

# MERCHANT CARD PROCESSING TERMS AND CONDITIONS

The Merchant Agreement (“Agreement”), made as of the Effective Date by and among Merchant, Processor, and Bank, consists of the completed application form for Merchant submitted to Processor (“Merchant Application”), these Merchant Card Processing Terms and Conditions, and all addenda, attachments, and schedules incorporated in the Merchant Application and these Merchant Card Processing Terms and Conditions, as each may be modified or amended in accordance with their terms. Processor, an agent of Bank, provides certain Services, and subject to Processor’s approval of Merchant for the Services in accordance with the Agreement, Merchant desires to use such Services. All capitalized terms used in the Agreement and not otherwise defined shall have the meanings ascribed below. Therefore, the parties agree as follows:

## 1. DEFINITIONS

- 1.1 “Account” has the meaning set forth in Section 6.2.
- 1.2 “Address Verification” (“AVS”) means a service that allows Merchant to verify the billing address of Cardholders with the relevant issuer of a Card.
- 1.3 “Agreement” has the meaning set forth in the preamble of these Merchant Card Processing Terms and Conditions.
- 1.4 “American Express” means American Express Travel Related Services Company, Inc. and its subsidiaries, successors, and assigns.
- 1.5 “Authorization” means the response from the Card issuer to a request to effect a transaction indicating, among other factors set forth in the Rules, if: such Card or Cardholder has a sufficient open-to-buy or available credit limit; and the Cardholder has not reported the Card lost or stolen.
- 1.6 “Bank” means the Card Brand member financial institution designated on the Merchant Application.
- 1.7 “Card” means any validly issued payment card, card number, account number, device, or other credential (whether manually entered, read from a device, communicated wirelessly by a device, or otherwise) provided by customer as payment for goods or services which is designated as an accepted payment method on the Merchant Application; and Merchant has been approved to accept by Processor, such acceptance at Processor’s sole discretion and subject to Processor’s modification from time-to-time.
- 1.8 “Cardholder” means the person or entity to which a Card was issued.
- 1.9 “Card Brands” means Visa, Mastercard, Discover®, American Express, and each Debit Network.
- 1.10 “Chargeback” shall mean a Transaction that the Cardholder or card issuer disputes and returns to Merchant pursuant to this Agreement.
- 1.11 “Confidential Information” means all information and materials relating to Processor, Bank, the Card Brands, and the Services, including but not limited to any technology, know-how, products, processes, operations, suppliers, marketing plans, marketing strategies, merchant’s credentials, passwords, transaction details, Card information, Cardholder information, Card security codes, Card numbers, Cardholder security codes, invoices, statements, reporting detail, and this Agreement.
- 1.12 “Data Breach” means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card information, Cardholder information, or Confidential Information, regardless of cause, including without limitation the intrusion of any system, failure, malfunction, inadequacy, or error affecting any system, or its hardware or software, through which Card or Cardholder information resides, passes through, and/or could have been compromised.
- 1.13 “Debit Network” means those debit networks determined by Processor through which debit transactions submitted by Merchant may be routed by Processor from time-to-time.
- 1.14 “Discount for Cash” means Processor’s pricing program which enables Merchant to provide Cardholders a lower price for goods and services if a cash or cash equivalent is used in place of a Card for Transactions.
- 1.15 “Discover®” means Discover Financial Services, LLC. and its subsidiaries, successors, and assigns.
- 1.16 “Effective Date” means the earlier of: (a) the date on which Processor accepts the Agreement and approves Merchant for the Services; or (b) the date on which Processor processes transactions delivered to Processor by Merchant pursuant to the Agreement.
- 1.17 “Equipment” has the meaning set forth in Section 5.
- 1.18 “Fees” means those amounts payable by Merchant pursuant to this Agreement, including but not limited to those rates, fees, fines, penalties, and/or assessments set forth on the Merchant Application, in an attached fee schedule, or charged by Processor, Bank, or a Card Brand.

- 1.19 “Initial Term” has the meaning set forth in Section 7.1.
- 1.20 “Law” means any law, statute, regulation, rule, code, judgment, or ordinance enacted, adopted, issued, or promulgated by any foreign, federal, state, or local government authority, administrative body, regulatory body, or agency thereof, including but not limited to any common law, consent decree, settlement agreement, or court ruling.
- 1.21 “Liquidated Damage Amount” has the meaning set forth in Section 7.3.
- 1.22 “Mastercard” means Mastercard International, Inc. and its subsidiaries, successors, and assigns.
- 1.23 “Merchant” means the person or entity set forth as the merchant on the Merchant Application.
- 1.24 “Merchant Application” has the meaning set forth in the preamble of these Merchant Card Processing Terms and Conditions.
- 1.25 “Payment Application” means software and/or hardware that are used to facilitate a payment transaction. This shall include but not be limited to payment terminals, gateways, hospitality management surplus, virtual terminal, and retail POS systems.
- 1.26 “PCI Program” means those PCI security products, services, and programs offered through Processor or a Third Party Service Provider designated by Processor from time-to-time, which may include but are not limited to PCI SAQ tools, vulnerability scanning for certain IP addresses, security policy generators, security awareness training, PCI compliance reporting, and PCI compliance certification.
- 1.27 “PCI” or “PCI Rules” means the then-current standards, rules, policies, procedures, and guidelines promulgated by the PCI Security Standards Council, LLC (or any successor organization), including without limitation the Payment Card Industry Data Security Standard and the Payment Application Data Security Standard, accessible at <https://www.pcisecuritystandards.org/>.
- 1.28 “Policies” means the then-current rules, regulations, policies, and procedures established by, and as may be amended by, Processor from time-to-time in Processor’s sole discretion.
- 1.29 “Processor” means the processor identified on the Merchant Application, and for purposes of this Agreement Processor is an agent of Bank.
- 1.30 “Renewal Term” has the meaning set forth in Section 7.1.
- 1.31 “Reserve Account” has the meaning set forth in Section 6.4.
- 1.32 “Rules” means the then-current operating regulations, requirements, rules, policies, procedures, bulletins, notices, policy statements, guidelines, and similar documents issued by the Card Brands, as available from each respective Card Brand or upon reasonable request from Processor, including without limitation the PCI Rules.
- 1.33 “Secured Assets” has the meaning set forth in Section 6.5.
- 1.34 “Services” means those services: (a) offered by Processor, which may be modified by Processor from time-to-time; (b) selected by Merchant on the Merchant Application or any additional services requested by Merchant from time-to-time; and (c) for which Processor has approved, in Processor’s sole discretion, for delivery to Merchant. The Services may include, but are not limited to, Card processing, gift card services, loyalty service, and ACH processing. Merchant’s execution of a specific agreement for a Service may be a prerequisite to the provision of such Service.
- 1.35 “Term” means the Initial Term and any Renewal Term, as set forth in Section 7.1.
- 1.36 “Third Party Fees” means the sum of any and all fees to Processor from third parties that are meant to be passed through to Merchant, excluding those that Processor bills separately to Merchant. This fee is calculated by adding up all fees from Banks and Card Brands billed to Processor in the month prior to the assessment of the Third Party Fee, divided by the total net dollar volume of Transactions for each Merchant that is eligible a for Third Party Fee, times each Merchant’s total net dollar volume from Transactions.
- 1.37 “Third Party Service Provider” means any third party used by Merchant, whether or not referred by Processor, in connection with: this Agreement; the processing, evaluation, or submission of transactions; Merchant’s payment ecosystem; or which otherwise has access to any transaction data. Third Party Service Providers include, but are not limited to, payment gateways, terminal manufacturers, data analysis tools, PCI vendors, transaction monitoring platforms, risk monitoring platforms, and loyalty and gift card platforms.
- 1.38 “Transaction” means the acceptance of a Card, information embossed or encoded on the Card, or other electronic instrument other than cash for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank or Processor, whether the Transaction is approved, declined, or processed as a forced sale. The term “Transaction” also includes credits, errors, returns disputes, and adjustments.
- 1.39 “Visa” means Visa, Inc. and its subsidiaries, successors, and assigns.

## 2. MERCHANT PARTICIPATION

- 2.1 Services. During the Term of this Agreement, Merchant agrees to use the Services provided by Processor and Bank. Processor agrees to provide the Services to Merchant, subject to Merchant's compliance with all obligations under this Agreement and payment of all Fees and other amounts due to Processor and Bank when due.
- 2.2 Acceptance. Except as otherwise set forth in this Agreement, Merchant will permit all valid holders of Cards authorized for Merchant's acceptance under this Agreement to pay for those goods or services provided by Merchant. Merchant will ensure that all transactions submitted to Processor adhere to the terms of this Agreement, the Rules, and the policies and procedures established by Processor. Merchant will only surcharge transactions or establish minimums or maximums for transactions if such surcharges, minimums, or maximums are allowed under applicable Law or the Rules, and then only upon proper notice to Processor and the appropriate Card Brand. If using Processor's Discount for Cash program, Merchant will ensure that all signage is placed as required by Processor and any applicable law or Rules. Bank is not a party to this Agreement in so far as it relates to Processor's Discount for Cash Program. Merchant will notify Processor and Bank at least thirty (30) days prior to any change to its business or the method in which it markets or sells goods or services. Processor or Bank may establish dollar volume processing limits and, at their sole discretion and on a case-by-case basis, decline to process transactions which would cause Merchant to exceed such limits or hold settlement of such transactions until such time as the risk of Chargebacks related to such transactions has expired.
- 2.3 Limited Acceptance. With respect to Visa, Mastercard and Discover, Merchant may, in accordance with the Rules, elect to accept credit cards, debit cards, or both, by selecting the applicable options on the Merchant Application. Merchant is solely responsible for identifying accepted and non-accepted Cards and will not submit transactions involving Cards which Merchant has elected not to accept. Processor may, but has no obligation to, process transactions submitted using, and will charge Merchant applicable Fees incurred as the result of processing any transaction involving, a Card that Merchant has elected not to accept, and Merchant agrees to pay all such Fees when due.
- 2.4 Customer and Technical Support. Processor will provide reasonable customer service and technical support to Merchant in order to allow Merchant to accept and process transactions. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank or Processor, Bank and Processor may terminate this Agreement. Bank and Processor reserve the right to charge Merchant reasonable fees and reimbursement on an account of excessive Cardholder inquiries, refunds, or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:
- (a) The Cardholder's name;
  - (b) The Card account number;
  - (c) The date and time the Cardholder asserted the claim or defense;
  - (d) The nature of the claim or defense; and
  - (e) The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank and Processor with this information in writing within ten (10) days.

