, review, audit, or inspect Merchant, including Merchant's premises, books, records, and other materials related to Merchant's activities in connection with the Services or the Agreement (each, an "**Audit**"). Merchant will cooperate with any Auditor in connection with any Audit, including to perform on-site inspections of Merchant's premises. Merchant agrees to be responsible for Processor's out of pocket expenses and its standard fees for the time spent by Processor's personnel (which will be assessed at Processor's then-current standard hourly rate) in conducting such on-site inspections.

3.12. . If the results of any Audit reveal any material issues, then Merchant will take all appropriate actions to remedy such issues within the time frames

established by Auditor and will provide the Auditor with any evidence reasonably required by the Auditor to demonstrate such issues have been properly remediated.

### 3.13. **Reporting.**

3.13.1. Merchant agrees to provide Processor advance written notice of any actual or anticipated: (a) material change in Merchant's products or services, business practices, or the manner in which Merchant accepts Cards; (b) change to Merchant's legal name, trade name, or mailing address; or (c) changes to anticipated Transaction amounts or volume.

3.13.2. Merchant acknowledges that, under the Operating Rules, certain merchant activity and terminations of merchant processing agreements may result in Service Provider reporting Merchant and its principals to the Payment Networks for inclusion on a terminated merchant file (e.g., the "MATCH" list). Merchant, on behalf of itself and its principals, hereby consents to such reporting and waives any claim related to the same, even in instances where Merchant or its principals believe that reporting to have been improper or in error.

## 4. **Term; Termination**

4.1. **Term.** The Agreement will go into effect for a three (3) year term (the "**Initial Term**") commencing on the date the Agreement is accepted by Service Provider, whether by signature or by the processing of presented Transactions. Thereafter, the Agreement will renew automatically for successive three (3) year periods (the "**Renewal Term**" and together with the Initial Term, the "**Term**") unless a Party provides written notice of non-renewal to the other Party at least sixty (60) days prior to the expiration of then-current Term. If Merchant presents, and Bank and/or Processor elects to process, Transactions beyond the conclusion of the Term, then the terms and conditions of the Agreement will continue to govern such processing activity.

4.2. **Service Provider Termination Rights.** In addition to any other termination rights of Service Provider under the Agreement, Service Provider may terminate the Agreement immediately, or may suspend Services or decline to process particular Transactions, with or without notice, if: (a) Merchant fails to strictly comply with any term, condition, or provision of the Agreement; (b) Processor or Bank, each in its sole discretion, determines that Merchant or any Merchant Affiliate is violating the Operating Rules or Applicable Law or is engaging in fraudulent or deceptive conduct or other conduct creating a risk of harm or loss to Processor, Bank, their respective Affiliates, or the Payment Networks; (c)

Merchant, any Guarantor, or any Merchant Affiliate becomes involved in voluntary or involuntary bankruptcy or insolvency proceedings; (d) Processor or the Bank deems Merchant to be financially insecure; (e) Merchant materially alters its business; (f) there is a material change in Merchant's processing activity, either from historical processing activity or the activity projected in the Merchant Application; (g) Processor or Bank receives direction from any Regulatory Authority or Payment Network to limit or terminate the Agreement; (h) Bank ceases to be a member of the Payment Networks or no longer has a license with the Payment Networks to use any applicable Payment Network Identifier; or (i) Processor or Bank determines that circumstances otherwise warrant immediate termination or suspension. Furthermore, Service Provider may terminate the Agreement at any time upon thirty (30) days' written notice.

4.3. **Merchant Termination Rights.** In addition to any other termination rights of Merchant under the Agreement, Merchant may terminate the Agreement if Processor or Bank has failed to perform a material obligation in the Agreement and such failure has not been cured for thirty (30) days after Merchant notifies Processor or Bank in writing of such failure.

4.4. **Early Termination Fee.** Except as expressly provided elsewhere in the Agreement, if the Agreement is terminated prior to the expiration of the then-current Term, Merchant will pay Processor a liquidated damages amount (the "**Early Termination Fee**"). The Early Termination Fee is an amount equal to the product of (a) the average monthly amount of Processing Fees and other charges paid to Service Provider pursuant to the Agreement (excluding any fees or charges of the Payment Networks or other third parties passed through to Merchant pursuant to the Agreement) over the six (6) month period immediately preceding the effective date of termination, Merchant's discontinued use of the Services, or Merchant's breach of Section 5, whichever is earliest; *multiplied by* (b) the number of months remaining in the then-current Term. Notwithstanding the foregoing, if there is an Early Termination Fee listed in Schedule A that is greater than \$1, then such fee will apply in lieu of the calculated amount described in the foregoing sentence. Merchant acknowledges and agrees that the Early Termination Fee is not a penalty, but rather is a reasonable estimate of the damages caused by such early termination, which amount would otherwise be difficult to calculate with precision. The Early Termination Fee is in addition to, and not in lieu of, any other damages or sums to which Processor or Bank may be entitled unrelated to the early termination of the Agreement.

4.5. **Effect of Termination.** All Merchant obligations with respect to Transactions processed under

the Agreement will survive any expiration or termination of the Agreement, including, without limitation, the obligation to pay any Merchant Liabilities.

## 5. Exclusivity

During the Term, Merchant will not receive services, or enter into an agreement to receive services, from any other Person similar to those Services that Merchant has elected to receive from Service Provider without Processor's express written approval and consent.

## 6. Procedures for Transactions

6.1. **General.** Merchant will submit Transactions to Service Provider in accordance with Service Provider's procedures and specifications for the creation and submission of data to Service Provider. Merchant understands that failure to submit such Transactions on a timely basis in accordance with Service Provider's procedures and specifications may: (a) result in increased fees associated with the Transaction(s) (such as higher interchange fees), and Merchant agrees to pay any such fees if assessed; and/or (b) compromise Merchant's ability to be paid for the Transaction(s). For the avoidance of doubt, Merchant will be solely responsible for all communication expenses associated with transmitting Transactions to Service Provider.

6.2. **Restrictions.** Merchant will not submit for processing: (a) any Transaction that does not involve Merchant, or that does not originate from an interaction between Merchant and a Cardholder intending to make a purchase from Merchant; (b) any Transaction for which Merchant does not receive an authorization code from Processor; (c) any Transaction that results in a transaction outside of Merchant's normal course of business as reflected on the Merchant Application; or (d) any Transaction that otherwise violates Applicable Law, the Operating Rules, or the Agreement. Service Provider reserves the right to refuse to process any Transaction if Service Provider believes any Transaction may be uncollectible from the Cardholder, is likely to result in a Transaction Dispute, or has been submitted in violation of Applicable Law, the Operating Rules, or the Agreement.

6.3. **Limitations.** Service Provider may impose a cap, either per transaction or on an aggregate basis, on the dollar amount of the Transactions it will process for Merchant that takes into consideration Merchant's sales volume, as indicated on the Merchant Application.

## 7. Transaction Disputes.

7.1. Merchant is responsible for responding to, addressing, and resolving all disputes, returns, reversals, refunds, Chargebacks, and adjustments, arising out of or relating to any Transaction (each, a “**Transaction Dispute**”) in accordance with Applicable Law, the Operating Rules, and the Agreement. Merchant is responsible for paying the amount of any Transaction Dispute and any and all fees, charges, assessments, or other Losses related to any such Transaction Dispute.

7.2. If Merchant has reason to dispute or respond to a Transaction Dispute, including any Chargeback, then Merchant must do so by the date provided on the applicable Transaction Dispute notice. Service Provider has no independent obligation to investigate or attempt to obtain a reversal or adjustment of any Transaction Dispute.

7.3. If Service Provider or a Payment Network, determines that Merchant is experiencing excessive Transaction Disputes, then Merchant may be subject to additional monitoring by Service Provider or the Payment Networks and additional controls or conditions imposed by Service Provider or the Payment Networks in connection with Merchant’s access or use of the Services, which may include Service Provider increasing the Processing Fees, establishing or increasing the Reserve Fund, suspending the Services, or terminating the Agreement.

