

## MERCHANT PROCESSING AGREEMENT TERMS AND CONDITIONS

THIS DOCUMENT CONTAINS THE TERMS AND CONDITIONS INCORPORATED BY REFERENCE INTO THE ACCOMPANIED MERCHANT APPLICATION DOCUMENT ("Merchant Application" or "Application"), AND THE TERMS AND CONDITIONS HEREIN, TOGETHER WITH THE MERCHANT APPLICATION, COLLECTIVELY CONSTITUTE THE MERCHANT PROCESSING AGREEMENT ("Merchant Agreement" or "Agreement" or "MPA").

This Merchant Agreement is between TRX Services, LLC whose principal place of business is 2727 Paces Ferry Road, Atlanta, GA 30339("ISO"), Merchant and WestAmerica Bank, whose principal place of business is 3750 Westwind Blvd, Suite 210, Santa Rosa, CA, 95403 ("Bank") for the limited purposes described expressly set forth herein below, and Bank is not otherwise a part of (nor liable for) any of ISO's obligations hereunder. For purposes of Part One of this Agreement and solely for convenience purposes, Bank and ISO may be collectively referred to hereinafter as the "Service Provider". Subject to the requirements of applicable Card Brand rules, ISO and Bank may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Bank may jointly or individually assert or exercise the rights or remedies provided to the Service Provider hereunder. This Merchant Agreement contains the terms and conditions under which Service Provider and/or other third parties will provide services to the Merchant and includes the Application Form signed by Merchant. To the extent ISO or any third party fails to perform any of its or their duties hereunder, Bank has the right, but not the obligation, to perform the services for Merchant

### RECITALS

Merchant desires to accept Credit Cards, Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members under license of Discover® Network ("Discover Network"), MasterCard® International, Inc. ("MasterCard"), and Visa® U.S.A., Inc. ("Visa") and the Debit Networks ("Debit Networks"). Service Provider desires to provide Card Processing services to Merchant. Therefore Service Provider and Merchant agree as follows:

### ARTICLE I – DEFINITIONS

- 1.1 "Account"** means a bank account maintained by Merchant as set forth in Article III, Section 3.01 for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.
- 1.2 "ACH"** means the Automated Clearing House paperless entry system operated by the Federal Reserve.
- 1.3 "Agreement"** means these Terms & Conditions, the Merchant Application, the ACH Authorization, the schedule of fees and any supplementary documents indicated herein, as amended from time to time.
- 1.4 "Authorization"** means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain credit approval from the Card Issuer.
- 1.5 "AVS"** (Address Verification System) allows verification of the cardholder's Zip code and billing address while requesting authorizations for transactions or during a request for address verification only.
- 1.6 "Card"** means (i) a valid card in the form issued under license from Visa U.S.A., Inc., Visa International, Inc., or MasterCard International, Inc. ("Bank Card" or "Bankcard") or (ii) any other valid card accepted by Merchant by agreement with Bank, such as those issued by, or under license of, Discover Financial Services, Inc. or (iii) any valid card issued under license of a regional or national Debit Network.
- 1.7 "Card Association"** means Visa, MasterCard, Discover or any other Company that regulates and manages their respective brands of Cards that are accepted by Merchant by agreement with Service Provider.
- 1.8 "Cardholder"** means the person whose name is embossed upon the face of the Card presented to Merchant
- 1.9 "Card Issuer"** means the Financial Institution or Company which has provided a Card to a Cardholder.
- 1.10 "Chargeback"** means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) is returned to Service Provider by a Card Issuer.
- 1.11 "Credit Card"** means a plastic card that allows payments to be offset against a special-purpose account associated with a revolving line of credit and requiring some form of installment-based payment.
- 1.12 "Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment credited to a Cardholder account.
- 1.13 "Debit Card"** means a plastic card linked to a checking or savings account.
- 1.14 "Debit Network"** means a network upon which transactions linked to checking or savings accounts are routed.
- 1.15 "Discover"** means Discover Network or Discover Financial Services.
- 1.16 "Imprint"** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.
- 1.17 "MasterCard"** means MasterCard International, Inc. or MasterCard Worldwide, Inc.
- 1.18 "MCC"** means Merchant Category Code and indicates the Merchant's category classification by Visa and MasterCard describing specifically the type of business the Merchant operates.
- 1.19 "Retrieval"** means a Card Issuer's or Cardholder's request of the Transaction receipt.
- 1.20 "Rules"** means the rules and regulations of any Card Association or Debit Network, as amended from time to time.
- 1.21 "Sales Draft"** means the paper form, approved in advance by Service

Provider, whether such form is electronically or manually imprinted, evidencing a sale Transaction.

**1.22 "Transaction"** means any sale of goods and services, or credit for such, from Merchant for which the customer makes payment through the use of any Card and which is presented to Service Provider for collection.

**1.23 "Visa"** means Visa U.S.A., Inc. or Visa International, Inc.

**1.24 "Voice Authorization"** means a direct phone call to a designated number to obtain credit approval on a Transaction.

### ARTICLE II - CARD ACCEPTANCE

#### 2.1 HONORING CARDS

**A. Without Discrimination.** Merchant will accept without discrimination, all valid Cards as indicated by Merchant on the Merchant Application when properly presented by Cardholders for payment for goods or services within the Merchant's Category (MCC) of acceptance. Merchant may not discriminate between payment Cards within a payment Card network on the basis of the Issuer that issued the presented payment Card.

**B. Acceptance.** Merchant will elect on the Merchant Application to accept (full acceptance) or not accept (limited acceptance) credit and/or debit cards for payment. A full acceptance Merchant will accept all valid Cards unless Merchant provides 30 days written notice to Service Provider requesting limited acceptance and stating Merchant's election of Card types. Limited acceptance is not applicable to non-US issued Cards.

**C. Advertised Price.** Merchant agrees to accept Cards for payment of goods or services without charging any amount over the advertised price as a condition of Card acceptance, unless local law requires Merchant be permitted to engage in such practice.

**D. Minimums and Maximums.** (a) Merchant shall not establish minimum or maximum transaction dollar value for Signature-Debit or PIN-Debit Card sales as a condition for accepting such Debit Cards. (b) Merchant may set a minimum transaction dollar value for the acceptance of a Credit Card, only to the extent that: (i) such minimum dollar value does not exceed \$10; and (ii) such minimum dollar value is the same for all Issuers or payment card networks. (c) If Merchant is a federal agency or institution of higher education, Merchant may set a maximum dollar value for the acceptance of Credit Cards, to the extent that such maximum dollar value is the same for all Issuers or payment card networks.

**E. Surcharges.** If Merchant chooses to impose a surcharge on Card payments, Merchant may do so only after meeting specific considerations, limitations and requirements as defined by the Card Associations. Requirements and limitations include: (i) Merchant may only impose a surcharge if permitted by, and compliant with, state and local law; (ii) Merchant shall notify Service Provider and Card Associations no less than 30 days in advance of imposing any surcharge; (iii) Merchant shall publicly disclose its surcharge practices to customers at the store entry point and point of sale; and (iv) Any surcharge imposed by Merchant shall not exceed 4% of the underlying transaction amount. For information on, and further links to, surcharge considerations, requirements, limitations and Card Association surcharge registration pages, visit [www.mastercard.us/merchants/support/surcharge-rules.html](http://www.mastercard.us/merchants/support/surcharge-rules.html) and [www.visa.com/merchantsurcharging](http://www.visa.com/merchantsurcharging).

**F. Discounts.** Merchant may offer a discount or in-kind incentive as an inducement for a Cardholder to use a means of payment that the Merchant prefers, provided that the discount: (i) is clearly disclosed as a discount from the standard price; (ii) is non-discriminatory, by providing the same discount for all Cards accepted; (iii) does not differentiate on the basis of the Issuer or the Card Association; and (iv) is in accordance with the law and the Rules.