- 2.5 Exclusivity. During the Term of this Agreement, Processor will be the sole and exclusive provider of all Services to Merchant and Merchant will not obtain services or products similar to the Services from any third party. This Agreement is not exclusive as to Processor, and Processor may provide the Services to any third party. With regards to any Merchant utilizing Processor's Discount for Cash program, if Merchant decides to move from the Discount for Cash program to a standard Merchant program, this Section will apply, and Merchant will be provided a standard fee schedule.
- (a) Exception. If Processor authorizes Merchant to use any other party to process transactions on Merchant's behalf, such authorization must be in writing and Merchant agrees to provide Processor the name and address of each such other entity as well as copies of Merchant's monthly statements from such other entity upon the receipt or accessibility of such monthly statements.
- (b) Liquidated Damages. If Merchant is in breach of this Section 2.5, the actual damages sustained by Processor as a result of such failure would be difficult, if not impossible, to calculate with precision. Therefore, Merchant agrees to pay to Processor as liquidated damages for such failure an amount equal to the greater of (i) \$550 dollars or (ii) the total gross dollar volume of transactions processed through any third party multiplied by two percent (2%).
- 2.6 Compliance. Merchant shall fully comply with all Rules, Policies, and Laws. To the extent this Agreement or any Policy conflicts with the Rules or Laws, the Rules or Laws shall control. Merchant shall be responsible for ensuring each Third

Party Service Provider is properly registered with the Card Brands and complies with all Rules, Policies, and Laws. Merchant understands that the Rules, Policies, and Laws may be modified without notice to Merchant, and Merchant will be bound by all such modifications. Merchant shall not use any Third Party Service Provider without Processor's prior written consent, provided that such consent shall not constitute any representation or warranty that such Third Party Service Provider is compliant with applicable Rules and Laws and shall not relieve Merchant of any responsibility or liability with regard to such Third Party Service Provider. Merchant will ensure each Third Party Service Provider only has access to Cardholder data for purposes authorized by the Rules and does not store or use any Confidential Information, including but not limited to Card or Cardholder information, without Processor's prior written consent. Merchant will regularly monitor all Rules, Policies, and Laws for modifications and will comply with all such modifications. Merchant will cooperate with Processor and Bank as necessary to comply with all Rules and Laws and will execute and deliver to Processor any documents or instruments Processor or Bank deems necessary for compliance purposes. Merchant will demonstrate its and each Third-Party Service Providers compliance with the Rules upon Processor's request. Merchant will resolve any disputes it has with any Third-Party Service Providers directly and will be responsible for paying all amounts due under this Agreement regardless of any disputes it has with any third party. Merchant will ensure each Third-Party Service Provider provides Processor and/or Bank with all information requested in connection with any transaction or other use of the Services within one (1) business day of Processor's or Bank's request. Merchant will display any signage, notifications, or other materials as required by Processor from time to time.

- 2.7 Marketing. Merchant shall display the Card Brand marks and promotional materials required by the Card Brands or provided by Processor in accordance with the Rules and Policies. Merchant will not display any such marks or promotional materials in a way which states, suggests, or implies that a Card Brand endorses Merchant or any product or service. Merchant shall immediately cease all use and display of the Card Brand marks and promotional materials upon the earliest of: notice from Processor; notice from a Card Brand; or termination of this Agreement.
- 2.8 Ownership. Merchant will not acquire any title, interest, copyright, or other proprietary rights in or to the Services, Confidential Information, advertising material, Card Brand materials, or Equipment, whether provided by Processor or any third party. Processor shall at all times retain all title to and ownership of the Services and any Equipment (to the extent such Equipment is provided by Processor). Merchant will not, directly or indirectly, and will not allow any third party to, copy, convey, license, sublicense, transfer, modify, translate, reverse engineer, decompile, disassemble, tamper with, derive source code from, or create any derivative work of any of the foregoing. Merchant will not allow any of the foregoing to become subject to any legal encumbrance.
- 2.9 American Express. If Merchant has entered into a direct agreement with American Express for the authorization, capture, and settlement of transactions, Merchant shall provide its credentials and account number to Processor and Processor will use reasonable efforts to route such transactions to American Express; provided, however, that Merchant's agreement with American Express will control such relationship and Processor will have no responsibility or liability for the authorization, capture, settlement, or other processing of any American Express transactions. If Merchant is eligible to participate in Processor's direct processing of American Express OptBlue Program, the requirements (set forth in the American Express Merchant Operating Guide) will apply to this agreement; in this program Merchant is referred to as Program Merchant of the American Express OptBlue program. Merchant grants Processor authorization to submit American Express Card transactions to, and receive settlement from, American Express on their behalf within the Processor's direct American Express program.
- 2.10 Insurance. Merchant will obtain and maintain throughout the Term an active Data Breach insurance policy with at least fifty thousand dollars (\$50,000) in coverage per incident.

### **3. TRANSACTION REQUIREMENTS.**

- 3.1 Transactions. Merchant will only submit to Processor transactions which have been authorized by the Cardholder and arise out of a bona fide transaction between a Cardholder and Merchant. Each transaction must be submitted in accordance with all applicable Rules, Policies, and Laws. Merchant will clearly identify itself as the merchant of record to each customer in connection with each transaction and provide such customer with Merchant's name and address.
- 3.2 Authorization. Merchant will obtain an Authorization for each transaction prior to submitting such transaction to Processor. Merchant will not submit for processing any transaction which did not receive an "approved" response code in response to the Authorization request. An "approved" Authorization response code does not constitute a representation, warranty, or guaranty that the transaction is authorized by the Cardholder, the Card is legitimate, or that the transaction will not later be

rejected or charged back. Merchant is solely responsible for ensuring that each Card used in a transaction is valid, authorized, and belongs to the Cardholder. Merchant understands that obtaining an authorization or processing a transaction does not constitute a guarantee of payment, and any such transaction can be returned or charged back to Merchant as set forth in the Rules. If the Equipment is inoperable at the time of an Authorization request, Merchant may obtain a dial-up Authorization for certain card present transactions in accordance with the Policies, in which case an ARU Authorization Fee will be assessed.

- 3.3 Documentation. For each transaction, Merchant will be responsible for evidencing such transaction with the appropriate transaction documentation required by the Rules, and if appropriate obtain the Cardholders signature authorizing such transaction. Such documentation will include the Merchant's name, address, and phone number. After completing a transaction, Merchant will provide a copy of the transaction documentation to the customer, provided that Merchant will ensure such copy of the transaction documentation is formatted in accordance with the Rules and Laws, including but not limited to the truncation of Card numbers and expiration dates. If required by Bank or Processor, in connection with each transaction Merchant will obtain from the Cardholder information required by Bank or Processor, including but not limited to the name, address, and telephone number of the Cardholder. Within one business day of Processor's request, Merchant will provide a copy of all information and transaction documentation to Processor, provided however that Merchant will not provide Processor with any Protected Healthcare Information (as defined in the Health Insurance Portability and Accountability Act of 1996, as amended) in connection with any transaction or otherwise without providing written notification to Processor of the status of such information. Such documentation will include evidence of a terminal capture or Card imprint for each Card present transaction. Merchant is solely responsible for maintaining complete backup records and documentation of information relating to its customers' orders, inquiries, purchases, sales, and other customer information in accordance with this Agreement and all applicable Laws and Rules.
- 3.4 Responsibilities. Merchant will fulfill each transaction by delivering the goods or providing the services prior to submitting the transaction to Processor for processing, unless such transaction is a pre-authorized transaction which complies with all Rules and Laws applicable to pre-authorized transactions and adequate written permission has been obtained from (with a copy of such permission provided to) the Cardholder. Merchant will not submit any pre-authorized transaction if such authorization had been revoked prior to the submission of such transaction or if the Card has expired or otherwise become invalid. For each card not present transaction, Merchant will verify and submit to Processor: the Cardholder's address through the address verification functionality (and the results of such verification along); the Card's security code (CVV2 or equivalent); and a designation specifying the order type (mail order, telephone order, e-commerce order, or pre-authorized order). Merchant will not retain or store any magnetic stripe information, CVV2, or equivalent data after authorization except as explicitly required by this Agreement, the Rules, or any applicable Law.
- 3.5 Transaction Restrictions. Merchant will not submit to Processor any transaction: (a) Merchant knows is illegal or should know is illegal; (b) Merchant knows, or should know, is fraudulent or unauthorized; (c) which violates any Rule or Law; (d) originated through any method (e.g. card present, mail order, telephone order, e-commerce order, or pre-authorized order) which is not designated on the Merchant Application or which has not been approved by Processor; (e) which represents a sale to any principal, partner, or owner of Merchant; or (f) in connection with any Merchant location other than those locations set forth on the Merchant Application. Additionally, Merchant will not: (g) obtain multiple Authorizations for amounts less than the total sale amount; (h) obtain an Authorization for the purpose of setting aside a Cardholder's credit line for use in future sales; (i) extend credit for or defer the time of payment of the total cash price in any transaction; (j) extract any agreement or security from a Cardholder in connection with a transaction; (k) submit any transaction that was not originated directly between Merchant and a Cardholder for those goods or services set forth on the Merchant Application and provided by Merchant; (l) use Merchant's own Card or the Card of any owner or principal in any Transaction; (m) initiate any credit unless the Account contains sufficient funds to pay for such credit; (n) use the Equipment for any purpose other than use of the Services; (o) use any information obtained in connection with this Agreement to evaluate, or draw or convey any inference concerning, a person's creditworthiness, standing, capacity, character, general reputation, personal characteristics, or mode of living; (p) disclose any information obtained regarding a transaction to any third party except as required by the Rules or Laws; (q) add any tax to a transaction unless required by Law; (r) disburse funds, cash, travelers checks, or cash equivalents to a Cardholder in connection with a transaction (except as explicitly allowed by the Rules); or (s) accept any Card for an unlawful transaction, including without limitation any unlawful internet gambling transaction.
- 3.6 Refunds. Merchant will maintain a fair exchange and return policy and clearly disclose such policy to its customers (prior to and at the time of any reservation or transaction). If no refund or return will be given, Merchant will advise the Cardholder in

writing that the sale is a “final sale” and that “no returns” are permitted at the time of the transaction. Merchant will issue all refunds, returns, and other credits to the Card used in the corresponding purchase transaction, and will not issue any refunds, returns, or other credits to such Card which, in the aggregate, exceeds the amount of the original purchase transaction. Merchant will not provide cash or any cash equivalent to the Cardholder in connection with any return, refund, or other credit if the original transaction was paid for using a Card. Merchant will retain sufficient information and/or transaction documentation to identify a transaction and be able to issue a refund upon a customer’s request.