## 8. Settlement Account; Settlement

8.1. Merchant will establish and maintain an account at a bank or other depository institution acceptable to Service Provider that Service Provider may credit or debit for amounts payable in connection with the Services or the Agreement (a “**Settlement Account**”). Merchant hereby authorizes Service Provider to initiate debit and credit entries to the Settlement Account through the ACH settlement process, and agrees that Service Provider may debit the Settlement Account for any Transaction Disputes amounts, Processing Fees, Data Compromise Event Losses, indemnified Losses, and any other amounts payable to Service Provider, its Affiliates, or the Payment Networks in connection with the Services or the Agreement, or any other agreement between Merchant and Service Provider’s Affiliates. Such authorization will remain in place until the later of termination of the Agreement or Merchant’s satisfaction of all obligations to Service Provider or its Affiliates. Merchant will maintain sufficient funds in the Settlement Account to prevent the occurrence of insufficient funds, and will be solely liable for all fees, costs, and overdrafts associated with the Settlement Account.

8.2. If Merchant intends to change its Settlement Account, it must give no fewer than thirty (30) days’ prior written notice to Processor and execute any forms required by Processor in connection with the change. Failure to provide the notice or the applicable executed forms required in this Section may result in the inability of Merchant to receive Transaction settlement amounts, and may result in the misdirection or loss of the same. Merchant will bear sole responsibility for any such loss and will have no right of recovery against Service Provider associated with such misdirection or loss.

8.3. With respect to Transactions involving Cards not issued by American Express or Discover, Bank is solely responsible for providing settlement funds directly to Merchant as provided herein. Services related to Transactions involving Cards issued by American Express and Discover are provided or otherwise made available without the involvement of Bank as provided in disclosure page of the Merchant Application. Accordingly, Bank is not responsible for, and will have no liability with respect to, American Express and Discover Transactions. Merchant acknowledges and agrees that Service Provider will not be responsible or liable for delays in the transmission of funds or the failure of Merchant to receive funds where that delay or failure is in any way attributable to Merchant or any third party, including third-party banks, depository institutions, or the Payment Networks.

8.4. Except as otherwise provided in the Agreement, after receiving funds for approved Transactions from any Payment Network, Service Provider will provisionally fund Merchant’s Settlement Account in an amount equal to the Transaction funds received from the applicable Payment Network, minus: (a) Transaction Dispute amounts, Processing Fees, Data Compromise Event Losses, indemnified Losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks in connection with the Services, this Agreement, or any other agreement between Merchant and an Affiliate of Service Provider; and (b) any amounts authorized to be retained under Sections 9 or 10 of the Terms and Conditions (collectively ((a) – (b)), the “**Merchant Liabilities**”). Failure to subtract such amounts does not relieve Merchant of liability or responsibility for the same, and Merchant agrees that Service Provider may collect such amounts in any manner set forth in Section 14.2.2. Merchant acknowledges that all payments and credits provided to Merchant are provisional and subject to suspension, revocation, deductions, or other adjustments as provided in the Agreement or the Operating Rules.

8.5. Merchant acknowledges that interchange and other rates, fees, charges, and assessments imposed by the Payment Networks are determined by the Payment Networks. Service Provider cannot guarantee any

interchange rate and have no obligation to minimize or secure the lowest interchange rate, fees, charges, or assessments for any Transaction. Merchant assumes full liability for the difference between any applied interchange rate and the interchange rate projected or assumed by Service Provider at the time of any Transaction.

8.6. The debit network used to process debit Transactions will depend upon a number of factors, including Processor's business considerations and the availability of a particular network, and may not be the lowest cost network available.

## **9. Reserve Fund and Security Interest**

9.1. Service Provider may, at any time, whether at the inception of the Agreement or thereafter (including at the time of expiration or termination of the Agreement), require Merchant to fund a non-interest bearing account established by Service Provider, which may be used to satisfy Merchant's current or anticipated obligations hereunder, including the Merchant Liabilities (the "**Reserve Fund**"). Further, Service Provider may adjust the required Reserve Fund amount from time to time, which may be based on several factors, including anticipated Transaction volume, processing history, and risk exposure to Service Provider, its Affiliates, or any Payment Network. All decisions relating to the establishment and required amount of the Reserve Fund will be in the sole discretion of Service Provider.

9.2. The Reserve Fund may be funded by: (a) withholding or setting-off payment of any amounts payable to Merchant in connection with the Services or the Agreement and applying them to the Reserve Fund; (b) debiting the Settlement Account; or (c) demanding funds from Merchant. If Service Provider makes a demand for funds pursuant to this Section 9.2, Merchant will transfer the amount of funds demanded within eight (8) business hours of receipt of such demand.

9.3. Service Provider may continue to hold the Reserve Fund until the one (1) year anniversary of the later of: (a) the expiration or termination of the Agreement; or (b) the last processing activity that occurs on Merchant's account (including any Transaction or Transaction Dispute) or for such longer time as Service Provider reasonably determine is necessary to satisfy Merchant's current or anticipated obligations, including Merchant Liabilities, under Applicable Law, the Operating Rules, or the Agreement.

9.4. Until the expiration of the period described in Section 9.3, Merchant will have no right, title, or interest in or to the Reserve Fund. Rather, the Reserve Fund will be the exclusive property of Service Provider.

Merchant will have no right to receive interest on any funds maintained in the Reserve Fund, which will be the exclusive property of Service Provider. Without limiting the foregoing, and merely as an additional form of security, Merchant hereby grants Service Provider a security interest in: (a) the Reserve Fund and all funds therein; (b) the proceeds associated with any Transaction; and (c) any amounts payable to Merchant by Service Provider hereunder. Service Provider may enforce its security interests granted under the Agreement without notice or demand. The security interests granted under the Agreement will continue after expiration or termination of the Agreement until Merchant satisfies all its obligations to Service Provider under the Agreement. Merchant hereby authorizes Service Provider and its designees to execute and deliver any instruments or documents to perfect or evidence its interest in the security interest granted under the Agreement, and further agrees to execute and deliver to Service Provider such instruments and documents as Service Provider may reasonably request to perfect or evidence the security interests granted under the Agreement.

## **10. Holdback Rights**

Without prejudice to any other rights of Service Provider under the Agreement, if Service Provider, at any time during the Term, determines in its commercially reasonable discretion that it may be prudent or necessary to do so as a result of any unusual, suspicious, or risk-exposing activity (including money laundering, invalid sales transactions, counterfeit transactions, altered or duplicate transactions, activity related to a suspected Data Compromise Event or other breach of Security Standards, or excessive Merchant Liabilities), then Bank, or Processor on behalf of Bank, may, without notice, hold funds otherwise payable to Merchant for such period as Service Provider, in its commercially reasonable discretion, deem necessary, to provide security against liability for such activity, plus other costs or liabilities reasonably anticipated to be due to Service Provider related to the same. To the extent: (a) the investigation conducted by Service Provider with respect to the unusual, suspicious, or risk-exposing activity determines that such activity is reasonably likely to result in amounts being due from Merchant to Service Provider; and (b) Service Provider require the establishment, replenishment, or increase of a Reserve Fund in connection therewith, then the funds held pursuant to this Section 10 may be used to fund such Reserve Fund.

## **11. Identifiers and Intellectual Property**

**11.1. Payment Network Identifiers.** Merchant will display and use the names, logos, trademarks, service marks, and other similar identifiers

(collectively, “**Identifiers**”) and advertising and promotional materials of the Payment Networks only in accordance with the Operating Rules and any use or display guidelines of the Payment Networks, and cease displaying and using the Payment Networks’ Identifiers and the advertising and promotional materials in accordance with the Operating Rules, or upon the earlier of expiration or termination of the Agreement or the Payment Networks’ request. Merchant: (a) acknowledges that the Payment Networks are the sole and exclusive owners of their Identifiers; and (b) agrees it will not contest the ownership of any of such Identifiers for any reason. From time to time, a Payment Network may request that Merchant provide samples of its use or display of any Identifier of the Payment Network, which Merchant will promptly provide in response thereto. Any goodwill associated with the use or display of any Identifier of the Payment Networks by Merchant will inure to the benefit of such Payment Network.