**G. Disputes with Cardholder.** (a) All disputes between Merchant and any Cardholder relating to any Card Transaction will be settled between Merchant and the Cardholder. The Service Provider bears no responsibility for such transactions. (b) Merchant must not require a Cardholder, as a condition for honoring a Card, to sign a statement that waives the Cardholder's right to dispute the Transaction with the Card Issuer.

**H. Cardholder Identification.** Merchant will identify the Cardholder and check the expiration date and signature on each Card. Merchant will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form); (iv) the Card was declined as a result of an Authorization attempt. Merchant may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver license number as a condition for honoring a Card unless permitted by law and the Card Association Rules.

**I. Non-presentment.** Merchant shall not accept a Card as payment (other than for mail order, Internet sale, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an imprint or otherwise use the physical Card to complete the Transaction.

**J. Card Recovery.** Merchant will use reasonable, best efforts and peaceful means to recover any Card if: (i) Merchant is advised by Service Provider, the issuer of the Card or the designated voice authorization center to retain it; or (ii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder. NOTE: The obligation of Merchant imposed by this section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property and Merchant will hold Service Provider harmless from any claim arising from any injury to person or property, or other breach of the peace in connection with the retention or recovery of a Card.

**K. Location.** Merchant may honor Cards only at location(s) approved by Service Provider. Additional locations may be added, subject to Service Provider's approval. Either Merchant or Service Provider may delete location(s) by providing notice as provided in this Agreement.

## 2.2 AUTHORIZATIONS

**A. Required on all Transactions.** Merchant will obtain prior Authorization for the total amount of a transaction via electronic terminal, gateway or other compliant and certified device before completing any transaction, and Merchant will not process any transaction that has not been authorized. Merchant will follow all instructions received during the Authorization process. Upon receipt of an Authorization approval Merchant may consummate only the transaction authorized and must note on the Sales Draft the Authorization number. Where Authorization is obtained, Merchant will be deemed to warrant the true and matching identity of the customer as the Cardholder.

**B. No Guarantees.** Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired or otherwise invalid Card.

**C. Unreadable Magnetic Stripes.** When presenting Card transactions for Authorization electronically, and Merchant's terminal is unable to read the magnetic stripe on the card, Merchant must obtain a Phone Authorization (either via Voice or Automated Response Service, both carry additional fees) and Merchant must obtain an imprint of the Card and also obtain the Cardholder's signature on the imprinted Sales Draft before presenting the Sales Draft to Service Provider for processing. Failure to perform these additional actions may result in the assessment of transaction surcharges or a rejected transaction.

**D. Fees.** Unless otherwise approved in writing by Service Provider, Merchant agrees to pay \$0.75 for each Voice Authorization and \$1.00 for each Voice Authorization for AVS.

## 2.3 PRESENTMENT OF SALES DRAFTS

**A. Sales Draft Administration.** Unless the Sales Draft is electronically generated from a swiped transaction or is the result of an Internet, mail, phone or preauthorized sales order, Merchant must use a Sales Draft or other form approved by Service Provider to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated if electronic); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

**B. Signatures.** Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone/Internet order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. Merchant may not require the Cardholder to sign the Sales Draft before Merchant enters the final transaction amount in the Sales Draft.

**C. Delivery and Retention of Sales Drafts.** Merchant will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. In addition to any records routinely furnished to Service Provider under this Agreement, Merchant shall preserve a paper or microfilm copy of all actual paper Sales Drafts and Credit Vouchers and if a mail, phone order or preauthorized order is involved, the Cardholder's signed Authorization for the Transaction for at least eighteen (18) months (or longer if required by law or Rules) after the date Merchant presents the Transaction and Merchant must preserve records in accordance with Article III, Section 3.04 of the Agreement.

**D. Electronic Transmission.** If Merchant utilizes electronic authorization and/or data capture equipment and/or services; Merchant will enter the data related to a Sales or Return transaction into a computer terminal or magnetic stripe reading terminal and transmit daily transactions to the Service Provider (or its duly assigned processor) no later than the close of business on the date the transactions are completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of transaction penalties.

**E. Compliance.** If Merchant provides or uses their own electronic terminal, gateway or similar transaction device to capture transactions and generate Sales Drafts, such devices must meet Service Provider, Card Associations, PCI Security Standards Council (pursuant to Article III, Section 3.04 of this Agreement) and Government requirements for processing transactions.

**F. Inspection.** If Service Provider requests a copy of a Sales Draft, credit voucher or other transaction evidence, Merchant will provide it within 24 hours following the request.

**G. Multiple Transaction Records.** Merchant shall not prepare more than one Sales Draft for a single sale or for a single item and shall include all items or goods and services purchased in a single Transaction in the total amount on a single Sales Draft except: (i) for purchases in separate departments of a multiple department store; (ii) for installment payments; or (iii) for delayed or amended charges governed by the Rules for travel and entertainment merchants and transactions.

**H. Forms.** Merchant shall only use forms or modes of transmission of Sales Drafts and Credit Vouchers as provided or approved by Service Provider. Merchant shall not use forms provided by Service Provider other than in connection with Card Transactions without Service Provider's prior written consent.

**I. Endorsement.** The presentment of Sales Drafts to Service Provider for collection and payment is Merchant's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with Service Provider's acceptance procedures and shall constitute an endorsement by Merchant to Service Provider of such Sales Drafts. Merchant hereby authorizes Service Provider to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of Bankruptcy Code (11 U.S.C. § 365) as amended from time to time. Merchant acknowledges that its obligation to Service Provider for all amounts owed under this Agreement arise out of the same transaction as Service Provider's obligation to deposit funds to the Account.

## 2.4 DEPOSIT OF SALES DRAFTS AND FUNDS DUE MERCHANT

**A. Presentment and Acceptance.** Service Provider shall accept from Merchant all valid Sales Drafts presented by Merchant under the terms of this Agreement and shall present the same to the appropriate Card issuers for collection against Cardholder accounts. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to this Agreement and the Rules. Service Provider shall be the only entity that will provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, fines and penalties, late submission charges and items for which Service Provider did not receive final payment. Service Provider may refuse to accept or withhold payment of any Sales Draft without notice until the expiration of any chargeback period, or revoke its prior acceptance of a Sales Draft, in the following circumstances: (i) Service Provider reasonably suspects that the Sales Draft was not made in compliance with this Agreement, Rules or applicable law; (ii) the Cardholder disputes its liability to Service Provider for any reason, including but not limited to Cardholder chargeback rights enumerated in the Rules; (iii) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder; (iv) the transaction is outside the parameters indicated on the Merchant Application; (v) if Service Provider determines, at its sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss; (vi) Service Provider may impose a cap on the volume and/or ticket amount of Sales Drafts that Service Provider will process for Merchant, as indicated on Merchant Application or imposed otherwise by Service Provider. This limit may be modified by Service Provider upon written notice to Merchant. If Merchant exceeds the limit established by this Agreement, Service Provider may suspend processing, charge over limit fees, hold deposits over the cap, and/or return all Sales Drafts evidencing funds over the cap to Merchant or terminate this Agreement. Merchant will pay Service Provider, as appropriate, any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by Service Provider. Merchant agrees that Service Provider has no liability for any delay in funding and that Service Provider is not responsible for any losses Merchant may incur, including but not limited to NSF fees, due to delayed deposit of funds.

**B. Returns and Adjustments: Credit Vouchers.** Merchant agrees that it will conduct business in regards to returns as follows: (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. Merchant agrees to disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms). (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale. (c) If Merchant does not make these disclosures and Cardholder requests a refund, a full refund in the form of a credit to the Cardholder's Card account must be given. Merchant shall not refund cash to a Cardholder who originally paid for the item by Card. (d) Credits must be made to the same Card account number on which the original sale Transaction was processed. (e) If Merchant accepts any goods for return, any services are terminated or canceled in conjunction with each such transaction. Merchant shall have sufficient funds in its account available to Service Provider to cover the amount of the transaction and any related fees. (f) Merchant warrants that any Credit Voucher it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted. (g) Under no circumstance will Service Provider be responsible for processing credits or adjustments related to Sales Drafts not originally processed by processor and Service Provider.