- 3.7 Disputes and Chargebacks. Merchant will provide customer service to each Cardholder and customer with regard to each transaction and will be solely responsible for resolving any dispute with a Cardholder. With regard to each dispute, Merchant will maintain a written record of, and provide to Processor upon request, the following information: the Cardholder’s name; the Card number; the date and time of the asserted claim; the nature of the claim; and the action taken by Merchant to attempt to resolve the claim. If a Cardholder disputes any transaction if a transaction is charged back for any reason by the Card issuing institution, or if Processor, Bank, or a Card Brand has any reason to believe a pending transaction or previously processed transaction is questionable, not genuine, or otherwise unacceptable, the amount of such transaction may be charged back and deducted from any payment due to Merchant or may be charged against the Account, the Reserve Account, or any other account in Merchant’s name. Merchant acknowledges and agrees that it is bound by the Rules with respect to any chargeback and, if Merchant disagrees with any Chargeback, it must notify Bank and Processor of its decision to dispute such Chargeback and provide all related documentation within ten (10) days of the Chargeback. Merchant further acknowledges that it is solely responsible for providing Processor, Bank, and each Card Brand with any available information to re-present a Chargeback and that, regardless of any information provided or not provided, Merchant shall be solely responsible for the liability related to such Chargeback. A list of the reasons for Chargebacks and the process for resolving Chargebacks is set forth in the Rules. Chargebacks, returns, and other credits will be set off against the proceeds of processed transactions on a daily basis. If the amount of any Chargeback, refund, return, or other credit is uncollectible through withholding the current transaction proceeds for Merchant, withdrawing from the Reserve Account, or withdrawing from the Account, upon demand from Processor, Merchant shall pay to Processor the full amount of such Chargeback, refund, return, or other credit. Merchant agrees to satisfy directly with the Cardholder any claim, Chargeback, or compliant arising in connection with any transaction, regardless of whether such claim or compliant is brought by the Cardholder, Processor, Bank, an issuing bank, or any third party. **If Merchant has a chargeback rate higher than 0.5%, they will be required to enroll in the acquirer’s Verifi program and enroll in 3D Secure. After 90 days of utilizing these mitigation tools, if the merchant’s chargeback rate exceeds 1% in any given month they will be terminated immediately without prior notice. If a merchant’s chargeback ratio meets or exceeds 4% at any point in time, they will be terminated without prior notice. Any merchant exceeding these thresholds could be subject to a network non-compliance assessment of \$25,000 upon the first offense.**
- 3.8 Settlement Redirection. Merchant acknowledges that any payment made, or credit given to Merchant as settlement for a Transaction is an advance of funds, until the Transaction is not capable of being subject in whole or in part to a Chargeback or other adjustment. Processor and Bank may monitor Merchant’s transactions and may, at their sole discretion, refuse to process, Chargeback, reverse, or redirect the proceeds of any transaction which Processor or Bank deems or suspects to be fraudulent, suspicious, unusual, or unauthorized, that varies from transactions typical of Merchant’s business or those set forth on the Merchant Application, that is submitted through unauthorized payment methods, or which Bank or Processor otherwise determine, in their sole discretion, to be in violation of this Agreement, the Rules, Laws, or likely to be a Chargeback. Redirected transactions will be deposited into a Reserve Account and held in such Reserve Account until, at Processor’s sole discretion: (a) an investigation related to such transactions has been completed and Processor and Bank deem the maintenance of such amount is unnecessary to secure the obligations of Merchant with respect to such transactions; or (b) such amount is released in accordance with Section 6.4. Processor and Bank shall have no liability to Merchant or any third party for the redirection of any funds otherwise due to Merchant into a Reserve Account.
- 3.9 Card Recovery. Merchant will not complete a transaction and should attempt to recover a Card by reasonable, peaceful means if: the Card number appears in a card recovery bulletin issued by the Card Brands; Bank or Processor request its retention; or if Merchant receives notification of cancellation, theft, or counterfeiting. Merchant must immediately notify Processor and Bank that it has recovered such Card and request further instructions. Under no circumstances will Merchant engage in any act of violence or otherwise breach the peace in connection with the recovery of any Card or otherwise.

3.10 ACH Services. When requested by Merchant, Processor will also provide ACH processing services at the rates specified in Schedule A. Merchant agrees that information supplied in this application may be used to establish a separate ACH account. Merchant agrees that Bank and Processor will deduct processing fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on Schedule A. Merchant also agrees to pay Bank or Processor the amount of any fees, charges or penalties assessed against Bank or Processor. Merchant agrees to abide by all National Automated Clearing House Association (NACHA) rules and regulations governing ACH processing and use of their network

#### **4. DATA AND INFORMATION.**

- 4.1 Confidential Information. All Confidential Information is and will remain the sole property of Processor. Merchant will not, without Processor's prior written consent, use, store, or disclose any Confidential Information, including but not limited to the information Merchant obtains from a Cardholder in connection with a Card transaction, except as necessary to perform its obligations under this Agreement or perform its obligations to such Cardholder. Notwithstanding the foregoing, pursuant to the Defend Trade Secrets Act of 2016, the parties understand that an individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Merchant will not sell, purchase, transfer, provide, or exchange any Card information, transaction documentation, or copies thereof to any third party without Processor's prior written consent. No ownership interest in or right to any Confidential Information will pass to Merchant pursuant to this Agreement, whether by use, custom, or any other method.
- 4.2 Processor. Merchant authorizes: (a) Processor to obtain a credit report (and subsequent credit reports throughout the Term) on Merchant and any officer, shareholder, partner, manager, and guarantor of Merchant; (b) Bank and any other financial institutions used by Merchant to release financial information and account information to Processor; and (c) Processor to disclose information and data regarding Merchant and its owners, shareholders, officers, managers, and guarantors, including without limitation credit report information, financial information, Confidential Information, and information regarding Merchant's transactions, disputes, and other activity to Bank, the Card Brands, governmental agencies, financial institutions, and any other third parties without liability to Merchant. Merchant understands that Processor is obligated to report certain information, including but not limited to Merchant's and its officer's identification information and transaction activity to governmental agencies in accordance with applicable Law. Merchant will establish and maintain a privacy policy and will ensure such policy allows the sharing of information regarding each customer and transaction with Processor, Bank, and each Card Association, and notes that each such party may use or disclose the information in accordance with their own respective rules and regulations.
- 4.3 PCI Compliance. Merchant is solely responsible for the security of all information obtained from a Cardholder. Merchant will, and will ensure each Third Party Service Provider will: (a) fully comply with the PCI Rules; (b) fully comply with Visa's Account Information Security Program (as set forth in the Visa Rules), Site Data Protection Program (as set forth in the Mastercard Rules), Data Security Requirements (DSR) (as set forth in the American Express Merchant Guide) and Discover Information Security & Compliance program (as set forth at Discovernetwork.com/DISC), and (c) implement and maintain those security measures, processes, encryption methods, software, and hardware necessary to ensure that Card numbers, Card security codes, transaction information, and other Confidential Information is not accessed or used for any reason or by any person other than for Merchant's performance of its obligations under this Agreement (including preventing any unauthorized access to such information through Merchant's website, Equipment, or other payment channels or methods through which Card information and other Confidential Information is received, accessed, transmitted, or stored by or on behalf of Merchant). Merchant will not store any Confidential Information, including without limitation any Card numbers, Card expiration dates, Card security codes, or other transaction information without Processor's prior written consent.
- 4.4 PCI Program. Merchant will participate in the PCI Program. Failure by Merchant to obtain and submit to Processor a PCI compliance certificate through the PCI Program within three (3) months of the Effective Date, or on an annual basis, thereafter, will result in the assessment against merchant of the PCI non-compliance Fees. Merchant will not be entitled to a refund in PCI compliance related Fees if Merchant obtains and submits a PCI compliance certificate after the assessment of such Fees. Merchant understands and agrees that participation in the PCI Program does not: guaranty prevention of a Data Breach or other security failure; constitute fulfillment of Merchant's PCI compliance or data security obligations; or relieve Merchant of any obligations related to PCI compliance or data security. Processor's issuance or acceptance of a PCI compliance certificate does not constitute a representation or warranty that Merchant is actually PCI

compliant or that a Data Breach will not occur, and Merchant shall undertake all actions and processes necessary to ensure it is and remains PCI compliant. Merchant will accurately and fully complete all self-assessment questionnaires through the PCI Program

in a manner that is not misleading. Processor may, but is not obligated to, enroll Merchant in limited scope Data Breach coverage, subject to certain terms and conditions, which may cover certain costs and expenses associated with a Data Breach if Merchant is eligible for such coverage. Data Breach coverage may not be available in all instances, including but not limited to claims falling under an exclusion or if the coverage limits have been exhausted. Participation, or lack thereof, of Merchant in any Data Breach coverage shall not relieve Merchant of its obligations or liabilities under this Agreement. If Merchant is enrolled in such Data Breach coverage, upon Merchant's reasonable request Processor will provide Merchant access to the applicable terms, conditions, and policies.