**11.2. Service Provider Identifiers.** From time to time, Service Provider may provide Merchant with materials that include one or more of Service Provider’s Identifiers. Merchant will only use such materials and Identifiers as expressly permitted by Service Provider in writing and in accordance with any use or display guidelines of Service Provider. Merchant will return to Service Provider any materials provided by Service Provider upon the earlier of the expiration or termination of the Agreement or Service Provider’s request. Merchant will use Service Provider’s Identifiers only in the manner as set forth in such materials, and will not alter, modify, relocate, or remove any such Identifiers. Any use of Service Provider’s Identifiers by Merchant is subject to Service Provider’s prior written approval. From time to time Service Provider may request that Merchant provide samples of its use or display of any Identifiers of Service Provider, which Merchant will promptly provide in response thereto. Any goodwill associated with the use or display of any Identifier of Service Provider by Merchant will inure to the benefit of Service Provider.

**11.3. Restrictions.** Merchant will not, and will not allow any other Person to: (a) alter, modify, or create any derivatives of any Identifier of Service Provider or the Payment Networks (or use any results thereof) at any time for any purpose; (b) use any Identifier of Service Provider or the Payment Networks in a manner that would result in the disparagement of, damage to, dilution (including quality or strength) of, tarnishment of, adverse reflection of, injury to, or otherwise adverse effect on, in any way, such Identifiers, the goodwill associated with them or their use, or the reputation or goodwill of or associated with such Identifiers or their owner; or (c) adopt, use, register, or seek to register an Identifier which includes or incorporates any Identifiers of Service Provider or the

Payment Networks or any term confusingly similar to any Identifiers of Service Provider or the Payment Networks; or (d) represent, directly or by implication, that its goods or services are endorsed, sponsored, or guaranteed by Service Provider or the Payment Networks, including by the use or display of any Identifiers of Service Provider or the Payment Networks.

**11.4. Merchant Identifiers.** Merchant hereby grants to Service Provider a license to use, display, and reproduce Merchant’s Identifiers: (a) to exercise its rights and perform its obligations in connection with the Services and the Agreement, including to provide or make available the Services and for administrative and monitoring purposes; (b) in the course of any sale or reorganization of Service Provider’s business; (c) to comply with Applicable Law or the Operating Rules; (d) in connection with any disclosure to credit reporting agencies and other financial institutions; and (e) for marketing purposes, including on Service Provider’s website, marketing materials, communications, and investor or other third party presentations. Any goodwill associated with the use or display of any Identifier or Merchant by Service Provider will inure to the benefit of Merchant.

**11.5. Service Provider Intellectual Property.** As between Merchant and Service Provider, Service Provider owns and will continue to own, all right, title, and interest, including all intellectual property rights (including patent, copyright, trademark, and trade secret rights), in and to any information or materials used or provided by Service Provider under the Agreement including computer programs, (including interfaces), equipment, and other technology, know-how, confidential information, or Identifiers (including, in all cases, in or in conjunction with the Services), including any modifications, derivatives (including derivative works), improvements, or enhancements of or to any of the foregoing (whether or not made by or at the request of the Merchant). Merchant acknowledges and agrees that: (a) except as expressly provided for in the Agreement, no license is provided to (including to use) any intellectual property, or under any intellectual property rights, of or licensed to Service Provider; and (b) the Agreement does not transfer any ownership rights in or to any intellectual property, or intellectual property rights, of or licensed to Service Provider to Merchant or any third party.

## **12. Confidentiality; Data Use**

**12.1.** Merchant acknowledges and agrees that Service Provider may disclose or otherwise make available to Merchant, in oral, written, visual, electronic, or other form, non-public or proprietary information or data of Service Provider, including: (a) the terms and conditions of the Agreement; (b) the Processing Fees; (c) Card

Information; or (d) any other non-public or proprietary information regarding any aspect of Service Provider's business, including pricing techniques, fees, equipment, services, processes, procedures, marketing or business development plans, technical information, personnel information, customer information, and trade secrets (collectively, "**Service Provider Confidential Information**").

12.2. The restrictions applicable to Service Provider Confidential Information under this Section 12 will not apply to information that Merchant can demonstrate: (a) was possessed or known by Merchant without any confidentiality obligations prior to disclosure of such information by Service Provider; (b) is or becomes publicly available through no act or omission of Merchant; (c) is furnished to Merchant by a third party that is not subject to use or disclosure restrictions; or (d) is independently developed by or for Merchant without the use of any Service Provider Confidential Information.

12.3. Merchant will hold the Service Provider Confidential Information in strict confidence and employ at least the same precautions Merchant employs with respect to its own confidential information, but no less than commercially reasonable precautions. Merchant will not access, use, or disclose the Service Provider Confidential Information except as expressly permitted in the Agreement. Merchant may use the Service Provider Confidential Information only to the extent necessary to exercise its rights or perform its obligations under the Agreement. Merchant may disclose the Service Provider Confidential Information only to Merchant's Representatives who have a need to know such information in connection the performance of Merchant's obligations under the Agreement; provided, that any such Representatives are subject to obligations of confidentiality that are at least as protective as the confidentiality obligations set forth in the Agreement.

12.4. In addition, Merchant may disclose Service Provider Confidential Information to the extent required to comply with Applicable Law or a request from a Regulatory Authority; provided, that, to the extent not prohibited by Applicable Law or the applicable Regulatory Authority, Merchant will: (a) promptly provide Service Provider with written notice of its intent to disclose such Service Provider Confidential Information such that Service Provider may seek a protective order or other remedy; and (b) limit the disclosure of such Service Provider Confidential Information to only that information which is necessary to satisfy the requirement of Applicable Law or the Regulatory Authority request.

12.5. Notwithstanding anything to the contrary in this Section 12, Merchant: (a) will only use

Card Information solely as necessary to receive the Services under the Agreement; (b) will not, under any circumstance, sell Card Information or use it for any purpose other than as expressly contemplated by the Agreement; and (c) subject to Section 12.4, will not disclose Card Information to anyone except Service Provider, Payment Networks, or Merchant's Critical Providers engaged by Merchant in accordance with Section 3.8.

12.6. Upon the expiration or termination of the Agreement or upon Service Provider's request, Merchant will: (a) return all Service Provider Confidential Information to Service Provider within thirty (30) days thereof; or (b) upon the written instruction of Service Provider, destroy all Service Provider Confidential Information and, within thirty (30) days, provide Service Provider with a written certification of such destruction.

12.7. Merchant acknowledges and agrees that: (a) to the extent not prohibited by Applicable Law or the Operating Rules, Service Provider may disclose information regarding Merchant obtained by Service Provider in connection with the Services or the Agreement to any third party who has asked for such information, and whom Service Provider determines has a legitimate business need to know such information to facilitate the purpose of the Agreement; and (b) Service Provider may disclose Card Information, Transaction information, and Merchant information to Regulatory Authorities, the Payment Networks, or as otherwise required to comply with Applicable Law, the Operating Rules, or any request from any Regulatory Authority or Payment Network.

12.8. Notwithstanding anything to the contrary in the Agreement, and without prejudice to Service Provider's other rights under the Agreement, Merchant acknowledges and agrees that Card Information, Transaction information, Cardholder information, and Merchant information obtained by Service Provider in connection with the Services or the Agreement may be accessed and used by Service Provider, the Payment Networks, and its and their respective Affiliates and Representatives: (a) to exercise their respective rights and to perform their respective obligations in connection with the Services or the Agreement; (b) to provide Services; (c) for administrative and monitoring purposes; (d) to enhance or improve Service Provider's products or services; (e) in the course of any sale or reorganization of Service Provider's business; (f) to comply with Applicable Law or the Operating Rules; (g) for disclosure to credit reporting agencies and other financial institutions; (h) for marketing purposes; and (i) for any other purpose not prohibited by Applicable Law or the Operating Rules.