**C. Chargebacks.** Merchant and Guarantor(s) are fully liable for all transactions returned for whatever reason, otherwise known as "Chargebacks." Merchant will pay upon presentation the value of all Chargebacks. Authorization is granted by Merchant to Service Provider to offset from incoming transactions and to debit the Designated Account, the Reserve Account or any other account held at Bank or at any other financial institution the amount of all Chargebacks. Merchant will fully cooperate in complying with the Rules regarding chargebacks. Merchant agrees that: (a) failure to pay a Chargeback upon such presentation shall be considered a material breach of this Agreement and Merchant, in addition to any other remedies which may be exercised by Service Provider, shall be charged a late fee of (i) the maximum allowed by law; or (ii) one and one half percent (1.5%) per month or portion thereof on all unpaid Chargebacks, whichever is greater; (b) Merchant agrees to accept for Chargeback any sale for which the Cardholder disputes the validity of the sale according to the Rules, or Service Provider determines that Merchant has in any way failed to comply with the Rules or Service Provider procedures, including but not limited to the following: (i) Sales Draft is illegible, not signed by the Cardholder or has not been or cannot be presented to Service Provider within the required time frame(s); (ii) Sales Draft does not contain the Imprint of a valid unexpired Card; (iii) an Authorization has not been obtained and/or a valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iv) Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated on one Card for a single sale; (v) Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased; (vi) price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment; (vii) Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number; (viii) Service Provider reasonably believes, within its sole discretion, that Merchant has violated any provision of this Agreement; (ix) Service Provider reasonably determines that the transaction record is fraudulent or that the Transaction is not bona fide or is

subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees; (a) for whatever reason pertaining to not complying with the Rules. (b) Notwithstanding any authorization or request from a Cardholder Merchant shall not initiate a sale Transaction in an attempt to collect a Chargeback. (c) Guarantors are personally liable for all Chargebacks. In the event Merchant sells its business and a new owner incurs Chargebacks, the original Merchant and all Guarantors will be held personally liable for the Chargebacks and any other liabilities of the new owner(s). (d) In the event the Account is closed or is otherwise unavailable to Service Provider for ACH debit, Merchant and/or Guarantors consent to Service Provider locating additional deposit accounts or assets by using any means available. In this event Merchant and/or Guarantors waive all rights to their privacy in favor of Service Provider until such time as all unpaid chargebacks and fees owed to Service Provider have been paid in full. (e) Merchant agrees to pay Chargeback fees as indicated on the Merchant Application for Chargebacks received by Service Provider regardless of outcome of a Merchant dispute of such Chargeback. (f) Merchant has the right to follow procedures outlined by the Rules to dispute a Chargeback, but such Merchant dispute procedure does not guarantee to relieve Merchant from the responsibilities in respect to Chargebacks outlined in this Section.

**D. Excessive Activity.** Merchant's presentation to Service Provider of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period for any one of Merchant's terminal identification numbers or merchant identification numbers: (i) the dollar amount and/or number of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount and or number of Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 3% of the average monthly dollar amount of your Card transactions. Merchant authorizes, upon the occurrence of Excessive Activity, Service Provider to take any action deemed necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

**E. Fees.** Unless otherwise approved in writing by Service Provider, Merchant agrees to pay \$15 for each Retrieval request.

## 2.5 OTHER TYPES OF TRANSACTIONS

**A. Recurring Transactions.** For recurring transactions, Merchant must be approved by Service Provider to accept recurring transactions and obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. Merchant will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from Service Provider, or (iii) a response that the Card is not to be honored. Merchant must print legibly on the Sales Draft the words "Recurring Transaction".

**B. Multiple Sales Drafts.** (a) Merchant will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or Transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. (b) Merchant shall not submit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any Chargebacks resulting from duplicate Transactions.

**C. Mail Orders "MO", Telephone Orders "TO" and Internet Orders "IO."** (a) Unless Merchant has been implicitly approved by Service Provider to accept mail orders, telephone orders, or Internet orders, Merchant warrants that it is a walk-in trade business, located in a retail business place conducting face-to-face Transactions. If Merchant is found to be submitting Card Transactions for mail orders, telephone orders, or Internet orders without Service Provider approval, this Agreement may be terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds thereof may be held pursuant to Article IV of this Agreement. (b) If Merchant is authorized by Service Provider to accept payment by mail order, telephone order, or Internet order, the Sales Draft may be completed without the Cardholder's signature or an imprint, but in such case Merchant shall create a Sales Draft containing Cardholder account number, expiration date, transaction date, an authorization number, the sale amount and the letters "MO", "TO", or "IO" as appropriate. In addition, the Merchant's business name, city and state must be included. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any MO, TO or IO Transaction. (c) For Approved MO, TO, and IO Merchants, performing AVS (Address Verification System) is required. AVS is not a guarantee for payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. (d) In the event the Merchant is approved to conduct MO, TO, or IO Transactions, Merchant is cautioned to apply fraud protection measures (as described on the Visa and MasterCard web sites) and Merchant understand that there is a higher risk of customer disputes and/or fraud associated with these types of Transactions. (e) If Merchant's Retail/Mail Order/Telephone Order, Internet mix changes from the percentages represented to Service Provider in the Merchant Application, Service Provider may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account, unless prior written approval has been obtained from Service Provider. (g) Merchant may not deposit a MO, TO, or IO Sales Draft before the product is shipped.

**D. Lodging and Vehicle Rental Transactions.** (a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental and the Cardholder must be

informed of the dollar amount Merchant intends to pre-authorize. Additional Authorization(s) must be obtained and recorded for charges actually incurred in excess of the estimated amount. (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction. (c) It is the responsibility of the Merchant to comply with the Rules inherent to the Lodging and Vehicle Rental MCCs in order to qualify for special Interchange pricing incentives for Lodging and Vehicle Rental merchants. Card Association Rules may be obtained and each Card Association's respective web site.

**E. Future Delivery.** (a) Merchant will not present for processing, whether by electronic means or otherwise, any Sales Draft, or other memorandum, to Service Provider representing a payment, partial payment or deposit for goods or services to be delivered in the future, without the prior written consent of Service Provider. Such consent will be subject to Service Provider's final approval. (b) The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the law or Rules. (c) If Service Provider has given such consent, Merchant represents and warrant to Service Provider that Merchant will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions. (d) If Merchant has obtained prior written consent, Merchant will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. Merchant will note upon the Sales Draft the words "deposit" or "balance" as appropriate. Merchant will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or Merchant has fully performed the services.

## 2.6 DEBIT CARD PROCESSING

If Merchant indicated on Merchant Application to become a sponsored participant in the Debit Networks in order to accept Debit Network transaction, Merchant is bound under the terms and conditions set forth in this Section (in addition to the other sections of this Agreement), as follows:

**A. Debit Networks.** "Debit Networks" refers to those regional and national Debit Card networks accepted by Service Provider, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, Maestro and Money Station. This Section (2.06) pertains only to transactions authorized, captured and settled through such Debit Network.

**B. Participation.** Merchant agrees to become a participant in each Debit Network Service Provider is able to facilitate.

**C. Compliance.** Merchant agrees to comply with all Debit Network rules, regulations, procedures, fees, assessments, penalties, and other membership duties, obligations, and costs of each such Debit Network, which are applicable to Merchant during the term of this Agreement. Merchant shall complete only those POS transactions that comply in all respects with the Rules and which have been authorized. Merchant shall comply with the Graphics Standards Manual, the Security Manual, all federal, state, and local laws applicable to its participation in the system, including without limitation statutes, regulations, and judicial decisions relating to POS transactions, POS Terminals sharing, consumer credit, consumer protection, electronic funds transfers, antitrust, franchise, and other trade regulation matters, and shall indemnify and hold Service Provider and Debit Network harmless against any and all liability or expenses related thereto.