- 4.5 Destruction. Merchant will retain all information required by applicable Law and the Rules. Upon termination of this Agreement, Merchant will destroy or return to Processor all Confidential Information which Merchant is not required to retain pursuant to the Rules, Laws, Policies, or this Agreement. All other Confidential Information in Merchant's possession will be retained by Merchant for the period required by the Rules, Laws, Policies, or this Agreement and, upon the expiration of such requirement, Merchant will destroy or return such information to Processor. Destruction of all Confidential Information will be completed securely in a manner which renders the data unreadable.
- 4.6 Employees and Third Parties. Merchant shall ensure each: of its officers, directors, owners, employees, and agents; Third Party Service Provider; and other third parties to which Merchant discloses Confidential Information do not use or disclose, directly or indirectly, any such Confidential Information for any reason other than as necessary for Merchant's performance of its obligations under this Agreement.
- 4.7 Sales Information Retention. Merchant shall securely maintain, in accordance with Section 4.3, a copy of that sales information and transaction documentation for each transaction required to be retained by the Rules, Policies, and Law, for at least seven (7) years from the date of such transaction, and will provide a copy of such information to Bank or Processor within one (1) business day of any request. Failure to deliver all such information and transaction documentation, or illegible information or transaction documentation, will constitute a waiver by Merchant of any claims related to such transaction and may result in an irrevocable Chargeback for the full amount of the transaction.
- 4.8 Data Breach. If a Data Breach occurs, Merchant will take all action necessary to immediately prevent further access to or misuse of Confidential Information and will fully cooperate with Bank, Processor, and any governmental or regulatory entities in connection with any ensuing investigations. All information provided in connection with such investigation will be deemed Confidential Information. Merchant will be responsible for all costs, expenses, fees, fines, penalties, assessments, and other amounts associated with any Data Breach or the response to such Data Breach, including but not limited to those incurred by Processor and Bank.
- 4.9 Requested Information and Audit. Merchant shall provide to Processor, Bank, or any Card Brand, within one (1) business day of any request by the foregoing, copies of any requested information or documentation, including but not limited to copies of: transaction documentation for any identified transaction; Merchant's or its principals' financial statements; Merchant's product and pricing lists; Merchant's policies; or any other information. Merchant will allow Processor, Bank, each Card Brand, and/or their representatives to inspect, audit, review and make copies of Merchant's books, records, processes, policies, procedures, and operations upon their request and Merchant will fully cooperate with any such investigation or audit. Merchant represents and warrants, as of the date any information or documentation is provided to Processor or Bank (including but not limited to all information on the Merchant Application) by or on behalf of Merchant, that such information is true, accurate, complete, and not misleading.
- 4.10 Forms. Merchant will promptly, fully, and accurately complete all forms and provide all information to Processor and Bank necessary for Processor and Bank to fulfill their obligations under this Agreement, including but not limited to any application, participation, or membership agreements related to sponsorship for the Card Brands.
- 4.11 Credentials. All credentials provided or made available to Merchant by Processor or Bank, including but not limited to identification numbers, usernames, passwords, and merchant identification numbers, are the sole property of Processor and shall not be used or disclosed by Merchant except to Processor in accordance with this Agreement. Access to and use of password protected areas of any Services are restricted to authorized users only. Merchant will immediately notify Processor if its passwords, identification numbers, or other credentials have been stolen or accessed without authorization. Processor may revoke such credentials at any time in its sole discretion without notice to Merchant, and will be revoked if Processor has

reason to believe such credentials have been stolen, compromised, or are otherwise likely to be used in violation of this Agreement. Processor makes no representation or warranty as to the availability, accessibility, or accuracy of its online system or any reports or invoices accessible through such online system. Processor may require credential information or other information from Merchant prior to making any changes to Merchant's account or providing customer or technical support to Merchant. Merchant hereby authorizes Processor to, and Processor may at its sole discretion, rely on any information and execute any requests received from any person which discloses Merchant's identification number or other credentials, or disclose information about Merchant to such person or any email account associated with Merchant, and Merchant waives any claims related to or arising from Processor's reliance on or actions resulting from such instructions or information or the disclosure of information to any such person.

4.12 Recording. Merchant understands that any telephone conversation or voice conversation between Merchant, Processor, and/or Bank may be monitored and recorded.

## 5. EQUIPMENT.

Merchant is solely responsible for obtaining and maintaining all software and Equipment necessary to use the Services, or otherwise used in conjunction with the Services, including but not limited to point-of-sale systems, terminals, gateways, card readers, and pin-pads (collectively "Equipment").

- 5.1 Usage. Merchant will only use the Equipment in accordance with the operating instructions for such Equipment. Merchant will promptly notify Processor of any Equipment malfunction, failure, or incident relating to the Equipment. Merchant will ensure such Equipment is approved by Processor and properly interfaces with Processor's systems and understands that Processor will have no liability for and will not be obligated to process any transactions which are not submitted to Processor in accordance with the Rules and Processor's Policies, including but not limited to Processor's transaction entry formats and other technical specifications. If Processor does process any improperly formatted or submitted transactions, such transactions may be subject to rate tier downgrades or other fee increases. Processor's approval of any Equipment will not constitute a representation or warranty that such Equipment will operate error free, function properly, interface with Processor's systems, or otherwise fulfill any function desired by Merchant.
- 5.2 Setup. Merchant will be solely responsible for the installation of such Equipment and any alterations necessary for such installation. Processor will not be liable for any delay or incompleteness of an installation of Equipment. Merchant will be responsible for maintaining and paying for electrical power and a secured phone line or other secure internet connection to be used solely by the Equipment to communicate with Processor.
- 5.3 Security. Merchant will ensure all Equipment used complies with the PCI Rules and all other applicable Rules. Merchant is solely responsible for the security, safekeeping, and proper operation of all Equipment. Merchant will adopt all security measures and processes necessary to prevent unauthorized access or use of the Equipment. If any loss, unauthorized use, or unauthorized access of the Equipment does occur, Merchant will immediately notify Processor.
- 5.4 Equipment. In processing Transactions, Merchant shall use only Equipment or software programs provided or approved by Processor ("equipment") and related Equipment installed or approved by Processor, and the following additional terms:
- (a) The Equipment shall be suitable for processing the Services.
  - (b) Merchant will provide, at Merchant's expense, suitable electric power and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's Equipment.
  - (c) If Merchant is using Equipment, Merchant acknowledges receipt of a copy of the Equipment user's guide. Merchant will use and operate the Equipment only in accordance with the Equipment user's guide; and
  - (d) Bank or Processor will have no liability to Merchant if any installation is delayed or cannot be completed. Processor will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of Processor. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or Processor.

To the extent any Equipment is leased or provided to Merchant by Processor, upon termination of this Agreement, Merchant will return the Equipment to Processor in good and working order and free of damage (ordinary wear and tear excepted). Merchant will be liable to Processor for any damage to Equipment, and if such Equipment is not returned in good and working order upon termination of this Agreement, Merchant will be responsible for the cost of a new terminal (or similar Equipment satisfactory to Processor) at Processor's then-current rates.

## 6. FEES AND ACCOUNTS.

6.1 Fees. Fees and charges payable by Merchant are set forth on the Merchant Application, attached Fee schedules, or elsewhere in this Agreement and will be due and payable when incurred, which as they relate to a transaction will be on the transaction date and which as they relate to any time period will be on the first day of such time period. Processor may modify the Fees at any time upon notice to Merchant to pass through to Merchant any increase in the Fees charged to Processor by the Card Brands, Bank, or other third parties or as the result of Merchant submitting transactions for goods or services or using methods not set forth on the Merchant Application. In addition, Processor may modify the Fees at any time and for any reason upon thirty (30) days prior written notice to Merchant. In addition to the Fees, any Fees, fines, penalties, assessments,

or other expenses incurred by Processor from Bank, the Card Brands, or any governmental or regulatory body attributable to Merchant or any transaction submitted by Merchant (in Processor's sole discretion), including but not limited to Fees for administrative costs related to a Card Brand or governmental investigation or inquiry, will be passed through to and paid by Merchant. If Merchant uses any Services for which the corresponding Fees are not set forth in the Merchant Application, attached Fee schedules, or this Agreement, Processor will charge and Merchant agrees to pay Processor's then-current rates for such Service, as adjusted by Processor from time-to-time. Merchant understands that the discount rates and Fees for transactions may fall into more expensive tiers based on, among other factors, the card acceptance method, information submitted, and batch submission timing, and the expense tier in which each transaction falls shall be determined by Processor in its sole discretion. Merchant's failure to submit all batches to Processor daily may result in higher rates, Processor's refusal to process such transactions, or such transactions being charged back. Merchant is solely responsible for re-submitting transactions which fail to properly batch, process, or send to Processor. Merchant will reimburse Processor for any Fees, fines, penalties, assessments, or other amounts assessed or charged to Bank or Processor by a Card Brand, governmental agency, or any other third party on account of or related to Merchant's use of the services or Merchant's transactions, including but not limited to fines and assessments resulting from Merchant's or any Third Party Service Provider's non-compliance with PCI or any Rules.

6.2 Account. Merchant shall establish and maintain in good standing, during the Term and for one hundred eighty (180) days thereafter (or such longer period of time as any warranty, guaranty, or other obligation related to any sale or other transaction), a depository account in Merchant's name at a financial institution which is approved by Processor and participates in the automated clearing house system ("Account"). Merchant irrevocably authorizes Processor, Bank, and their designated agents during the Term and for one hundred and eighty (180) days thereafter, to debit and credit the Account via ACH transactions or via wire for any amounts due to or from Merchant pursuant to this Agreement, including but not limited to withdrawal of funds from the Accounts for the payment of all Fees, expenses, assessments, Chargeback, credits, returns, and other amounts due to Processor from Merchant. Merchant will at all times maintain a balance in the Account sufficient to cover all Fees, fines, and other amounts due to Processor or Bank. Merchant waives all claims against Processor and/or Bank and the financial institution holding the Account arising from any debits to the Account in accordance with this Agreement. Merchant agrees to pay an ACH Reject Fee to Processor for each ACH transaction to the account initiated by Processor but not completed for any reason (other than Processor's cancellation of such ACH transaction), the most common of which is insufficient funds. Processor will have no responsibility for the timing of transactions posted to the Account or the availability of funds deposited into the Account, both of which are subject to the policies and procedures of the financial institution holding the Account. Merchant will notify Processor in writing prior to any modification of the Account, and upon such modification the authorization set forth in this Section 6.2 will apply for any subsequent or alternate depository account established or maintained by Merchant. Merchant understands that if the information supplied as to the Account routing number and account number is incorrect, and the funds are incorrectly deposited, Processor and Bank will attempt to assist Merchant in the recovery of such funds but will have no liability as to restitution of the same. Assistance in recovering of such funds will be billed to Merchant at Processor's and Bank's current hourly rate for such work.