### 13. Data Security

13.1. Merchant acknowledges and agrees that it is responsible and liable for complying with, and that Merchant will comply with, all Security Standards, including PCI DSS. Merchant will provide proof of compliance to Service Provider or any Payment Network as required or upon request, including by attestation or an examination of Merchant's systems to validate such compliance. The costs of any such attestation or examination will be Merchant's sole responsibility.

13.2. Without limiting any other of Merchant's obligations in the Agreement, Merchant will secure and keep confidential Card Information, Transaction information, and Cardholder information in strict compliance with Applicable Law and the Operating Rules (including the Security Standards), and will not access, use, or disclose such information for any purpose prohibited by Applicable Law, the Operating Rules (including the Security Standards), or the Agreement.

13.3. If Merchant discovers or at any time has reason to suspect that Merchant or any of its Representatives experienced a Data Compromise Event, Merchant must immediately notify Processor and fully cooperate, at Merchant's cost and expense, with all forensic examinations and remediation and mitigation procedures requested or required by Service Provider or any Payment Network. Furthermore, if Merchant is undergoing a forensic investigation at the time it signs the Merchant Application, it must fully cooperate with the investigation until completed.

13.4. Merchant acknowledges and agrees that, as between Service Provider and Merchant, Merchant is responsible and liable for all Losses arising out of or relating to any failure of Merchant or any of its Representatives to comply with the Security Standards or any Data Compromise Event experienced by Merchant or any of its Representatives, including: (a) penalties, fines, assessments, charges, or other amounts assessed by a Payment Network or Regulatory Authority; (b) costs and expenses related to communicating with, and providing notice and credit monitoring and credit restoration services to, Persons that have been or reasonably may have been affected by any such failure or Data Compromise Event; (c) costs and expenses related to investigating any such failure or Data Compromise Event; and (d) costs and expenses associated with any claims or demands made by third parties in connection with such failure or Data Compromise Event (collectively, "**Data Compromise Event Losses**"). The Parties acknowledge and agree that Data Compromise Event Losses are considered direct damages, and not special, incidental, consequential, punitive, or exemplary damages.

### 14. Pricing and Payment

#### 14.1. Processing Fees.

14.1.1. Merchant agrees to pay all Processing Fees. The Processing Fees are based upon assumptions regarding Merchant's anticipated volume, average transaction size, and method of doing business. If these assumptions prove materially inaccurate, Service Provider may increase or otherwise adjust the Processing Fees with or without prior notice to Merchant. Any such increase or adjustment will be in addition to, and not in lieu of, any other remedies available to Service Provider hereunder. Service Provider also may modify, supplement, or replace the Processing Fees with or without notice: (a) as Service Provider deems necessary or advisable to comply with Applicable Law, the Operating Rules, or any instruction from a Regulatory Authority or Payment Network; or (b) to reflect any changes in fees or other amounts imposed by or incurred in connection with the Payment Networks or any other applicable third party. For the avoidance of doubt, the notice period and Merchant's right to terminate the Agreement under Section 14.1.2 will not apply with respect to any adjustment, modification, supplementation, or replacement of the Processing Fees made by Service Provider pursuant to this Section 14.1.1.

14.1.2. Without prejudice to any other rights of Service Provider under the Agreement, Service Provider may modify, supplement, or replace the Processing Fees by giving Merchant thirty (30) days' notice of any such modification, supplementation, or replacement; provided, however, that, subject to Section 14.1.1, Merchant may terminate the Agreement, without penalty or any obligation to pay the Early Termination Fee, in response to such modification, supplementation, or replacement by providing Processor with written notice within the period beginning as of the date of Service Provider's notice and ending on the effective date of such modification, supplementation, or replacement.

#### 14.2. Payments.

14.2.1. Merchant acknowledges and agrees that Merchant is responsible for paying for the Merchant Liabilities.

14.2.2. Without prejudice to any other rights of Service Provider under the Agreement, Service Provider may, at any time, collect the Merchant Liabilities by: (a) withholding or setting-off payment of any amounts payable to Merchant in connection with the Services or the Agreement and applying them against the amounts payable by Merchant; (b) debiting the Settlement Account; (c) debiting the Reserve Fund; and/or (d) demanding payment from Merchant for such amounts. If Merchant does not pay

any Merchant Liabilities when due, Merchant may be charged interest on such unpaid amounts at rate equal to the lesser of 1.5% per month or the highest amount permitted by Applicable Law.

## 15. Taxes

Merchant will be solely responsible for the calculation, collection, and remittance of any sales tax imposed by any Regulatory Authority in connection with the provision of Merchant's goods or services. Unless Merchant is otherwise exempt (and can prove such exemption to Service Provider's satisfaction), Merchant agrees to pay all taxes imposed on the services, equipment, or other property provided to Merchant pursuant to the Agreement.

## 16. Indemnification

16.1. Merchant will indemnify and hold harmless each of Bank, Processor, its Affiliates, and its and their respective agents, officers, directors, and employees (each, an "**Indemnified Party**") from and against any and all Claims and Losses suffered or incurred by any Indemnified Party arising out of or relating to: (a) the acts or omissions of Merchant, Merchant's Affiliates, or Merchant's Representatives; (b) Transactions, including any related Transaction Disputes; (c) any breach of the Agreement by Merchant; (d) any violation of Applicable Law or the Operating Rules by Merchant, Merchant's Affiliates, or Merchant's Representatives; (e) any Data Compromise Event experienced by Merchant or its Representatives; (f) Merchant's provision, maintenance, and use of equipment, systems, software, and hardware; (g) Merchant's use of third-party services; (h) Merchant's relationship with third parties, including Cardholders, value added resellers, independent software vendors, lienholders under the Uniform Commercial Code, or other service providers; (i) Merchant's goods or services; (j) any other fact, circumstance, or matter for which Merchant is responsible or liable under the Agreement.

16.2. Each of Processor and Bank will have the right to select and retain counsel of its choosing in connection with any indemnifiable Claim or Losses under the Agreement, and nothing in this Section will entitle Merchant to select counsel or assume the defense of any such matter.

## 17. Obligation to Report Statement Discrepancies

17.1. Merchant will be solely responsible for reviewing Merchant's statements from Processor (including statements provided online) and for reporting to Processor in writing, within thirty (30) days of Merchant's receipt of any statement from Processor, any problems or

irregularities with Merchant's statements, including, without limitation, underpayments, overpayments, or other discrepancies of any items, fees, charges, or liability assessments reflected on such statements or related to the period covered by such statement, including, without limitation, discrepancies between the volume and/or value of Transactions that Merchant actually processed during the period indicated by the statement. Statements provided online will be deemed received the first day they are available online.

17.2. MERCHANT ACKNOWLEDGES AND AGREES THAT NEITHER BANK NOR PROCESSOR SHALL BE LIABLE OR OTHERWISE RESPONSIBLE TO MERCHANT, AND SHALL HAVE NO OBLIGATION TO REIMBURSE MERCHANT, FOR ANY UNDERPAYMENT TO MERCHANT OR ANY OTHER DISCREPANCY THAT IS NOT REPORTED TO PROCESSOR IN WRITING WITHIN THIRTY (30) DAYS OF MERCHANT'S RECEIPT OF THE APPLICABLE STATEMENT.

17.3. Merchant acknowledges and agrees that Merchant will reimburse Service Provider upon demand for any misdirected deposits, duplicate deposits, or inadvertent overpayments to Merchant. In addition, Merchant acknowledges and agrees that Service Provider may deduct such overpayment amounts by debiting the Settlement Account or the Reserve Fund or any other means provided in Section 14.2.2.