**C. Honoring Cards.** Merchant shall honor all valid cards when presented for payment of Debit transaction when such transactions can be initiated and completed electronically. If a technical malfunction prevents electronic initiation and completion of a transaction, Merchant is not obligated to complete such Debit transaction. Merchant shall treat transactions by any Debit Network cardholders in the same manner as transactions by any other cardholders as permitted by the Rules and law. Merchant may not require or request the cardholder's signature or any other means of verifying the cardholder's identity.

**D. Authorizations.** Service Provider will provide a transaction authorization service, which will enable the Merchant to offer its Cardholders a method of payment using PIN-Debit Cards. Merchant will be permitted to accept certain PIN-Debit Cards and access Service Provider's contracted data center facilities to perform authorization requests.

**E. Funds.** Bank will facilitate the transfer of funds received from the Debit Networks as a result of Merchant's transaction activity. Funds will be transferred to Merchant's Designated Account using the Automated Clearing House (ACH) of the Federal Reserve Bank, on a two-three (2-3) day delayed basis contingent upon receipt of funds by the Service Provider and method of Merchant statement reconciliation.

**F. Access.** Upon receipt of written instructions from any Debit Network to which Service Provider is providing access hereunder, Service Provider may immediately cease to provide to Merchant and its Cardholders, access to such Debit Network. Service Provider shall use reasonable efforts to promptly notify Merchant of such interruption in network access. Merchant shall indemnify and hold Service Provider harmless from any claims, liabilities, or losses, including costs and attorney's fees, resulting from Service Provider's compliance with the written instructions of any Debit Network.

**G. No Discrimination.** Merchant shall treat transactions by any Debit Network Cardholders in the same manner as transactions by any other cardholders, unless

otherwise stipulated under law and the Rules.

**H. Equipment.** (a) Merchant shall, at its own expense, obtain and install POS Terminals, together with PIN-Pads and other facilities necessary to support the Debit Network transactions at Merchant location(s). Merchant shall provide Service Provider and the Debit Network with a list of all Merchant locations currently with compliant POS Terminals capable of accepting cards and shall provide a list as applicable. All POS Terminals shall accept cards. Merchant at all times shall maintain and operate the POS Terminals in accordance with the Operating Rules. (b) Merchant shall take all reasonable steps necessary to ensure that all POS Terminals and PIN-Pads operated at Merchant locations shall: (i) be available for use by cardholders of all provided Debit Networks for POS transactions; and (ii) function with a minimum of error and in a reliable manner and meet all applicable standards contained in the Technical Specifications and the Security Manual for Debit Network. (c) Merchant shall have at, or in proximity to, any POS Terminal where a card is accepted, an operating Track 2 magnetic stripe reader and PIN-Pad that meets the standards contained in Article III, Section 3.04. The requirements of this paragraph shall not apply to POS transactions not involving the transfer of funds such as balance inquiries. Merchant shall be responsible for connecting the POS terminals at each Merchant location.

**I. Receipts.** At the time of any POS transaction involving a transfer of funds, Merchant shall make available to each cardholder a written receipt that complies fully with all applicable state and federal laws and regulation, including, but not limited to, Regulation E (12 C.F.R. § 205), and includes, but is not limited to, the following information: (i) the amount of the POS transaction; (ii) the transaction date; (iii) the type of POS transaction and, if more than one type of account may be accessed at the POS Terminal by the cardholder, the type of account (checking, savings, etc.) and, if more than one account of the same type may be accessed at the POS Terminal by the cardholder the specific account accessed must be uniquely identified; (iv) a number or code that uniquely identifies the cardholder initiating the POS transaction, or the cardholder's account, or the card used to initiate the POS transaction; (v) location of the POS terminal at which the POS transaction was initiated; (vi) the name of the Merchant providing the goods, services or money to the cardholder; and the trace number.

**J. Dispute Resolution.** Merchant will attempt to settle in good faith any dispute with a Cardholder involving a transaction. Merchant will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. Except as the Debit Networks may permit, Merchant will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Service Provider. The Debit Card Sales Draft for which no refund or return will be accepted by Merchant must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules. Merchant will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. Merchant will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. Merchant will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.

**K. Personal Identification Numbers.** (a) For each PIN-based Debit Card sale, Cardholder must enter a Personal Identification Number ("PIN") through a PIN-pad located at the point of sale. (b) PIN-pad(s) must be situated to permit Cardholders to input PINs without a chance of revealing it to another individual, including Merchant or its employee(s). (c) Merchant will instruct employees not to ask any Cardholder to disclose a PIN and in the event Merchant or employee(s) nevertheless becomes aware of any Cardholder's PIN, Merchant or employee(s) will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person. (d) Merchant must ensure the PIN message is encrypted, using a compliant encryption method, from the PIN-pad to the POS Terminal, and from the POS Terminal to the Debit Network and back (end-to-end). (e) The PIN encryption method considered compliant is the method mandated by the Card Associations, the Debit Networks and the PCI-SSC. (f) Merchant may only use a PIN entry device certified by Service Provider and listed as compliant by the PCI-SSC (including PTS and PCI-PED) for submitting PIN-Debit Transactions. Merchant will comply with any other requirements relating to PIN security as required by Service Provider or by any Debit Network, inclusive of PIN encryption method.

**L. Inquiries.** Balance inquiries may be performed only at cardholder-operated terminals and shall at all times require entry of the cardholder's PIN and use of the magnetic stripe reader.

**M. Confidentiality.** Merchant shall not disclose to third parties, other than; (a) the Debit Network or Service Provider or (b) otherwise specifically required by law, any information related to POS transactions (including, but not limited to, cardholder account information) without the prior written consent of the cardholder and the card issuing bank.

**N. Cashback.** (a) Cashback transactions shall be limited to the maximum of \$200 per Cardholder on any transaction date. If Merchant allows Cardholders to initiate cashback transactions, Merchant must transmit to the Debit Network for each cashback transaction initiated at Merchant's location, the following information in its transaction message: (i) the amount of cashback given to the Cardholder pursuant to the POS transaction; and (ii) Whether the POS transactions involved the issuance of scrip to the cardholder. For purposes of cashback reporting required under this paragraph, the full amount debited from Cardholder's account during a Debit transaction initiated at terminal that issues scrip shall be reported as the cashback amount, regardless of the amount used by the Cardholder to purchase goods or services at the Merchant's location. (b) If Merchant receives, in response to a request for authorization for a cashback transaction involving the purchase of goods and services, a denial code indicating that a cashback

transaction has been denied solely because the cashback portion of the Debit transaction would cause the Cardholder to exceed a limit on cash withdrawals imposed on the Cardholder by the Card issuing bank, Merchant shall inform Cardholder that the transaction was denied because it would cause the Cardholder to exceed such limit on cash withdrawals, but that a new Debit transaction in the amount of the purchase alone may be approved.

**O. Indemnity.** Merchant shall be responsible for and shall indemnify and hold Debit Network and Service Provider harmless against any and all liability or expense relating to the payment of federal, state, and local sales, use, and other taxes (other than such taxes based in whole or in part on income attributed to fees for services), when due or deemed to be due, as well as all other expenses, fees and charges imposed by a government, arising out of or incidental to its participation in the system.

**P. Insurance.** Merchant is responsible for obtaining all insurance that may be required by reasonable prudent business practices.

**Q. Inspection.** Merchant agrees that, upon request, it will promptly provide to Debit Network or Service Provider any information reasonably requested by it to aid in determining whether Merchant is in compliance with the Operating Rules and the Graphics Standards Manual, the Security Manual and this agreement between Merchant and Service Provider, or Debit Network.