6.3 Settlement. Processor or Bank will, after the applicable hold time which will be set by Processor in its sole discretion, deposit via ACH transaction into the Account an amount equal to: (a) the gross amount of the transactions settled, less (b) the amount of any denied charges, credits, refunds, Chargebacks, and/or returns processed, less (c) the Fees, penalties, and other amounts payable by Merchant, less (d) any charges incurred by Processor or Bank as a result of or attributable to Merchant or any transaction processed for Merchant. Processor and Bank will have no obligation to: (e) settle any transactions or fund any amounts for which Processor or Bank has not received payment for such amounts from the Card Brands; (f) process any transaction Bank or Processor identify as suspicious or irregular; or (g) settle any transactions deemed suspicious or irregular until such transaction may no longer be charged back or contested. This deposit is an advance of funds, which will not become a final transaction until it is no longer subject to Chargeback or other adjustment. ACH transactions may not be settled on certain days, including without limitation Sundays and holidays. Merchant shall have no right to, and Processor is not obligated to settle to the Account, any amount relating to a transaction which violates this Agreement or an applicable Law, Rule, or Policy. All amounts settled to Merchant by Processor are provisional and may be revoked (and withdrawn from the account) if such transaction is returned, refunded, charged back, subject to dispute, or otherwise in any way violates this Agreement or an applicable Law, Rule, or Policy. Processor or Bank may immediately, upon incurrence, withdraw the amount of any Fees, refunds, returns, Chargebacks, taxes, penalties, or other credits from the Account. Merchant agrees not to, directly or indirectly, prevent, block, or otherwise preclude any debit by Processor or Bank to the Account which is permitted

under this Agreement. Processor or Bank may, at their sole discretion, redirect any settlement amount in accordance with Section 3.8.

- 6.4 Reserve. Processor or Bank may, at any time in their sole discretion, establish a depository account at Bank or any other financial institution and in Bank's or Processor's name to secure the performance of Merchant's obligations to Processor and/or Bank ("Reserve Account"). The amount and required balance of the Reserve Account will be the amount determined by Processor or Bank as necessary to secure Merchant's obligations, and will be determined using factors which include, but are not limited to, the amount and number of transactions submitted by Merchant, the amount and number of Chargebacks incurred by Merchant, the nature of Merchant's business, Merchant's financial position, and the terms and conditions associated with Merchant's sales. The Reserve Account shall be funded, at Processor's sole discretion, as follows: (a) Merchant will, upon the request of Processor, directly deposit of funds into the Reserve Account; (b) Processor or Bank may redirect all or a portion of any proceeds from processed transactions which would otherwise be settled to Merchant into the Reserve Account; and/or (c) Processor or Bank may withdraw funds from the Account or any other depository accounts in Merchant's name, and deposit such amounts into the Reserve Account. Merchant authorizes Processor and/or Bank to withdraw any amounts due from Merchant from the Reserve Account without prior notice to Merchant, including but not limited to all Fees, fines, penalties, assessments, Chargebacks, and other amounts due under this Agreement or any other agreement between Merchant and Processor or Bank. Upon any such withdrawal the Reserve Account will be funded in accordance with this Section 6.4 to return the Reserve Account to an amount determined by Processor or Bank as necessary to secure Merchant's obligations. Funds in the Reserve Account may be held by Processor or Bank until the later of: the expiration of any potentially applicable Fees, assessments, or Chargeback rights in respect of the transactions processed; or the period necessary to secure the performance of Merchant's obligations. Merchant understands that the foregoing holding period will extend for at least six months after the termination of the Agreement. After the conclusion of such holding period, the balance of Merchant's funds in the Reserve Account, if any, shall be paid to Merchant. With respect to any funds held in the Reserve Account, Merchant will not: receive interest on such funds; access or use such funds; or transfer, pledge, or grant any interest in such funds to any third party.
- 6.5 Security Interest and Setoff. Merchant grants Processor and Bank a first priority security interest in and lien upon the Account, the Reserve Account, the proceeds of all transactions submitted, and all other depository accounts Merchant has with any financial institution (collectively "Secured Assets"). Merchant will execute all documents requested by Processor or Bank, in a form acceptable to Processor and Bank, in order to perfect such security interest and will pay all costs and expenses associated with filing such documents in those offices deemed necessary or desirable by Processor or Bank. Processor and Bank are authorized to file financing statements and other documents reflecting this security interest and Merchant irrevocably appoints Processor and Bank as its attorney-in-fact to execute any documents such parties deem desirable to perfect their security interests. Merchant shall not grant any security interest or lien in or upon the Secured Assets to any third party without Processor's prior written consent. Merchant Agrees that Processor and Bank each have a right of set off, and may apply any of Merchant's balances, amounts due to Merchant from Bank or Processor, or other assets in Bank's or Processor's possession, control, or to which they may have access (including without limitation the proceeds of Merchant's transactions, amounts in the Account, and amounts in any Reserve Account) towards the payment of amounts due from Merchant to Bank or Processor under this Agreement or any other agreement. If required by Processor or Bank, Merchant agrees to execute a control agreement providing Bank and/or Processor control over the Account.
- 6.6 Interest. If Merchant does not pay any Fees or other amounts owed to Bank or Processor when due, such amounts will accrue interest, and Merchant agrees to pay interest on such amounts, at a rate of one and a half percent (1.5%) per month or the highest amount allowed by applicable law, whichever is less.
- 6.7 Overpayment. If an overpayment to Merchant occurs, Processor or Bank may debit the Account without notice to Merchant to withdraw the amount of such overpayment, and if the Account does not contain sufficient funds Merchant agrees to remit the amount of the overpayment directly to Processor.
- 6.8 Reporting. Bank or Processor will provide or make available to Merchant periodic (typically monthly) statements and/or invoices setting forth information relating to Merchant's processing activity, related Fees, and other amounts due. Such statements and/or invoices may, at Bank's or Processor's sole discretion, be sent by mail or be posted online and accessible to Merchant by logging in, using credentials provided by Processor, to Processor's or its vendor's online system. Merchant is solely responsible for accessing, printing, and saving all such statements and invoices. Processor may remove statements from its online system at any time and without notice to Merchant. All such statements and invoices shall be Confidential Information.

6.9 Discrepancy Reporting. Merchant will promptly review and reconcile all transaction settlements and amounts, in all cases within fifteen (15) days of the submission of the transaction, and shall immediately notify Processor and Bank of any discrepancy or error as the result of such reconciliation. Bank and Processor will not be responsible for any downgrades assessed in the Fees; however, Processor will use reasonable efforts to guide Merchant in operational methods which allow transactions to qualify at their best rate. Processor and Bank will have no responsibility or liability to Merchant or any third party for any transaction related errors or omissions if they do not receive written notice of such error or omission within thirty (30) days of the date on which the transaction to which such error or omission relates is first presented to Processor and Bank for settlement. Merchant will also promptly review all reports, statements, and bills, and will promptly report any errors or omissions to Processor. For errors or omissions other than transaction settlements and amounts (which are subject to the foregoing limitations), Processor and Bank will have no liability for any claim, loss, billing error, damage, or expense arising out of or relating in any way to this Agreement which is not reported in writing to Processor by Merchant within thirty (30) days of such error or the date of the first invoice, report, or statement available to Merchant which contains such error or from such amount is omitted. Merchant expressly waives all of its rights in and to any such claim that is not brought within such thirty (30) day period.

## **7. TERM AND TERMINATION.**

- 7.1 Term. This Agreement shall begin on the Effective Date and shall remain in full force and effect for an initial term of three (3) years ("Initial Term"). This Agreement shall be automatically extended for successive three (3) year periods (each a "Renewal Term") unless Merchant gives written notice of termination of this Agreement to Processor at least ninety (90) days prior to the expiration of the then-current Term, in which case this Agreement will terminate at the end of the then-current Term.
- 7.2 Right of First Refusal. If, during the Term or within three months after the Term, Merchant receives and wishes to accept a proposal from any third party for a product or service the same as or substantially similar to a product or service offered by Processor, Merchant shall promptly notify Processor in writing of such proposal (which shall reasonably and sufficiently describe the price and non-price terms of the products and services to be offered). Processor shall have a Right of First Refusal, which means that if, within thirty (30) days of Processor's receipt of such notice from Merchant, Processor elects to match or beat the third party proposal, Merchant shall reject such third party's offer and accept the offer from Processor. If Processor does not elect to match or beat the third party offer, Merchant may elect to accept such third party offer presented to Processor, however Processor's failure to exercise such Right of First Refusal in any one instance will not preclude or otherwise void or affect Processor's Right of First Refusal with respect to any other third party proposal. Provision of any Services pursuant to this Right of First Refusal shall not waive Processor's right to collect the Liquidated Damage Amount or any other amount due to Processor under the Agreement.
- 7.3 Liquidated Damages. Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated prior to the end of the then-current Term, the Liquidated Damage Amount shall be immediately due and payable by Merchant to Processor. The "Liquidated Damage Amount" is an amount equal to: (a) the average monthly Profit received and calculated by Processor in connection with Merchant's account, as measured over the six month period immediately preceding such termination (or, as measured over the six month period prior to Merchant's ceasing to use the Services or breach of this Agreement, if applicable), multiplied by (b) the number of months remaining in the then-current Term. "Profit" shall mean the sum of all amounts billed to Merchant, less interchange, dues and assessments from the Networks, and Third-Party Fees. The payment of such Liquidated Damage Amount as described in this Section is not a penalty, but rather is agreed by the parties to be a reasonable amount of liquidated damages to compensate Processor for its termination expenses and damages under the circumstances when such amount would be payable. Such amounts shall be in addition to, and not in lieu of, any other damages to which Processor may be entitled and all payment obligations for the Services provided to Merchant or other Fees or amounts due from Merchant under this Agreement, whether arising before or after termination of this Agreement.
- 7.4 Merchant Termination. If Processor materially breaches this Agreement, Merchant may provide Processor notice of its intent to terminate if the identified breach is not remedied within thirty (30) days of Processor's receipt of such notice. Failure to remedy such breach shall make this Agreement terminable, at the option of Merchant, upon the end of such thirty (30) day period. Merchant will have no obligation to pay the Liquidated Damage Amount if this Agreement is terminated in accordance with this Section 7.4. Merchant may terminate this Agreement by providing Processor with thirty (30) days prior written notice if Processor increases the Fees charged to Merchant, but only if: (a) such increase in Fees is not the pass through of Fees or rates charged by a Card Brand or other third party; (b) Merchant provides such notice to Processor within fifteen (15) days after the effective date of the Fee increase, and (c) after receipt of such notice, Processor does not revert Merchant to

the previously charged Fees within fifteen (15) days.