## 18. Limitation of Liability and Disclaimer of Warranties

18.1. TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL THE AGGREGATE LIABILITY OF PROCESSOR, BANK, AND/OR THEIR RESPECTIVE AFFILIATES ARISING OUT OF OR RELATING TO THE SERVICES OR THE AGREEMENT EXCEED THE AGGREGATE AMOUNT OF PROCESSING FEES PAID TO PROCESSOR UNDER THE AGREEMENT IN THE THREE (3) MONTH PERIOD PRECEDING THE DATE OF THE EVENT THAT GAVE RISE TO THE CLAIM OF LIABILITY.

18.2. FOR PURPOSES OF THIS SECTION 18, FEES, CHARGES, OR OTHER AMOUNTS OF THE PAYMENT NETWORKS OR OTHER THIRD PARTIES PASSED THROUGH TO CUSTOMER PURSUANT TO THE AGREEMENT SHALL NOT BE INCLUDED IN THE CALCULATION OF PROCESSING FEES PAID TO PROCESSOR.

18.3. IN NO EVENT SHALL PROCESSOR, BANK, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOST PROFITS, LOSS OF REVENUE, OR CLAIMS BY MERCHANT OR ANY THIRD PARTY RELATIVE TO THE TRANSACTIONS OR ACTIVITIES HEREUNDER, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, NEITHER PROCESSOR NOR BANK SHALL BE LIABLE FOR: (A) THE DECLINE OF A TRANSACTION, EVEN IF SUCH DECLINE WAS WRONGFUL; (B) ANY LOSS CAUSED BY A TRANSACTION DOWNGRADE, REGARDLESS OF THE CAUSE; OR (C) THE FAILURE TO PROCESS, AUTHORIZE, OR CAPTURE A TRANSACTION.

18.4. PROCESSOR AND BANK MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES, TECHNOLOGY, PROPRIETARY INFORMATION AND MATERIALS, OR THE IDENTIFIERS OR ASSOCIATED RIGHTS, PROVIDED OR MADE AVAILABLE BY PROCESSOR, BANK, OR THEIR RESPECTIVE AFFILIATES IN CONNECTION WITH THE SERVICES OR THE AGREEMENT, AND HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, USAGE, OR TRADE.

18.5. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROCESSOR AND BANK DO NOT GUARANTEE OR WARRANT THAT (A) THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THAT ANY SOFTWARE WILL BE VIRUS-, DEFECT-, OR ERROR-FREE; OR (C) THAT DATA, REPORTS, OR ANALYSES WILL BE FREE FROM ANY OR ALL BUGS AND ERRORS.

## **19. Relationship of the Parties**

Neither Processor nor Bank will be considered a partner or fiduciary to Merchant, and nothing in the Agreement or the rendition of Services related to the Agreement will be deemed to create a joint venture, partnership, or fiduciary relationship between or among the

Parties. Rather, the relationship among the Parties to the Agreement is an arm's length commercial relationship.

## **20. Amendments and Waiver**

20.1. Service Provider may modify, supplement, or replace the terms of the Agreement by giving Merchant thirty (30) days' notice of any such modification, supplementation, or replacement; provided, however, that Merchant may terminate the Agreement, without penalty or any obligation to pay the Early Termination Fee, in response to such modification, supplementation, or replacement by providing Processor with written notice within the period beginning as of the date of Service Provider's notice and ending on the effective date of such modification, supplementation, or replacement. Notwithstanding the foregoing, if Service Provider modifies, supplements, or replaces any terms of the Agreement based on Service Provider's determination that such modification, supplementation, or replacement is necessary or advisable to comply with Applicable Law, the Operating Rules, or any instruction from a Regulatory Authority or Payment Network, then such modification, supplementation, or replacement may be made on less than thirty (30) days' notice and will not be grounds for termination of the Agreement.

20.2. Service Provider will not be deemed to have waived any provision of the Agreement by failing to promptly enforce the same, and no waiver of any provision of the Agreement on one occasion will constitute a waiver of any other provision of the Agreement or the same provision on any other occasion.

## **21. Notices; Electronic Notice**

All notices under the Agreement to either Processor or Bank must be in writing and delivered via hand delivery or via a carrier that provides a tracking number and/or other proof of delivery. Notices to Bank or Processor must be sent to the addresses respectively designated on the Merchant Application for Bank and Processor and will be deemed effective upon receipt. Service Provider may provide Merchant with effective notice under the Agreement, including of any amendment to the Agreement or to Processing Fees, by any of the following means: (a) via mail at the address designated in the Merchant Application (or such other address as Merchant may provide), including by statement messages appearing on any processing statement; (b) electronically, through the Merchant portal, through electronically available processing statement(s), or through any other means of electronic communication maintained by Processor or Bank which Merchant may access; or (c) electronically, via any email address designated by Merchant. Merchant expressly consents to receive

documents and notices electronically and agrees to maintain access to the Internet for so long as the Agreement is in effect.

## **22. Choice of Law and Venue; Time and Procedure for Assertion of Claims**

22.1. All disputes or controversies of any nature whatsoever (whether in contract, tort, or otherwise) arising out of, relating to, or in connection with: (a) the Agreement; (b) the relationships which result from the Agreement; or (c) the validity, scope, interpretation, or enforceability of the choice of law and venue provisions of the Agreement will be governed by and construed in accordance with the laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Georgia.

22.2. Without in any way limiting Section 24 (Arbitration), with respect to any action arising out of, relating to, or in connection with the Agreement, Merchant and all individuals executing the Agreement in any capacity hereby consent to the exclusive jurisdiction of, and venue in, the federal and state courts located in Atlanta, Georgia or Fulton County, Georgia.

22.3. Each Party agrees to provide the other Party prompt notice of any claim, controversy, or dispute arising under or related to the Agreement, and the Parties agree to engage in good faith discussions to resolve the matter. If that fails to resolve the matter promptly, upon either Party's election, the Parties will participate in non-binding mediation before a mutually agreed mediator. Any controversy, claim, or dispute that is not resolved through the procedures set forth above within sixty (60) days following the initial notice (or such longer period as the Parties may agree) will be resolved pursuant to arbitration pursuant to Section 24.

22.4. Neither Party may bring a claim more than two (2) years after the underlying cause of action first accrues.

## **23. Attorneys' Fees**

Merchant agrees to reimburse each of Processor and Bank for all attorneys' fees or other costs incurred by Processor and/or Bank in enforcing any provision of the Agreement against Merchant, or in obtaining any sums due under the Agreement from Merchant, regardless of whether Processor or Bank incurs those fees in connection with a court proceeding, private dispute resolution, or outside a formal dispute resolution proceeding.

## **24. Arbitration**

24.1. ANY DISPUTE OR CLAIM ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE AGREEMENT OR THE RELATIONSHIPS WHICH RESULT FROM THE AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT. ARBITRATION DOES NOT PROCEED BEFORE A JURY AND MAY INVOLVE MORE LIMITED DISCOVERY THAN A COURT PROCEEDING. ANY ARBITRATION UNDER THE AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. Notwithstanding the foregoing, nothing in this Section prohibits a Party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief. Furthermore, this Section 24, and the obligation to arbitrate, will not apply to claims for misuse or infringement of a Party's intellectual property or confidential information.