**R. Reimbursements.** Merchant shall promptly reimburse within three (3) business days of the event giving rise to any loss for the amount of all losses resulting from any of the following actions, including without limitation reasonable attorney's fees and court costs, in the event that Merchant or any of its agents or employees or any of the operators of its POS Terminals at Merchant locations or the employees or agents of any such operators: (i) knowingly permits anyone other than the Cardholder, or a person expressly authorized by the cardholder, to use the Card and to initiate any POS transaction; (ii) permits the amount debited in a POS transaction by use of a Card to exceed the actual amount of goods or services and cashback, if any, provided to such Cardholder at the time in respect to such transaction; (iii) circumvents the limit imposed by a Merchant on POS transactions by dual submissions for the same POS transaction; (iv) otherwise permits the use of any Card in any manner in violation of the Operating rules or the Security Manual; (v) completes any declined POS transactions; or (vi) otherwise participates in any fraud resulting in loss.

**S. Records.** Merchant shall retain records for each POS transaction for at least seven (7) years or for such longer period as is required by applicable federal or state law or regulation and/or in accordance with Network Operating Rules and in accordance with Article III, Section 3.04 of the Agreement.

**T. Investigation.** Merchant is responsible for investigation of any complaints regarding POS transactions in accordance with the requirements of the Operating Rules.

**U. Security.** Debit Networks, Service Provider or its designated agent, on behalf of itself or others, shall have the right to inspect Merchant security systems and procedures from time to time after reasonable notice to Merchant.

## 2.7 PROHIBITED AND HIGH RISK TRANSACTIONS

**IMPORTANT: FAILURE TO COMPLY IN FULL WITH THIS SECTION OF THE AGREEMENT MAY RESULT IN THE TERMINATION OF THIS AGREEMENT, AND MERCHANT ACCOUNT PRIVILEGES AND MERCHANT MAY BE ADDED TO THE CONSOLIDATED TERMINATED MERCHANT FILE (MATCH).**

**A. Fraud Transactions.** Merchant will not, under any circumstances, present for processing of Sale or Credit, directly or indirectly, any Transaction or any Transaction Merchant knows or should know to be fraudulent or not authorized by the Cardholder. Merchant must not request or use a Card Account Number for any purpose other than as payment for goods and services.

**B. Factoring.** Merchant will not, under any circumstances, present for processing of Sale or Credit, directly or indirectly, any Transaction not originated as a result of a bona-fide Card transaction directly between Merchant and Cardholder. Merchant will not present any Sales Drafts on behalf of another company, person, source or entity.

**C. Lawful Purposes.** Merchant will not, under any circumstance, engage in any Transaction, or use Card Acceptance and Transaction capabilities for selling goods and/or providing services prohibited by local, hyper-local, state, federal, international and other applicable laws included, but not limited to, the USA PATRIOT Act, Bank Secrecy Act, Consumer Protection Laws and the U.S. Tax Code. Merchant will not submit any Transactions prohibited by the Rules. Perpetrators of fraud or fraudulent Transactions will be referred to state and/or federal law enforcement agencies.

**D. Cash Payments.** Merchant will not, under any circumstances accept cash, checks or other negotiable items from any Cardholder and forward a Credit Transaction, as a purported payment or deposit to an account maintained by the Cardholder.

**E. Cash Advances.** Merchant will not submit, deposit or process any transaction for the purpose of obtaining or providing a cash advance. Merchant will not submit any transaction that involves a Card owned or controlled by Merchant for the purpose of obtaining a cash advance or deposit of funds into Merchant's own Designated Account. Merchant agrees that any such deposit or transaction shall be grounds for immediate termination.

**F. Refinancing Existing Debt.** Merchant will not accept a Card to collect or refinance an existing debt that: (i) has been deemed uncollectible by the Merchant providing the associated goods or services; (ii) represents any other pre-existing indebtedness by Cardholder, including collection of delinquent accounts on behalf of other parties; (iii) represents the collection of a dishonored check. Further, Merchant must not accept Cardholder payments for previous Card charges.

**G. Merchant Category.** Merchant may not accept Card payments for products and/or services delivered to Cardholder that are not directly applicable to the Merchant Category Code (MCC) entered on the Merchant Application, for which Merchant was approved. Should Merchant's MCC change after execution of this Agreement, Merchant shall not submit, deposit or process any Transactions until



receiving Service Provider's written approval of MCC change. Merchant understands that accepting payments for goods and/or services not directly relating to the approved MCC will result in termination of this Agreement.

**H. Card Association Rules.** Merchant shall comply with the Card Association Rules, as amended from time to time. Merchant is required to review the latest versions of Card Association Rules, as applicable to Merchant's obligations under this Agreement, available online at each Card Association's respective web site.

**I. Cooperation.** Merchant will fully cooperate with Service Provider and each Card Association in the event that Service Provider or any Card Association determines that there is a substantial risk of fraud arising from Merchant's access to Card processing networks. Merchant will take whatever action(s) Service Provider or Card Associations reasonably deem necessary in order to protect Service Provider, Card Associations, its members and Cardholders. Neither the Service Provider nor the Card Associations and any of their respective personnel will have any liability to Merchant for any action taken in good faith.

**J. Prohibited Transactions.** Merchant will not submit any telemarketing (inbound or outbound) sales Transactions or any other Transactions that Service Provider or Card Associations deem to be High Risk unless Merchant obtains Service Provider's prior written consent. Such consent will be subject to Service Provider's final approval and may be revoked by Service Provider without prior notice. Merchant may be subject to Card Association registration and reporting requirements. If Merchant processes any such Transactions without Service Provider's prior approval, Merchant may be terminated immediately and Service Provider may suspend funds and/or require Merchant to establish a Reserve Account.

## **ARTICLE III – MUTUAL OBLIGATIONS**

### **3.1 DESIGNATED ACCOUNT**

**A. Establishment and Authority.** Merchant will establish and maintain a demand deposit account at an ACH receiving depository institution approved by Service Provider ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations to Service Provider, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Service Provider to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least two (2) years after termination of this Agreement whether or not Merchant has notified Processor and Service Provider of a change to the Designated Account. Merchant must obtain prior written consent from Service Provider or processor to change the Designated Account. If Merchant does not obtain that consent, processor and Service Provider may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

**B. Deposit.** Service Provider will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Article IV of this Agreement upon receipt of funds from Visa, MasterCard, Discover or a Debit Network. Typically, the deposit will be initiated three (3) business days following Service Provider's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which may be initiated five (5) business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Bank will be the only entity to deposit Sales Drafts to the Account subject to Article II, Section 2.04 of this Agreement. Merchant authorizes Service Provider to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Service Provider, in its sole discretion, may grant Merchant provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Service Provider and subject to all chargebacks.

**C. Asserted Errors.** Merchant must promptly examine all statements relating to the Designated Account, and immediately notify Service Provider in writing of any asserted errors. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error, (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Service Provider within 30 calendar days after Merchant receives the periodic statement containing the asserted error. Merchant's failure to notify Service Provider of any error within thirty (30) days constitutes a waiver of any claim relating to that error. Merchant may not make any claim against Service Provider relating to any asserted error for 60 calendar days immediately following Service Provider's receipt of Merchant's written notice. During that 60 day period, Service Provider will be entitled to investigate the asserted error.

**D. Indemnity.** Merchant will indemnify and hold Processor and Service Provider harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

**E. ACH Authorization.** Merchant authorizes Service Provider to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by Merchant at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event Merchant changes the Designated Account, this authorization will apply to the new account.

**F. Fees.** Unless otherwise approved in writing by Service Provider, Merchant agrees to pay \$15 for each debit or credit rejected or returned from the Designated Account and \$20 for each DDA change submitted to Service Provider during the term of this Agreement.