- 7.5 Processor Termination. Processor may terminate this Agreement, or any portion of this Agreement, at any time in Processor's sole discretion and without prior notice to Merchant, including but not limited to upon or any time after: (a) Merchant's default in the performance of any obligation under this Agreement, including but not limited to the failure to pay any Fee or amount when due; (b) a material change in Merchant's product mix, business type, structure, financial condition, or sales methods, including but not limited to a shift to accepting Cards via fax, telephone, mail, internet, or any other Card not present transaction; (c) Merchant's failure to comply with any Rule, Law, or Policy, including but not limited to PCI Rules; (d) the request or instruction for such termination by Bank or any Card Brand; (e) any representation or information provided to Processor by Merchant is or becomes false or misleading, including without limitation information on the Merchant Application; (f) the commencement of bankruptcy or insolvency proceedings by or against Merchant; (g) any representation or warranty made by Merchant is or becomes untrue; (h) Merchant's transactions have or are likely to result in excessive Chargebacks, returns, or other credits, in Processor's or Bank's sole discretion; (i) Cardholder disputes arise, or are unresolved, with a frequency unacceptable to Bank or Processor; (j) any circumstances which create actual or risk of harm or loss, whether monetary or of good will, for Processor, Bank, a Card Brand, or any third party; (k) information obtained by Processor concerning Merchant is unsatisfactory to Processor in its sole discretion; (l) Processor has reason to believe Merchant or its employees or agents have engaged in or are likely to engage in any act involving fraud or dishonesty; (m) Merchant fails to maintain sufficient funds in the Account to cover all amounts due under this Agreement; (n) any insurance policy Merchant is required to have pursuant to Processor's instructions, or Processor's insurance policy relating to transactions or chargebacks, is cancelled or terminated for any reason; (o) Processor becomes unable to provide the Services, including but not limited to as a result of deregistration of Processor or Bank by any Card Brand; or (p) Merchant fails to timely provide any transaction documentation or other information requested by Processor or Bank. Processor will use reasonable efforts to inform Merchant of such Termination within a reasonable time after such termination.
- 7.6 Other Termination. Bank or any Card Brand may terminate this Agreement at any time in their sole discretion and without notice to Merchant. Processor will use reasonable efforts to inform Merchant of such Termination within a reasonable time after such termination.
- 7.7 Selective Termination. Processor or Bank may selectively terminate one or more of the Services or Merchant's approved locations without terminating this entire Agreement.
- 7.8 Financial Accommodation. Provision of the Services under this Agreement is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced, and Processor and Bank shall be excused from performance hereunder. To the extent Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against, or otherwise challenge any motion filed by Bank or Processor for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's or Processor's rights or claims under this Agreement.
- 7.9 Suspension. Processor may at any time and without notice to Merchant, suspend provision of the Services if: (a) Merchant is, or Processor is investigating the possibility that Merchant is, in breach of this Agreement; (b) Merchant has failed to pay any amount due to Processor in accordance with this Agreement; (c) such suspension is warranted during any investigation of Processor's right to terminate this Agreement; (d) Merchant's prior transactions have resulted in or future transactions are likely to result in excessive Chargebacks, retrieval requests, or credits (in Bank's or Processor's sole discretion); or (e) such suspension would prevent circumstances which create actual or risk of harm or loss, whether monetary or of good will, for Merchant, Processor, Bank, a Card Brand, or any third party, in Bank's or Processor's sole discretion. Processor will have no liability to Merchant for any suspension of the Services or termination of this Agreement in accordance with this Section 7.
- 7.10 Effect of Termination. Upon termination of this Agreement: (a) Processor will cease providing the Services; (b) all outstanding Fees and other amounts payable by Merchant pursuant to this Agreement will become immediately due and payable; and (c) Merchant shall cease all use of the Card Brand marks. Termination of this Agreement will not affect Merchant's obligations which accrued prior to termination or which related to any transactions processed or use of the Services prior to termination, including but not limited to Fees due and liability for Chargebacks, even if such amounts accrue after termination of this Agreement. If required by the Rules or warranted by the circumstances, Processor or Bank may submit Merchant's name to applicable terminated merchant lists.

## 8. REPRESENTATIONS AND WARRANTIES

- 8.1 Merchant Transactions. Merchant represents and warrants to Processor and Bank, as of the Effective Date and as of the date of each transaction submitted under this Agreement: (a) Merchant and each transaction submitted by Merchant is fully compliant with all applicable Rules, Laws, and Policies; (b) each sales transaction represents a bona fide sale to a Cardholder of those goods and services set forth on the Merchant Application in the amount of the transaction submitted, free of any claim, demand, defense, or setoff; (c) each transaction was authorized by the Cardholder; (d) Merchant has produced and/or obtained all required transaction documentation accurately describing the goods and services; (e) each transaction submitted was accepted through the method set forth on the Merchant Application and approved by Processor (e.g. card present swipe, mail order, telephone order, internet, or other method); and (f) except as otherwise permitted under the Rules, that the products or services for each transaction have been delivered or performed to the customer's satisfaction prior to the submission of such transaction.
- 8.2 Merchant Business. Merchant represents and warrants to Processor and Bank, as of the Effective Date and as of the date of each transaction submitted under this Agreement: (a) Merchant has all necessary regulatory approvals, certificates, and licenses to sell its products and/or services to each of its customers; (b) Merchant is in compliance with all requirements of the Federal Trade Commission and has not engaged in any unfair, abusive, deceptive, or misleading acts or practices; (c) Merchant has not falsely advertised any of its goods or services; (d) Merchant has not been placed on the Mastercard MATCH system or the combined terminated merchant file, except as disclosed in writing to Processor; and (e) Merchant is not under investigation by, subject to any action by, or likely to be subject to any action by any governmental or regulatory agency (unless Merchant has previously provided detailed written notice of such investigation, action, or likely action to Processor and provides timely written updates regarding the same to Processor).
- 8.3 Merchant Authority. Merchant and the individual executing the Merchant Application on behalf of Merchant each represent and warrant to Processor and Bank that (a) they have full legal power and authority to enter into this Agreement, (b) this Agreement has been duly authorized; (c) the signer is a duly authorized signatory of Merchant; (d) as of the Effective Date this Agreement constitutes a legal, valid, and binding obligation of Merchant; and (e) this Agreement is enforceable against Merchant in accordance with its terms.
- 8.4 Processor Disclaimer. PROCESSOR AND BANK MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, AVAILABILITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE SERVICES OR EQUIPMENT FURNISHED UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES. MERCHANT UNDERSTANDS THAT LEGITIMATE TRANSACTIONS MAY BE IMPROPERLY DECLINED AND THAT UNAUTHORIZED TRANSACTIONS MAY BE APPROVED WHICH LATER RESULT IN CHARGEBACKS, AND PROCESSOR AND BANK WILL HAVE NO LIABILITY FOR THE FOREGOING. EACH OF THE SERVICES AND ALL EQUIPMENT IS OFFERED SOLELY "AS IS" AND "AS AVAILABLE" AND MERCHANT'S USE OF THE SERVICES AND EQUIPMENT IS AT MERCHANTS SOLE RISK. PROCESSOR AND BANK ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN ANY DOCUMENTS, INVOICES, REPORTS, OR OTHER CONTENT PROVIDED OR MADE AVAILABLE TO MERCHANT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

## 9. INDEMNIFICATION AND LIMITATIONS ON LIABILITY.

- 9.1 Indemnification. Merchant will indemnify, defend, and hold Processor, Bank, and each of their officers, directors, owners, employees, agents, and independent contractors ("Indemnified Parties") harmless from and against any and all claims, liabilities, losses, fees, fines, assessments, damages, and expenses, including but not limited to attorney's fees, court costs, and expert witness fees ("Damages"), whether actual or alleged, arising out of or relating to the Services or this Agreement, including but not limited to (a) any failure by Merchant or its officers, directors, owners, employees, agents, independent contractors, or Third Party Service Providers (each an "Indemnifying Party") to comply with this Agreement or any Rules, Laws, or Policies; (b) any actions or omissions by an Indemnifying Party; (c) any complaint, claim, or Chargeback made by a Cardholder or any other person or entity with regard to transactions processed pursuant to this Agreement, including but not limited to any disputes over the quality, condition, or delivery of merchandise or the quality or performance of any service; (d) any unauthorized access to or use of any Equipment, Card information, Cardholder information, Confidential Information, Merchant credential, computer system, or other equipment controlled or maintained by Merchant or any other Indemnifying Party; (e) a declined authorization code or the failure to authorize, capture, settle, or otherwise process any transactions; (f) any fees, fines, or penalties issued or assessed by any Card Brand or any other fees and costs arising out of or relating to the

transactions submitted by Merchant or submitted using Merchant's credentials or identification; (g) Processor's or Bank's withdrawal of any funds from the Account, Reserve Account, or any other depository account of Merchant in accordance with this Agreement; (h) the placement of Merchant and its principals on any terminated merchant list, merchant monitoring list, or the reporting of any amounts due to Processor or Bank to credit reporting agencies; or (i) any unauthorized or prohibited transactions under this Agreement, the Rules, or any applicable Law.