24.2. The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of the arbitration provisions of this Section. Arbitration will be administered by JAMS ([www.jamsadr.com](http://www.jamsadr.com)). For claims greater than \$250,000, the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply. For claims equal to or less than \$250,000, the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply. Unless the arbitrator(s) determine that justice or fairness require otherwise: (a) any arbitration will proceed in Atlanta, Georgia (although, for the convenience of the Merchant or Guarantor (as applicable), any Party or its counsel may participate telephonically); (b) the arbitrator(s) will oversee limited discovery, taking into account the amount in controversy and the Parties' desire to keep proceedings cost-effective and efficient; and (c) the claimant(s) and respondent(s) will bear the cost of arbitration, including the cost of any filing fee, equally, subject to the discretion of the arbitrator(s) to alternatively allocate costs pursuant to the applicable rules in any final award; provided, however, that for claims equal to or less than \$25,000, Merchant and Guarantor (if applicable) will not be responsible to pay any case initiation or similar fee greater than that of the filing fee in the Superior Court of Fulton County, Georgia at the time arbitration is filed unless the arbitrator(s) determine that such claims are frivolous. The arbitrator(s) will have no authority to award non-monetary or equitable relief or to award damages that are inconsistent with the limitations and exclusions set forth in the Agreement, nor will he, she, or they have authority to award sanctions of any type. The arbitrator(s)

will not issue a reasoned opinion for any award unless such award is greater than \$250,000. Any decision rendered in such arbitration proceedings will be final and binding on each of the Parties to the arbitration and judgment may be entered thereon in any court of competent jurisdiction. The Parties will maintain the confidential nature of the arbitration proceeding except as may be necessary to enforce any award or to comply with Applicable Law. If any part of this Section 24 is found invalid or unenforceable, the other parts of this Section 24 will still apply.

24.3. MERCHANT AND GUARANTOR (IF APPLICABLE) ACKNOWLEDGE AND AGREE THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THE AGREEMENT SHALL BE RESOLVED ON AN INDIVIDUAL BASIS AND SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTIES. MERCHANT AND GUARANTOR (IF APPLICABLE) FURTHER AGREE TO WAIVE, AND HEREBY WAIVE, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR TO LITIGATE OR ARBITRATE ON A CLASS-WIDE BASIS.

#### **25. Remedies Cumulative**

The rights and remedies conferred upon Service Provider under the Agreement are not intended to be exclusive of each other or of any other rights or remedies belonging to Service Provider under the Agreement, at law, or in equity. Rather, all such rights and remedies are cumulative.

#### **26. Assignment; Successor Responsibility**

The Bank may assign the Agreement without Merchant's consent. Processor may assign the Agreement to another transaction processor approved by Bank. Merchant may not assign the Agreement without the express written consent of Service Provider, nor will it assign any right to payments to which it may be entitled under the Agreement. For purposes of the Agreement, it will be deemed an assignment by Merchant of the Agreement to effectuate any sale or transfer of the equity interests of Merchant's business such that the equity holders listed in the Merchant Application collectively hold less than 50% of the equity interests after such sale or transfer. The Agreement will be binding on each Party's successor(s) and/or permitted assigns.

#### **27. No Third-Party Beneficiaries**

The Payment Networks and Affiliates of Service Provider will be third-party beneficiaries to the Agreement, meaning that, while they have no obligations under the

Agreement, they will have the right, within their discretion, to enforce of the terms of the Agreement (including, without limitation, with respect to the Operating Rules) directly against Merchant. Except as specified in the preceding sentence, there are no third-party beneficiaries to the Agreement, which is solely for the benefit of Merchant, Processor, and Bank. To the extent Processor uses any third-party vendor to provide Services under the Agreement, Merchant acknowledges and agrees that no third-party vendor of Processor has any direct obligation to Merchant.

#### **28. Force Majeure**

Service Provider will not be liable for any delay or inability to perform caused by acts of God, natural disasters, wars, acts of terrorism, civil disturbances, governmental actions, strikes, telecommunications failures, equipment failures, network failures, or other causes beyond Service Provider's reasonable control.

#### **29. Entire Agreement; Severability**

The Agreement constitutes the complete and final agreement between the Parties and supersedes all prior oral or written agreements. Except as elsewhere provided herein, the Agreement may be modified only in a writing signed by all Parties hereto. If any provision of the Agreement is deemed unlawful or unenforceable, then it will be reformed only insofar as necessary to make it lawful and enforceable, or if it cannot be so reformed, it will be severed from the Agreement without any effect on the remaining terms of the Agreement, which will continue in full force and effect.

#### **30. Survival**

The terms of the Agreement that would or should, by their nature survive the termination of the Agreement in order to give effect to their purpose, or that, by their terms, do survive the expiration or termination of the Agreement, will so survive such expiration or termination and be enforceable under the Agreement, including the following Sections of the Terms and Conditions: Sections 1, 3.1, 3.4 through 3.11, 3.13.2, 4, 6, 7, 8.3 through 8.5, and 9 through 34.

#### **31. Electronic Signature**

The Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together constitute one and the same Agreement. A signature or other indication of acceptance received electronically or via facsimile will be legally binding for all purposes and equally effective as a wet ink signature.

### **32. Conflict**

In the event of any conflict or inconsistency between the Agreement and the Operating Rules, the Operating Rules will govern to the extent necessary to resolve such conflict or inconsistency.

### **33. Rules of Interpretation.**

For purposes of the Agreement: (a) words importing the singular include the plural and vice-versa, (b) references to “Sections,” “subsections,” and other subdivisions without reference to a document are to designated Sections, subsections, and other subdivisions of the Agreement, unless otherwise expressly set forth in the Agreement, (c) the words “hereof,” “herein,” “hereunder,” and words of similar import, when used in the Agreement, refer to the Agreement as a whole and not to any particular provision of the Agreement, (d) the terms “include,” “includes,” and “including” will be deemed to be followed by the words “without limitation,” (e) the term “or” will be deemed to be used in the inclusive sense of “and/or,” unless the context requires otherwise, (f) unless the context otherwise requires, “will” and “will not” are expressions of command and not merely expressions of future intent or expectation, (g) the headings contained in the Agreement are for reference purposes only and will not affect the meaning or interpretation of the Agreement, (h) any consent or approval that may be given by a Party may be given or withheld in the Party’s sole and absolute discretion, unless otherwise expressly set forth in the Agreement, and (i) all references in the Agreement to days, months, or years means calendar days, calendar months, or calendar year, unless otherwise expressly set forth in the Agreement.

### **34. Special Provisions Related to American Express**

In addition to the remaining terms of the Agreement, Merchant agrees to the following terms in connection with its acceptance of American Express Cards:

34.1. Merchant acknowledges that any request to accept American Express Cards is subject to approval by American Express. If approved, Merchant authorizes Processor to submit American Express Card Transactions to, and receive settlement from, American Express on behalf of Merchant.

34.2. Merchant acknowledges and agrees that: (a) American Express is a third-party beneficiary to the Agreement, and maintains all rights, but no obligations, to enforce the terms of the Agreement against Merchant, and (b) Merchant is not a third-party beneficiary under any agreement between American Express and Processor.

34.3. Merchant hereby authorizes: (a) Processor to disclose Transaction Data (as such term is defined in the American Express Operating Regulations), Merchant Data (as such term is defined in the American Express Operating Regulations), and other information about Merchant to American Express and the Affiliates, employees, subcontractors, and agents of American Express; and (b) American Express and its Affiliates, employees, subcontractors, and agents to use such information to perform its obligations in connection with the Agreement, the Services, and the American Express OptBlue® Program, to operate and promote the American Express, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes, transactional or relationship communications from American Express, and any other purpose set forth in the American Express Merchant Regulations.

34.4. To help encourage cardmembers to seek out and shop at small merchants that accept American Express, American Express may include small merchants in cardmember offers from time to time. There is no additional cost to Merchant to be included in these offers. For more information, visit [www.americanexpress.com/us/small-business/shop-small](http://www.americanexpress.com/us/small-business/shop-small) and click on the “Cardmember Offers” tab. There, Merchant can view offer terms and conditions, determine if Merchant’s business is an eligible small merchant that is included in any offers, and access any available signage to promote cardmember offers in which Merchant is included, to Merchant’s customers.

34.5. Merchant must accept the American Express Card as payment for goods and services (other than those goods and services prohibited under Section 3.3, “Prohibited Uses of the Card,” of the American Express Merchant Regulations) sold, or (if applicable) for charitable contributions made, at all of Merchant’s establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant’s establishments under the Agreement.