### **3.2 MERCHANT OBLIGATIONS**

**A. Notification of Business Changes.** Merchant shall provide Service Provider with immediate notice if Merchant intends to: (i) transfer, sell or liquidate any substantial part of its total assets and/or equity; (ii) change the basic nature of its business affecting Merchant's MCC; (iii) change ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar

business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; or (v) modify Merchant's monthly processing volume and/or average ticket size as approved by Service Provider, collectively known as Business Changes. Notice to Service Provider should be made to in accordance with Article VII, Section 7.02. Failure or neglect to provide notice of Business Changes may be grounds for termination of this Agreement. In event of Business Changes, Service Provider may at its sole discretion act to terminate this Agreement or, if deemed acceptable by Service Provider, Service Provider may opt to initiate a new Agreement with Merchant. In the event Service Provider suffers a monetary loss caused by neglect to comply with this Section, Service Provider has the right to recover such losses by means of exercising its Security Interests per Article IV, Section 4.01 of the Agreement.

**B. Financial Condition.** (a) Merchant will notify Service Provider, within one business day, in event of bankruptcy, receivership, insolvency, or similar condition or action initiated by or against Merchant or any of its principals; hereafter collectively referred to as a "Financial Condition Change." (b) Merchant will include Service Provider as a creditor in Merchant's bankruptcy proceedings if Merchant has funds due to Service Provider for any reason including fees, chargebacks or ACH rejects. (c) In event of Financial Condition Change, or if Merchant is aware of future or imminent Financial Condition Change, Merchant will cease all Card acceptance at once and will no longer accept and submit Card Transactions until Service Provider has given Merchant permission to do so after receiving notice of Financial Condition Change. (d) In the event of Financial Condition Change, Merchant will not sell, transfer, or disclose any Cardholder information, inclusive of Card account numbers or personal information to agent, vendors or any other parties.

**C. Separate Notification.** Separate notification regarding changes to account information, including those to Account, must be made to outside services used by Merchant including but not limited to American Express and any leasing company.

**D. Equipment.** In the event where Merchant enters into a Lease agreement to obtain POS equipment from Service Provider: (a) Merchant is required to verify the terms of the Lease agreement by way of a telephone conference call between Merchant, Service Provider, and the leasing company. For each Lease agreement Merchant will have a scheduled appointment date and time to complete this verification. If Merchant does not verify Lease on the scheduled appointment date and time, a Service Provider representative will make two (2) additional attempts to contact Merchant and complete the verification. If the Lease cannot be successfully verified after these additional attempts, an ACH debit will be made to the Merchant's Account to recover cost of equipment, shipping and handling. Merchant may contact Service Provider to reschedule the appointment prior to the initial appointment date and time. The rescheduled appointment cannot be set more than five (5) business days from the original appointment date. (c) Merchant cannot return equipment after 30 days from receipt. Merchant agrees that any and all equipment returns are assessed a twenty percent (20%) restocking fee.

**E. Request for Copy.** Within three (3) calendar days of receipt of any written or verbal request by Service Provider, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof, in size comparable to the actual Sales Draft, and any other documentary evidence available to Merchant and reasonably requested by Service Provider to meet Service Provider's obligations under law (including its obligations under the Fair Credit Billing Act, 15 U.S.C. § 1601 et seq.) or otherwise to respond to questions concerning Cardholder accounts. Unless otherwise approved by Service Provider, Merchant will be assessed a \$15 fee for each request for copy.

### **3.3 CREDIT INQUIRIES FINANCIAL EXAMINATION AND INSPECTIONS.**

**A. Credit Inquiries.** Merchant authorizes Service Provider to make credit inquiries considered necessary in order to review the acceptance and continuation of this Agreement. This authority is granted to Service Provider at any time during which Merchant owes any obligation to Service Provider and may survive the term of the Agreement. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, principal owners or officers. If requested to do so by Service Provider, Merchant shall provide written consent of any individual for which an inquiry has been or is to be made if such individual did not execute this Agreement.

**B. OFAC.** Merchant, its principal owner(s) and guarantor(s) acknowledge that Bank is required by federal law (Section 326, USA PATRIOT Act of 2001) to inquire with the Office of Foreign Asset Control (OFAC) of the U.S. Treasury Department if Merchant, its principal owner(s), proprietor(s), officer(s) or Guarantor(s) are present on any lists maintained by OFAC prior to accepting Merchant.

**C. Inspections.** Merchant agrees to permit Service Provider to occasionally inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit(s) (where necessary) to conduct its business. However, nothing in this paragraph shall be interpreted as a waiver of Merchant's obligation to comply in all respects with the terms of this Agreement.

**D. Audits and Reviews.** Merchant authorizes Service Provider to audit Merchant's records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. Merchants processing dollar volumes in excess of \$100,000 per month will cooperate with Service Provider in performing annual financial reviews by presenting up-to-date financial statements, tax returns and bank statements in order to assure Service Provider that Merchant maintains a favorable capital position, liquidity, stability, business practices and general financial condition to fulfill the responsibilities tied to high volume Card processing.

### **3.4 SAFEGUARDING PAYMENT CARD INFORMATION**

**A. Release of Payment Card Information.** Merchant will not, under any circumstance, disclose, copy, distribute, release, make public or transmit payment card information including account number, expiration date, CVV2/CVC2 or other

Card security codes, or any data element relating to the payment card to any third party, person, company, recipient or entity other than Service Provider or its authorized processing agent.

**B. Storing Card Data.** If Merchant is inclined to retain paper or electronic Sales Drafts or Credit Vouchers, Merchant may only do so if (i) Sales Drafts or Credit Vouchers contain only Cardholder account information permitted to be retained by Merchant as mandated by the Rules; (ii) any type of electronic storage is maintained in strict accordance with the PCI-DSS on a PA-DSS certified system; (iii) Sales Drafts or Credit Vouchers which no longer bear an importance are properly destroyed in a manner which renders the data unreadable and unrecoverable.

**C. Prohibited Data Storage.** Neither Merchant nor any type of software system used by Merchant, shall store, save or retain, in whole or in part, either electronically, on paper or any other type of media, payment card magnetic stripe information, track data, or Card security codes (e.g. CVV, CVC, CID, CVV2 or CVC2) appearing or stored on the payment Card.

**D. Payment Applications.** Merchant may be using special services, hardware or software provided by a third party ("Third Party Payment System") to assist Merchant in processing transactions, including authorizations, batch settlement or accounting functions. In the event Merchant uses a Third Party Payment System including, but not limited to, a POS terminal, POS system, POS software, payment software, payment gateway, virtual terminal, cardholder activated terminal or automated fuel dispenser, Merchant is responsible for assuring third party system is PA-DSS certified and complies with the PABP (Payment Application Best Practices) as set forth by the Payment Card Industry Security Standards Council (PCI-SSC) and the Card Associations. Merchant must ensure that any software or system updates of Third Party Payment System(s) satisfies all security standards required under the Rules (including PABP, PA-DSS and PCI-DSS). All electronic commerce Merchants must provide Cardholders with a secure and encrypted transaction method, utilizing a valid Secure Sockets Layer (SSL) certificate or 3D Secure. Service Provider has no responsibility for any transaction until that point in time Service Provider receives data about the transaction. Merchant must notify Service Provider of its use of any Third Party Payment System that will have access to and/or stores Cardholder or Payment Card information.

**E. Electronic Terminals.** If Merchant provides its own Point-of-Sale electronic terminal or similar device ("POS Terminal"), such POS Terminals must comply with, and meet all requirements set forth by, Service Provider, any applicable processor, and directives set forth by the PCI-SSC as amended from time to time, in order to submit Transactions. Information regarding a sales or credit Transaction transmitted with a POS Terminal will be transmitted by Merchant to Service Provider or applicable Processing Host in the format Service Provider from time to time specifies or is required under the Rules. If Service Provider requests a copy of a Sales Draft, credit voucher or other Transaction evidence, Merchant will provide it within three (3) business days following the request. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided Service Provider with at least thirty (30) days prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to Service Provider or Processing Host.