- 9.2 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Processor and Bank will have no liability to Merchant or any customer of Merchant under any cause of action for or arising out of: (a) any loss or liability resulting from the decline of any transaction, even if such decline was wrongful or improper; (b) Merchant's retention of, or attempt to retain, any Card, whether in accordance with this Agreement or otherwise; (c) the unavailability of the Services caused by the termination of contracts with third parties, including but not limited to Processor's vendors and service providers; (d) any loss caused by the Equipment, including but not limited to any loss resulting from the misuse of such Equipment, unauthorized access of such Equipment, the Equipment's non-compliance with any applicable Law or Rule, or any defect or error in such Equipment; (e) any loss caused by a transaction downgrade, whether resulting from defective or faulty Equipment, or otherwise, without regard to the owner or provider of any Equipment; (f) the failure to process, authorize, capture, or settle a transaction; (g) any transaction not received by Processor; (h) any action or inaction of any Third Party Service Provider, including but not limited to the failure to comply with any Rules or Laws; (i) any error, omission, delay, computer virus, loss of data or records, or disclosure of confidential information; (j) a Data Breach; or (k) any interruption or termination of the Services.
- 9.3 Limitation on Liability. Under no circumstances will Processor or Bank be liable for any lost profits, lost interest, lost business, reputational damage or for special, consequential, punitive, indirect, or exemplary damages arising out of or in any way related to this Agreement, the Services, any transaction, or for any other reason, including but not limited to damages arising out of placing a Merchant's name on any terminated merchant list for any reason, even if advised of the possibility of such damages. The total cumulative liability of Processor and Bank for any amounts arising out of or relating in any way to this Agreement, including but not limited to the malfunction of the Services, personal injury, or property damage shall, in the aggregate, be limited to actual and direct money damages in an amount not to exceed three (3) month's average Fees paid by Merchant and retained by Processor under this Agreement (for the avoidance of doubt Fees retained by Processor do not include, without limitation, interchange fees, assessments, and other Fees and costs imposed by a Card Brand or any other third party in connection with the Services) measured over the twelve (12) month period immediately prior to the event giving rise to the claim, or such lesser number of months as shall have elapsed subsequent to the Effective Date. This shall be the extent of Processor's and Bank's collective liability arising out of or in any way relating to this Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the form in which any legal or equitable action may be brought against Processor or Bank, whether contract, tort, or otherwise, and the foregoing shall constitute Merchant's exclusive remedy.

## 10. MISCELLANEOUS

- 10.1 Agreement. This Agreement, including these Merchant Card Processing Terms and Conditions, the Merchant Application, attached Fee schedules, the Rules, the Policies, and all other exhibits and attachments incorporated into this Agreement by reference, constitutes the entire Agreement between Merchant, Processor, and Bank with respect to its subject matter, and supersedes all prior agreements and understandings between the parties, whether oral or in writing, with respect to that subject matter.
- 10.2 Amendments. Processor or Bank may modify, effective immediately and without notice to Merchant: (a) the Policies; (b) the Services offered; (c) the Card Brands or Card types supported; and/or (d) this Agreement to pass through or accommodate any modifications to the Rules, Laws, or Processor's agreements with third parties. Processor may modify the Fees, charges and/or discounts charged to Merchant in accordance with Section 6.1. Processor may, by written notice to Merchant, modify any other terms in or Services offered under this Agreement, such modifications effective upon provision of notice or, if a later effective date is set forth in the notice, such specified effective date. Merchant's submission of any transaction to Processor after the effective date of any such modification shall constitute Merchant's acceptance of such modification and such modification shall thereafter be binding upon Merchant. Except for modifications by Processor or Bank in accordance with this Section 10.2, this Agreement may be amended only by a writing signed by Processor, Bank, and Merchant.
- 10.3 Venue and Choice of Law. All disputes and controversies between the parties, whether in contract, tort, or otherwise, arising out of or related to this Agreement or the Services shall be governed by the laws of the State of Delaware, notwithstanding

any conflicts of Laws, Rules, and shall be resolved on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. Merchant waives its right to bring or participate in, and no court may order, permit or certify, a class action, representative action, private attorney general litigation or consolidated arbitration in connection with this Agreement or the Services. No court may order or permit a joinder of parties in connection with this Agreement unless Processor has consented to such joinder in writing. Merchant, Processor, and Bank agree that all actions arising out of, relating to, or in connection with this Agreement, the Services, or the relationship which results from this Agreement, shall be brought exclusively in the state and federal courts located in Lehigh County, Pennsylvania. Each party consents to the exclusive jurisdiction of such courts and waives any claim of lack of jurisdiction or forum non conveniens.

- 10.4 Attorney's Fees and Jury Trial. If Bank or Processor defends or enforces any of its rights under this Agreement, including but not limited to any collection or legal action, Merchant agrees to reimburse Bank and/or Processor, as applicable, for all costs and expenses, including without limitation attorney's fees, court costs, and expert witness fees, as a result of such collection or legal action. Furthermore, Merchant agrees to reimburse Processor and/or Bank for all costs and expenses, including without limitation reasonable attorney's fees, court costs, and expert witness fees, incurred by Processor and/or Bank in enforcing or defending its rights under this Agreement, without regard to whether there has been an adjudication on the merits in any such action. Merchant waives any right to a trial by jury with respect to any litigation arising out of or relating to this Agreement.
- 10.5 Merchant Claim Period. If Merchant brings legal action against Processor or Bank for any reason, Merchant must commence the action within one (1) year of the date the error or incident giving rise to such action occurred.
- 10.6 Assignment. Merchant may not assign, transfer, or delegate this Agreement or any rights or obligations under this Agreement, by operation of law or otherwise, to any third party without Processor's prior written consent, which may be granted or withheld in Processor's sole discretion. Any attempt by Merchant to assign, transfer, or delegate this Agreement or its rights or obligations under this Agreement in violation of this Section 10.6 shall be void. Processor and Bank may each transfer, assign, or delegate this Agreement or any portion of its rights or responsibilities under this Agreement (including but not limited to its right to debit and credit the Account) without notice to Merchant. Upon assignment of this Agreement by Processor or Bank to a third party, Processor or Bank shall have no further obligations related to this Agreement.
- 10.7 Waiver. No waiver or discharge relating to the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of Merchant, Processor, and Bank. The failure or delay in exercising any right or privilege under this Agreement shall not operate as a waiver of any such right or privilege. The partial exercise of any right or privilege under this Agreement shall not preclude any further exercise of such right or privilege.
- 10.8 Remedies. The remedies provided in this Agreement are cumulative and not exclusive, and the parties may, subject to the terms of this Agreement, exercise any remedies available to them at law, in equity, and as provided in this Agreement.
- 10.9 Notices and Communications. All notices provided under this Agreement shall be provided as set forth in this Section. The parties may change the name and address of the person to whom notices, or other documents shall be sent by giving written notice to the other parties in accordance with this Section.
- (a) Processor. All notices to be provided to Processor under this Agreement shall be provided in writing and sent to Processor by certified mail or a nationally recognized overnight carrier with signature required to the address set forth for Processor on the Merchant Application, Attention: Legal. Such notices shall be effective upon Processor's receipt.
- (b) Bank. All notices to be provided to Bank under this Agreement shall be provided in writing and sent to Bank by certified mail or a nationally recognized overnight carrier with signature required to the address set forth for Bank on the Merchant Application, Attention: Legal. A copy of each such notice shall be provided to Processor in accordance with Section 10.9(a). Such notices shall be effective on receipt of the notice by both Bank and Processor.
- (c) Merchant. Notices, messages, and other information provided to Merchant under this Agreement may be: (i) provided to Merchant in writing, by certified mail or a nationally recognized carrier, to the address listed on the Merchant Application; (ii) posted on Processor's online portal, which Merchant may access using credentials issued by Processor; or (iii) sent by electronic mail to the email address set forth on the Merchant Application, or sent via SMS text if a mobile number is provided by Merchant. Such notices will be effective upon the date sent.
- (d) Communications. Merchant agrees to answer and/or promptly respond to phone calls, facsimiles, emails, and other communications sent by Processor and Bank. Merchant authorizes Processor and Bank to contact Merchant using the information set forth on the Merchant Application about information related to this Agreement and promotional information, and if a wireless or cellular number is listed on such Merchant Application or otherwise provided to Processor or Bank, Merchant authorizes Processor and Bank to communicate by SMS or text message (automated or otherwise) in

addition to phone calls to such number. Merchant further authorizes Processor and its affiliates to solicit and/or market to Merchant via regular mail, telephone, email, facsimile, and text message in connection with the Services or other goods or services offered by Processor or its affiliates. Merchant will hold Processor, Bank, and their affiliates harmless against any and all claims pursuant to the CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act, and any and all other state or federal laws relating to transmissions or solicitations by any of the methods above. Merchant may opt out of receiving certain messages or communications by contacting Processor at [opt-out@greenlightpayments.com](mailto:opt-out@greenlightpayments.com), provided that Processor and its affiliates will have a commercially reasonable time after such notice to cease sending such optional messages or communications.