34.6. Except as expressly permitted by Applicable Law, Merchant must not: (a) indicate or imply that Merchant prefers, directly or indirectly, any other payment products over the American Express card; (b) try to dissuade cardmembers from using the American Express Card; (c) criticize or mischaracterize the American Express Card or any American Express services or programs; (d) try to persuade or prompt cardmembers to use any other payment products or any other method of payment (e.g., payment by check); (e) impose any restrictions, conditions, disadvantages, or fees when the American Express card is accepted that are not imposed equally on all other payment

products, except for electronic funds transfer, or cash or check; (f) suggest or require cardmembers to waive their right to dispute any Transaction; (g) engage in activities that harm American Express's business or the American Express brand (or both); (h) promote any other payment products (except Merchant's own private label card that Merchant issues for use solely at Merchant's establishments) more actively than Merchant promotes the American Express Card; or (i) convert the currency of the original sale Transaction to another currency when requesting authorization or submitting Transactions (or both). Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card, or credit/charge card, provided that (to the extent required by Applicable Law): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant's customers; (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers; and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, Mastercard, Discover, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this Section will not constitute a violation of the provisions set forth in this Section.

34.7. Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the Card and display the American Express Identifiers (including any Card application forms we may provide Merchant) as prominently and in the same manner as any other payment products. Merchant must not use the American Express Identifiers in any way that injures or diminishes the goodwill associated with the Identifier, nor in any way (without our prior written consent) indicate that American Express endorses Merchant's goods or services. Merchant will only use the American Express Identifiers as permitted by the Agreement and will cease using the Identifiers upon termination of the Agreement. Upon termination of the Agreement or its ability to accept American Express Cards hereunder, Merchant agrees to remove American Express Identifiers from Merchant's website and wherever else they are displayed.

34.8. Except as otherwise specified, Merchant must not disclose American Express Cardmember Information (as such term is defined under the American Express Merchant Regulations), nor use nor store it, other than to facilitate Transactions at Merchant's establishments in accordance with the Agreement. For more information about protecting American Express Cardmember Information, see Chapter 8, "Protecting Cardmember Information," of the American Express Merchant

Regulations, as the same may be modified, supplemented, or replaced from time to time.

34.9. Without prejudice to Merchant's other obligations under the Agreement, Merchant must comply with all applicable requirements under Chapter 4, "Transaction Processing," Chapter 5, "Authorization," Chapter 6, "Submission," Chapter 8, "Protecting Cardmember Information," and Chapter 11, "Chargebacks and Inquiries," of the American Express Merchant Regulations, in each case as the same may be modified, supplemented, or replaced from time to time.

34.10. Merchant must comply with the applicable website information display guidelines set forth in Section 13.4, "General Payment Facilitator Requirements," of the American Express Merchant Regulations, as the same may be modified, supplemented, or replaced from time to time.

34.11. If Merchant engages in activities in a specific industry identified in Chapter 12, "Specific Industries," of the American Express Merchant Regulations, as the same may be modified, supplemented, or replaced from time to time, then Merchant will comply with all applicable industry-specific terms and conditions set forth therein.

34.12. Merchant must maintain customer service information that is readily available for review by Cardholders transacting with Merchant. The customer service information should provide clear instructions on how to contact Merchant, including an active customer service email address and telephone number.

34.13. Merchant agrees to have a refund policy for purchases on American Express Cards that is at least as favorable as its refund policy for purchases on any other Cards, and to disclose its refund policy to Cardholders at the time of purchase and in compliance with applicable Law. Merchant will not bill or collect from any Cardholder for any purchase or payment on the American Express Card unless Chargeback has been exercised, Merchant has fully paid for such charge, and Merchant otherwise has the right to do so.

34.14. Merchant may opt out of accepting American Express Cards at any time without penalty and without directly or indirectly affecting its rights to accept other Cards.

34.15. Merchant agrees that American Express may use information obtained in the Merchant Application to screen and/or monitor Merchant in connection with American Express Card marketing and administrative purposes.

34.16. Merchant acknowledges and agrees that it may be converted from using the Services to accept American Express Cards pursuant to the Agreement to a direct American Express Card acceptance relationship with American Express if and when it becomes a “High CV Merchant” (as such term is defined under the American Express Merchant Regulations) in accordance with the American Express Merchant Regulations. Upon such conversion, Merchant acknowledges and agrees that: (a) merchant will be bound by American Express’s then-current Card acceptance agreement; and (b) American Express will set pricing and other fees payable by Merchant for American Express Card acceptance.

34.17. Merchant may not process Transactions or receive payments on behalf of, or (unless required by law) re-direct payments to any other party.

34.18. This Section 34.18 sets forth the arbitration agreement as to Claims involving American Express. In the event that Merchant is not able to resolve any issue with American Express or a third party that concerns or relates to any American Express Card transaction or any issue regarding American Express Card acceptance or the American Express Payment Network, including but not limited to disputes that concern or relate to Processor, this section explains how Claims can be resolved through mediation, arbitration, or litigation. It includes an arbitration provision. Merchant’s agreement to this provision does not preclude Merchant from bringing its concerns to the attention of any appropriate governmental agencies.

(a) Notice of Claim. Before Merchant or American Express files a lawsuit or initiates a mediation or arbitration regarding a Claim, Merchant and American Express agree to send a written notice (Claim notice) to the party against whom the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally or through mediation. The Claim notice, by any party including a Claim notice by American Express, must describe the nature and basis of the Claim and state the specific monetary amount of the Claim, absent any interest, trebling, or similar additions, and/or any other relief demanded. Merchant’s Claim notice to American Express must also include Merchant’s name, Merchant d/b/a, Merchant address, Merchant mailing address (if different from Merchant’s address), Merchant phone number, Merchant Tax ID, Merchant’s merchant number (MID) or Merchant’s Service Establishment 10-Digit Number(s) with American Express and be sent to American Express’ notice address as follows: By mail at: American Express Travel Related Services Company, Inc., P.O. Box 299051, Fort Lauderdale, FL 33329, Attn: Department 87; or by email at: American.Express.Contract.Keying@aexp.com.

(b) Mediation. In mediation, a neutral mediator helps parties resolve a Claim. The mediator does not decide the Claim but helps parties reach a voluntary agreement to resolve the Claim.

(i) Initiation. Before beginning a mediation, Merchant or American Express must first provide the Claim notice described above and attempt to resolve the Claim in good faith through informal negotiations. If the parties are unable to resolve the Claim through informal negotiations within sixty (60) days of receiving the Claim notice, Merchant or American Express then have ninety (90) days to submit the Claim to JAMS (1-800-352-5267, www.jamsadr.com) or the American Arbitration Association (AAA) (1-800-778-7879, www.adr.org) for mediation, or to an alternative mediator mutually agreed upon in writing by Merchant and American Express.

(ii) Conduct of Mediation. The parties will cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. Both parties will share equally the costs of any mediation proceedings but otherwise will be responsible for their own legal costs and expenses. The parties shall both have a business representative (either an employee or principal, the choice of whom shall be at the producing party’s discretion) attend any mediation, whether in-person or by remote videoconference.

(iii) Confidentiality and Tolling. All communications made for the purpose of, in the course of, or pursuant to the mediation are confidential, and no evidence of any such communication is admissible for any purpose or subject to discovery. From the date Merchant or American Express receives the Claim notice, all applicable statutes of limitations and defenses based upon the passage of time are tolled for one hundred eighty (180) days or until termination of the mediation, whichever is earlier.

(iv) Effect. If neither party elects mediation within ninety (90) days after the completion of the sixty (60) day informal negotiation period, or the parties do not reach a resolution within a period of ninety (90) days from the first meeting of the parties in mediation, then either party may elect to resolve the Claim by initiating a binding arbitration as set forth in section (c) below.