**F. PCI-DSS Compliance.** Merchant shall be in full compliance with rules, regulations, guidelines and procedures adopted by any Card Association or Payment Network relating to the privacy and security of Cardholder and Card transaction data, including without limitation the most up-to-date version of the Payment Card Industry Data Security Standard (PCI-DSS), as amended from time to time by the Payment Card Industry Security Standards Council. Detailed information pertaining to aforementioned requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements may be found on the Card Association's respective web sites.

**G. Merchant Responsibility.** (a) MERCHANT SHALL BE LIABLE FOR ALL FINES, CHARGES AND PENALTIES THAT MAY BE ASSESSED BY ANY CARD ASSOCIATION OR PAYMENT NETWORK AS A RESULT OF TRANSACTIONS MADE BY MERCHANT OR MERCHANT'S NONCOMPLIANCE WITH THE PRECEDING REQUIREMENTS. (b) Merchant acknowledges that it may be prohibited from participating in payment network programs if it is determined that Merchant is non-compliant. (c) Merchant acknowledges that Service Provider may cause Merchant to subject to an audit to verify Merchant's compliance with the foregoing security requirements. (d) Merchant must notify Service Provider within twenty-four (24) hours after becoming aware of: (i) any suspected or actual data security breach; or (ii) any noncompliance by Merchant with the security requirements set forth herein. (e) Merchant shall, at its own expense: (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data by an authorized assessor acceptable to Service Provider; (ii) take all such remedial actions recommended by such investigation, Service Provider or Card Association; and (iii) cooperate with Service Provider in the investigation and resolution of any security breach.

**H. Truncation.** Merchant must comply and adhere to the security provisions set forth in the Fair and Accurate Credit Transactions Act of 2003 (FACTA) which mandate that card receipts given to the Cardholder may not contain: (i) more than the last five digits of the credit card account number; and (ii) that the Card receipt may not contain the expiration date.

**I. Privacy Policy.** If Merchant sells goods or services on the Internet, Merchant's web site must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer transaction data.

**J. Passwords.** In the event where Merchant receives a password from Service Provider to access a transaction system or gateway, Merchant shall: (i) keep password confidential; (ii) not allow any other entity or individual to use password or gain access to Service Provider's systems; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Service Provider if Merchant believes the confidentiality of Service Provider's system or Merchant's information has been compromised by use of such password.

### 3.5 FEES AND OTHER AMOUNTS OWED SERVICE PROVIDER

**A. Fees and Taxes.** Merchant will pay Service Provider fees for services, forms and equipment in accordance with the fees and rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day or month's activity, or will be deducted from funds due Merchant attributable to Sales Drafts presented to Service Provider. Service Provider reserves the right to adjust the fees set forth on the Application, including adding fees for additional services utilized by Merchant, provided that Service Provider must approve, and notify Merchant in advance of, any fee to or obligation of Merchant arising from or related to performance of this Agreement. Merchant is obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Service Provider may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement.

**B. Other Amounts Owed.** Merchant will immediately pay processor and Service Provider any amount incurred by Service Provider attributable to this Agreement including but not limited to chargebacks, fines imposed by Card Associations non-sufficient funds fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. Merchant authorizes Service Provider to initiate a debit via ACH the Designated Account, Reserve Account, or any other account Merchant has at Bank or at any other affiliate or subsidiary of Bank or other financial institution for any amount Merchant owes Service Provider under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between Merchant and Service Provider, whether Merchant obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Service Provider demand funds due or such ACH does not fully reimburse Processor and Service Provider for the amount owed, Merchant will immediately pay Service Provider such amount. Merchant acknowledges and agrees that Service Provider will impose an 18% per annum interest rate charged to Merchant on the balance of any overdue funds due to Service Provider, or the greatest amount allowed by law, whichever is greater.

**C. Pass-Through Fees.** Each card organization (Visa, MasterCard and Discover Network) assess fees to merchants in connection with transactions that are outside the control of Service Provider, such as, dues & assessments, fixed acquirer network fees, international/cross-border transaction fees, network access and data usage charges. Because these fees are frequently modified by the card organizations, a detailed list of these fees has been posted online at <https://www.trxservices.com/interchange-plus-pricing/> where these fees are kept up to date. Pass-through fees are charged at cost to Merchant.

### ARTICLE IV – SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT AND SET-OFF

#### **4.1 SECURITY INTERESTS**

**A. Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to Service Provider a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; (iv) Merchant's electronic terminal, printer, imprinter and imprinter plate; (v) all accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor(s), including any affiliated companies of Merchant and/or Guarantor(s), whether established or designated and maintained pursuant to this Agreement or not; and (vi) any and all amounts which may be due to Merchant under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other collateral or security to Service Provider to secure your obligations under this Agreement upon Service Provider's request. These security interests and liens will secure all Merchant obligations under this Agreement and any other agreements now existing or later entered into between Merchant and Service Provider. This security interest may be exercised by Service Provider without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.

**B. Perfection.** Upon request of Service Provider, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant will represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Service Provider will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Service Provider written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Service Provider are not required to file a motion for relief from a bankruptcy action automatic stay for Service Provider to realize on any of its collateral (including any Reserve Account). Nevertheless Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Service Provider. Merchant authorizes Service Provider to appoint Service Provider as Merchant's attorney-in-fact to sign Merchant's name to any financing statement used for the perfection of any security interest or lien granted hereunder.

**C. Guaranty.** As a primary inducement to Service Provider to enter into this Agreement with Merchant, the undersigned Guarantor(s), whether by signing the Merchant Application or by acknowledging consent by electronic means, joint and several, unconditionally and irrevocably, guarantees the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Service Provider pursuant to this agreement, as it now exists or is amended from time to time, with or without notice. Guarantor(s) understands further that Service Provider may proceed directly against Guarantor(s) without first exhausting its remedies against any other individual or entity responsible therefore to it or any security held by Service Provider or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns of Merchant and may be enforced

by or for the benefit of any successor of Service Provider. Guarantor(s) understand that the inducement to Service Provider to enter into this Agreement is consideration for this Guaranty, and that this Guaranty remains in full force and effect even if Guarantor(s) receives no additional benefit from the Guaranty.

#### 4.2 RESERVE ACCOUNT

**A. Establishment.** Merchant will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Service Provider, with sums sufficient to satisfy Merchant's current and future obligations as determined by Service Provider. Merchant authorizes Service Provider to initiate a debit to the Designated Account or any other account Merchant has at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if Service Provider determines such action is reasonably necessary to protect Service Provider's interests.

**B. Use of Reserve Account.** Bank may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes

under this Agreement or any other agreement between Merchant and Service Provider. Further, Service Provider may exercise its right under this Agreement against the Reserve Account to collect any amounts due to Service Provider including, without limitation, rights of set-off and recoupment. Service Provider's right to outstanding amounts owed it by Merchant pursuant to this Agreement shall in no way be limited to the balance or existence of the Reserve Account. Rights granted to Service Provider with respect to the Reserve Account, as well as the security interest under this Agreement, shall survive the termination of this Agreement.

**C. Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement, or Merchant's last transmission of Sales Drafts or Credit Voucher to Service Provider, or Chargeback submitted by Cardholder, provided, however, that Merchant will remain liable to Service Provider, for all liabilities occurring beyond such 270-day period. After the expiration of such 270-day period Merchant must provide Service Provider with written notification indicating Merchant's desire of a release of any funds remaining in the Reserve Account in order to receive such funds. Merchant agrees that Merchant will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts Merchant owe Service Provider under this Agreement. Bank will have sole control of the funds in Reserve Account..