- 10.10 Electronic Notice. Merchant consents to receiving electronically rather than in paper form all notices, disclosures, invoices, statements, and other documents which may or are required to be provided to Merchant under this Agreement. Merchant will log into and check the merchant portal and Merchant's account information on Processor's website daily for such notices, disclosures, invoices, statements, and other documents. Merchant understands and acknowledges that access to the internet, e-mail, and the worldwide web are required for Merchant to access a document electronically and Merchant is responsible for all such access costs. Without prior notice to Merchant and at any time, electronic documents may no longer be sent or made available to Merchant, in which case a paper copy will be sent to Merchant.
- 10.11 Taxes. Each party will be responsible for reporting its own income and paying its own taxes to any applicable jurisdiction. If Bank or Processor are required to pay any tax, interest, fine, or penalty owed by Merchant, such amount shall become immediately due and payable by Merchant to Bank or Processor. Merchant will be responsible for the collection and payment of all excise, sales, and/or use taxes imposed on transactions or in connection with its use of the Services, including but not limited to any interest or penalties levied or assessed by any governmental or taxing jurisdiction. Merchant understands that, in accordance with applicable law, Processor will report Merchant's transactional activity to certain government agencies and may be required to withhold settlement of funds and remit such funds to the appropriate governmental agency if certain accurate taxpayer identification number and name information is not provided to Processor. Processor will have no liability to Merchant for its compliance with such legal obligations. Processor will have no obligation to remit any such funds to Merchant after receipt of such accurate taxpayer identification information from Merchant nor will Processor have any obligation to assist Merchant in recovering such amounts from the applicable government agency.
- 10.12 Signatures. If this Agreement has been electronically executed, under the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand. This Agreement and all related electronic documents shall be governed by the provisions of the E-Sign Act. By submitting the Merchant Application or any transaction to Processor, Merchant agrees: (a) that the Agreement and related documents shall be effective by electronic means; (b) to be bound by the terms and conditions of this Agreement and related documents; and (c) that Merchant has the ability to print or otherwise store the Agreement and related documents.
- 10.13 Independent Contractor. Merchant is an independent contractor and not an employee or agent of Processor or Bank. Merchant will have no right to accept or enter into any agreement on behalf of Processor or Bank and will not represent otherwise to any person or entity.
- 10.14 Construction. Headings in this Agreement are for convenience only and shall not constitute a part of the Agreement. This Agreement is the mutual product of the parties and each provision has been subject to the mutual consultation and negotiation of each of the parties, and shall not be construed for or against any party.
- 10.15 Intellectual Property. Except as otherwise specifically set forth herein, Merchant will not use the name, logo, trademarks, or other intellectual property of Card Brands, Processor or Bank without their prior written consent. Processor and Bank may use Merchant's name and/or logo in proposals, brochures, banners, press releases, and other marketing materials of such parties.
- 10.16 Third Party Beneficiary. The Card Brands will be third party beneficiaries to this Agreement, meaning that although they have no obligations under this Agreement, they will have the right, at their sole discretion, to enforce the terms of this Agreement (including but not limited to compliance with the Rules) directly against Merchant. Other than as set forth in the preceding sentence, there are no third-party beneficiaries to this Agreement.
- 10.17 Personnel. Merchant is responsible for all actions and omissions of its officers, directors, owners, employees, Third Party Service Providers, representatives, agents, and other personnel.
- 10.18 Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid,

illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable provision which, being valid, legal and enforceable, comes closest to the intentions of the parties underlying the invalid, illegal or unenforceable provisions.

- 10.19 **Force Majeure.** Processor and Bank shall not be liable for any failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control, including but not limited to: acts of God, acts of the government, fires, floods, epidemics, strikes, labor shortages, severe weather, operational failures, electrical power failures, communication failures, unavoidable delays, the errors or failures of third party systems, or other similar causes.
- 10.20 **Information about Bank's responsibilities.** American Express Card Transactions and Discover Network Card Transactions are not provided to you by Bank but are provided by Processor, as the Acquirer of American Express OptBlue and Discover Network. The provisions of this Agreement regarding Discover Network Card Transactions and American Express Card Transactions, when relates to Processor's OptBlue program and Discover Network, constitute an agreement solely between you and Processor. Bank is not a party to this Agreement in so far as it relates to American Express Card Transactions and Discover Network Card Transactions, and Bank is not responsible, and shall have no liability to you in any way with respect to American Express Card Transactions and Discover Network Card Transactions.
- 10.21 **Discover Program Marks.** Merchant is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by Processor. Program Marks mean the brands, emblems, trademarks, and/or logos that identify Discover Cards, including, without limitation, Diners Club International Cards. Additionally, Merchant shall not use the Program Marks other than to display decals, signage, advertising, and other forms depicting the Program Marks that are provided to Merchant by Processor pursuant to the Merchant Program or otherwise approved in advance in writing by Processor. Merchant may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, Web sites, advertising materials and marketing materials; provided that all such uses by Merchants must be approved in advance by Processor in writing. Merchant shall not use the Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Program Marks. Merchant recognizes that it has no ownership rights in the Program Marks. Merchant shall not assign to any third party any of the rights to use the Program Marks.
- 10.22 **American Express OptBlue Statement.** The Program Merchant acknowledges and agrees to allow the conversion from their OptBlue account with Processor to a direct acceptance relationship with American Express if and when it becomes a High CV Merchant, see program qualification requirements in American Express Merchant Operating Guide provided below. Merchant further acknowledges that they have the right to opt out of accepting American Express Cards at any time without penalty and without directly or indirectly affecting its rights to accept other payment products.
- 10.23 **Survival.** The following portions of this Agreement shall survive termination of this Agreement and remain in full force and effect: Sections 2.6, 2.8, 3.3, 3.4, 3.7, 3.8, 4, 5, 6, 7.2, 7.3, 7.8, 7.9, 7.10, 8, 9, and 10 (and each of their subsections).

## **DISCLOSURE SCHEDULE**

This disclosure schedule sets forth a summary of certain information in the Agreement (as defined in the Merchant Card Processing Terms and Conditions) for your information only and does not provide all information pertinent to the Agreement. Processor recommends thoroughly reviewing the Agreement and contacting us with any questions you may have. In the event of any conflict between the terms of the Agreement and the terms of this disclosure schedule, the terms of the Agreement shall control. Capitalized terms not otherwise defined in this disclosure schedule have the meanings set forth in the Agreement.

**Effective Date:** The Agreement is binding on Processor on the earlier of (a) the date on which Processor accepts the Agreement and approves Merchant for the Services; or (b) the date on which Processor processes transactions delivered to Processor by Merchant pursuant to the Agreement.

**Bank:** Unless otherwise specified through notice to Merchant, the Bank is the financial institution set forth on the Merchant Application, and can be contacted at the address for Bank set forth on the Merchant Application.

**Processor:** Unless otherwise specified through notice to Merchant, Processor is the entity designated as Processor on the Merchant Application and can be contacted at the address for Processor set forth on the Merchant Application.

**Term:** The initial term of the Agreement is three years and the Agreement automatically renews for additional three-year terms until terminated. Either party may terminate the Agreement effective at the end of the current term by providing written notice to the other party at least ninety days prior to the expiration of the then current term. Each party has additional termination rights

under Section 7 of the Merchant Card Processing Terms and Conditions. Certain Liquidated Damages are due (see Section 7.3) if the Agreement is terminated prior to the end of the term.

**Settlement:** Merchant will be provisionally paid for transactions after the expiration of any applicable hold period, less: the amount allocated to a reserve account (if any); returns, refunds, and other credits; Fees, fines, assessments, and other amounts payable by Merchant; and any charges incurred by Processor or Bank as a result of or attributable to Merchant or any transaction. This will usually be within two to three business days but can be up to the full time period in which any transaction processed by Merchant is at risk of being a Chargeback.

**Fees/Rates:** The most common Fees can be found in the Merchant Application. Other Fees and rates are set forth in the Agreement and the Rules. If you are unsure about the calculation or applicability of any fee, please contact us and we will explain it to you in greater detail. The way the most common Fees are calculated is as follows:

“Discount Rate” is a percentage of the gross amount of each transaction. A portion of the Discount Rate is the Interchange Rate. The discount rate may be set by category (e.g., qualified, mid-qualified, and non-qualified) or set based on the Interchange Rate (e.g., the Interchange Rate plus a certain percentage). The category into which a transaction will fall depends on several factors, including but not limited to the card type, transaction type, payment method, authorization, and timeliness of submitting the transaction/batch. Processor can provide information to you about the category applicable to a particular transaction upon your request.

“Interchange Rate” is a percentage of the gross amount of each transaction set by the applicable Card Brand. The Interchange Rate varies based on the type of transaction, method of transaction, and transaction classification.

Transaction related Fees, depending on the specific Fee, may be charged on all transactions or only specific types of transactions. For example, a PIN-Debit Fee is only charged on debit transactions requiring a PIN. Other Fees will be charged as set forth for each Fee, which may be upon the occurrence of an event (e.g., a Chargeback Fee will be charged for each chargeback) or based on the passage of time (e.g., a monthly Fee will be charged each month or portion thereof without proration).

The payment due for the purchase or lease of equipment, and the calculation of such payment, will vary based on the type of equipment, the applicable license(s) necessary to use the equipment, the length of any financing term, and the creditworthiness of Merchant. The payment amount(s), and the calculation for such amounts, will be set forth in a separate purchase or lease agreement.

Monthly Minimum Fees will be charged in place of the following fees if the sum of the following fees does not exceed the Monthly Minimum (Discount Fees, Authorization Fees, Network Settlement Fees, PIN Debit Transaction Fees).

Each Card Brand may surcharge one or more transactions based on the type of transaction, method of transaction, transaction classification, and other metrics set forth in the Rules. Merchant is responsible for reviewing the applicable Rules (available on each Card Brand website or upon request from Processor) regarding applicable surcharges.

**Modification:** The Agreement, including but not limited to the Fees charged, maybe modified in accordance with Section 10.2.

**Complaints:** Merchant is responsible for handling any Chargeback or complaint with regard to a customer. If Merchant has a complaint with regard to Processor, Merchant will immediately notify Processor of such complaint and Processor will handle the complaint in accordance with its current policies and procedures. If Processor is unable to resolve an issue to Merchant's satisfaction, the complaint resolution procedures in the Agreement will control the process, including but not limited to Sections 10.3, 10.4, and 10.5.

**Statements:** Merchant statements are available online, after login, at Processor's website set forth on the Merchant Application and paper statements are available at a cost as detailed in the Fee schedule.