(c) Arbitration. Merchant or American Express may elect to resolve any Claim involving Merchant, American Express or any third party, including Processor, by individual, binding arbitration. Claims will be decided by a single neutral arbitrator except as provided below. If arbitration is chosen by either party,

neither Merchant nor American Express has the right to litigate that Claim in court or have a jury trial on that Claim. Further, neither Merchant nor American Express has the right to participate in a representative capacity or as a member of any class pertaining to any Claim subject to arbitration. Arbitration procedures are generally more limited than the procedures that apply in court, and discovery is generally more limited. The arbitrator's authority is limited to Claims between Merchant and American Express alone, except that Processor may be added as a party at the election of either Merchant or American Express. Claims may not be joined or consolidated unless Merchant and American Express agree in writing. An arbitration award and any judgment confirming it only applies to the specific Claim(s) arbitrated and cannot be used in any other arbitration or case except to enforce the award for that Claim. Other rights Merchant or American Express would have in court may also not be available in arbitration. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision is final and binding.

(i) Initiation. Before beginning an arbitration, Merchant or American Express must first provide the Claim notice described above. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with the Arbitration Agreement (in which case the Agreement shall govern). If American Express chooses the organization, Merchant may select the other within thirty (30) days after receiving notice of American Express' selection. Contact JAMS or AAA to begin an arbitration and for other information. Claims may be referred to another arbitration organization if Merchant and American Express agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that requires the physical presence of the parties (as opposed to a video appearance) shall take place in New York, New York, unless the parties agree in writing to an alternate venue.

(ii) Limitations on Arbitration. If either party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There is no right or authority for any Claim to be arbitrated on a class action basis or on bases involving any Claim brought in a purported representative capacity on behalf of the general public, other Merchants or other persons similarly situated, including persons alleging Claims arising from transactions involving Processor. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or

other organization against American Express. Disputes brought by Merchant or American Express against the other may not be joined or consolidated in arbitration with Claims brought by or against any third party, unless agreed to in writing by all parties, except that Processor may be added as a party at the election of either Merchant or American Express. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these Limitations on Arbitration is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) does not apply.

(iii) Previously Filed Claims/No Waiver. Merchant or American Express may elect to arbitrate any Claim, including one that concerns or relates to transactions involving Processor, that has been filed in court at any time before the earlier of the presentation of evidence at trial has begun and final judgment being entered on the Claim. Either Merchant or American Express may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of doubt, and without limiting its scope, this Section 34.18(c)(a)(iii) applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the date that the Agreement is effective.

(iv) Arbitrator's Authority. The arbitrator has the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. However, the arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 34.18, nor to determine any matter or make any award except as provided in this Section 34.18.

(v) Split Proceedings for Equitable Relief. Either Merchant or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits solely to preserve the status quo pending completion of such arbitration process. Equitable relief awarded pursuant to this Section 34.18(c)(v) shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered following a violation of such award.

(vi) Small Claims Court.

American Express shall not elect to use arbitration under this Section 34.18(c) for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. This section is not intended to, and does not substitute for our ordinary business practices, policies, and procedures, including American Express's rights to chargeback and to create reserves.

(vii) Governing Law;

Arbitration Procedures; Entry of Judgment. This Section 34.18(c) is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law, including the same substantive law, statutes of limitations and privileges as would apply in court. Arbitration will not be deemed initiated under Section 34.18(c), including for statute of limitations purposes until Merchant or American Express submits a Claim notice as described in Section 34.18(a), a formal written arbitration demand is filed with the organization selected, and Merchant either (A) pays its share of arbitration filing fees or (B) includes in its written arbitration demand a request that American Express advance Merchant's share of arbitration filing fees. Subject to the tolling provision of Section 34.18(b)(iii), neither sending a Claim notice alone nor requesting mediation constitutes initiation of arbitration for statute of limitations purposes. A business representative (either an employee or principal, the choice of whom shall be at the producing party's discretion) for both of Merchant and American Express shall attend any arbitration hearing, whether in-person or by remote videoconference. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. Notwithstanding the previous sentence, if a Claim is for: (1) \$100,000 or less, Merchant or American Express may elect to have the arbitration conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization, with no discovery; (2) more than \$100,000 and less than \$1,000,000, Merchant and American Express shall be entitled to limited discovery, which shall include reasonable discovery of hard-copy and electronically stored information, including not more than four custodians, the selection of which is to be approved by the arbitrator, who shall consider, inter alia, whether the discovery sought from one party is proportional to the discovery received by the other party,

but shall not include depositions; or (3) \$1,000,000 or more, or includes a request for injunctive relief, Merchant and American Express shall be entitled to reasonable document and deposition discovery, including reasonable discovery of electronically stored information and no more than ten (10) depositions for each side, as approved by the arbitrator, who shall consider, inter alia, whether the discovery sought from one party is proportional to the discovery received by the other party. With respect to awards of \$500,000 or more and/or where injunctive relief is ordered by the arbitrator, either party can initiate an appeal by notifying the arbitration organization and all parties in writing within sixty (60) days after the arbitrator's award is issued, after which the parties will select a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider de novo any aspect requested of that award and whose decision (or award (if no written decision is timely requested)) is final and binding; the appeal will otherwise proceed pursuant to the arbitration organization's appellate rules. At the timely request of a party, the arbitrator(s) shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision is final and binding, subject to each party's right to appeal as stated in this Section 34.18(c). and/or to challenge or appeal an arbitration award pursuant to the FAA. If more than sixty (60) days after the written arbitration decision is issued a party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the other party shall have the right to seek judicial confirmation of the award in any state or federal court where the other party's headquarters or assets are located.

(viii) Confidential

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

(ix) Costs of Arbitration

Proceedings. Merchant will be responsible for paying Merchant's legal fees (except where otherwise provided in the Agreement), witness fees (including expert witnesses),

and Merchant's share of any arbitration fees (including filing, administrative, hearing and/or, all other fees). At Merchant's written request, American Express will consider its sole discretion making, but will not be required to make, a temporary advance of Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause. x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor for a net award in an amount greater than any settlement offer American Express made to Merchant before any final arbitration award is announced, that arbitrator's award will include any money to which Merchant is entitled pursuant to the award, but in no case less than \$5,000. If the arbitrator determines that the claims or defenses of a party to the arbitration lacked merit and were presented in bad faith or for purposes of harassment, the arbitrator shall award to the other party such fees and costs as reasonably incurred in responding to the improperly presented claims or defenses.

(d) Interest. To the extent permitted by Applicable Law, the parties expressly disclaim any entitlement to prejudgment, post-verdict, or post-judgment interest imposed by New York law or any other Applicable Law. If Applicable Law does not permit disclaiming such interest, any interest awarded by a court, tribunal, or arbitrator related to a Claim shall be calculated using a rate equivalent of the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment, but in no event shall the interest rate exceed 5%. Any award for prejudgment, post-verdict, or post-judgment interest, if not permitted to be disclaimed under Applicable Law pursuant to the first sentence of this paragraph, shall use this rate and this rate only.

(e) Definitions. For purposes of this Section 34.18 only, (i) "**American Express**" includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) "**Merchant**" includes Merchant's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) "**Claim**" includes any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express, Merchant, or any other entity that American Express has the right to join in or control its resolution, including any transaction using an American Express product or network or issue regarding an American Express policy or procedure.

(f) Continuation. This Section 34.18 survives termination of the Agreement, any legal

proceeding to collect a debt, any bankruptcy and any sale of Merchant or Merchant's assets (in the case of a sale, its terms apply to the buyer). If any portion of this Section 34.18, except as otherwise provided in the "Limitations on Arbitration" subsection, is deemed invalid or unenforceable, it does not invalidate the remaining portions of this Section 34.18, the Agreement, or any predecessor agreement Merchant may have had with American Express or Processor, each of which is enforceable regardless of such invalidity.