**D. Assurance.** In the event of a Bankruptcy proceeding, Service Provider does not consent to assumption of this Agreement. Nevertheless, in the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under the Bankruptcy Code (11 U.S.C. § 365), as amended from time to time, Merchant must establish or maintain a Reserve Account in an amount satisfactory to Service Provider. Assumption will be made under terms and conditions that are acceptable to Service Provider and comply with the applicable federal or state laws governing such assumption.

**E. Recoupment and Set Off.** Service Provider has the right of recoupment and set-off. Specifically, Service Provider may offset or recoup any outstanding/uncollected amounts owed by Merchant from: (i) any amounts Service Provider would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Service Provider may owe Merchant under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under the Bankruptcy Code to Service Provider, Merchant must create or maintain the Reserve Account as required by Service Provider, and Service Provider must have the right to offset against the Reserve Account for any and all obligations which Merchant may owe to Service Provider, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

**F. Recoupment of Chargebacks.** In the event of Merchant's default in payment of chargebacks, Merchant and Guarantor(s) agree: (i) that all personal Bank accounts standing in their names shall be subject to this Agreement and ACH debits; (ii) all ACH debits, whether made against Merchant's Account or a Guarantor's personal account shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system; and (iii) Merchant and/or Guarantor(s) irrevocably consent to Service Provider utilizing any means available to locate such deposit accounts until such time when all amounts due have been satisfied. Service Provider may enforce this security interest as applicable by: (a) making an immediate debit/charge via the ACH system (code CCD) to any deposit account standing in the name or names of Merchant and/or Guarantor(s), without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any account through the ACH system; (b) freezing the Designated Account and Reserve Account, without notice or demand of any kind; (c) taking possession of any or all of Merchant's Sales Drafts; (d) taking possession of any and/or all of Merchant's electronic terminals, printers, imprinters, and imprinter plates; (e) by placing a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to Service Provider arising under this Agreement has been satisfied in full; (f) by obtaining either a writ of attachment or a writ of possession without bond pertaining to Merchant and/or Guarantor(s)'s personal property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that Service Provider determines to be necessary in order to preserve and protect this security interest. The granting of this security interest by Merchant and/or Guarantor(s) in no way limits Merchant's liabilities to Service Provider under this Agreement.

**G. Account Monitoring.** (a) Merchant acknowledges that Service Provider will

monitor Merchant's daily deposit activity. The deposit activity must remain consistent to the monthly volume and average ticket amount implicitly approved or adjusted by Service Provider ("Risk Parameters"). If Merchant should exceed Risk Parameters, Merchant agrees to provide documentation as set forth by Service Provider if so required. **Merchant agrees that Service Provider may not deposit total Sales Draft dollar volume in excess of the implicitly approved monthly volume, and that Merchant may be subject to a 5% fee on all funds processed over the approved monthly volume limit. Merchant agrees that Service Provider may, at its sole discretion, suspend Merchant's transaction deposits for any reasonable period of time required to investigate suspicious or unusual transaction activity. Service Provider shall make a good faith effort to notify Merchant immediately. Merchant agrees to pay \$25.00 for each release of funds suspended by Service Provider.** Service Provider shall have no liability for any losses, direct or indirect, which Merchant may attribute to any suspension of funds disbursement. (b) **In the event of suspension of transaction deposits by Service Provider, Merchant agrees to a Security Processing Fee not to exceed 110% of the transaction activity may be assessed.** (c) If a batch is suspended by Service Provider, Merchant acknowledges that the consumer's product or service must be delivered just as if the Merchant has been paid. Further, if a batch or a transaction is suspended, Merchant acknowledges that fees, including security fees, will be assessed by Service Provider. (d) At sole discretion of Service Provider, if Merchant's type of business is deemed a compliance risk to Service Provider, Service Provider may enroll Merchant in third-party risk monitoring service ("Monitoring Service") at the sole expense of Merchant. Merchant will either be notified in advance of underwriting approval of enrollment in Monitoring Service and related expenses, or notified no less than 30 days in advance if Merchant has an open merchant account with Service Provider. Refusal of Merchant's enrollment in Monitoring Service when mandated by Service Provider, may be cause for termination of this Agreement.

#### ARTICLE V – TERM AND TERMINATION EVENTS

##### 5.1 TERM AND TERMINATION

**A. Term.** The Agreement will become effective on the date Service Provider executes this Agreement ("Effective Date"), provided, however that if Merchant submits a transaction prior to the Effective Date, Merchant will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of two (2) years ("Initial Term") and will renew for successive one (1) year terms ("Renewal Term") unless terminated as set forth below.

**B. Termination.** The Agreement may be terminated by Service Provider or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Service Provider. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement.

**C. Debit Termination.** Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Service Provider's or Merchant's access to such Debit Network whether caused by termination or expiration of Service Provider's agreement with such Debit Network or otherwise. In addition, in the event that Service Provider's participation in such Debit Network is suspended for any reason, processing through such Debit Network by Merchant will be suspended for the period of time of such suspension and Service Provider will notify Merchant of that event. Neither Service Provider nor any Debit Network will have any liability to Merchant as a result of any such suspension or termination.

**D. Terminated Merchant File.** Merchant acknowledges that MATCH (formerly known as the Combined Terminated Merchant Files or "CTMF") is a file maintained by MasterCard and accessed by Card Associations and Service Providers containing the business names and the identification of principals of Merchant, which have been terminated for one or more reasons specified in the Rules. Merchant acknowledges that Service Provider is required to report the business name of Merchant and the names and identification of its principals to MATCH when Merchant is terminated for such reasons. Merchant consents to such reporting to the Card Associations by Service Provider. Further, Merchant waives and will hold harmless Service Provider from any claims, which Merchant may raise as a result of such reporting.

**E. Designated Account.** All Merchant obligations regarding accepted Sales Drafts will survive termination. Merchant must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by Merchant for a reasonable time, but in any event not less than the time specified in this agreement. Merchant authorizes Service Provider to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, Merchant will pay Service Provider the amount owed to Service Provider upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

**F. Reason to Terminate:** Service Provider may terminate this Agreement immediately without prior notice if (i) Service Provider reasonably believes that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location;

(ii) Service Provider is required to take action to prevent loss to Bank or Card Issuers, (iii) in the event of any significant circumstances that do or could create harm or loss of goodwill to any Card Association; (iv) Merchant appears on any Card Association's security or termination reporting, or (v) Merchant Acceptance Criteria of Service Provider or laws in respect to Merchant's business changes.

**G. Bankruptcy.** If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically

terminate, and any amounts due to Service Provider shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by Service Provider.

## 5.2 ACTION TAKEN UPON TERMINATION

**A. Discontinuation of Services.** In the event of termination for any reason, Merchant expressly authorizes Service Provider to withhold and discontinue the disbursement for all Cards and other payment transactions of Merchant in the process of being collected and deposited. Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to Service Provider. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement.

**B. Maintaining Reserves.** Collected funds will be placed in a Reserve Account until Merchant pays any equipment and processing cancellation fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, Service Provider reserves the right to require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Service Provider into the Reserve Account. The Reserve Account shall be maintained for a minimum of 270 days after the termination date and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Service Provider terminates the Reserve Account. Any

remaining balance after Chargeback rights have expired and all other expenses, losses, and damages have been paid will be disbursed to Merchant upon request.

**C. Early Termination.** If Merchant terminates this Agreement before the end of the Initial Term, Merchant will immediately pay Service Provider, as deconversion costs, an early termination fee equal to \$500. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Other remedies Service Provider may have under this Agreement still apply.

**D. Records.** Following termination, Merchant shall upon request provide Service Provider with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.

**E. Return to Service Provider.** All promotional materials, advertising displays, signage, emblems, Sales Draft forms, credit memoranda and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of Service Provider and will be immediately returned to Service Provider upon termination of this Agreement. Merchant is fully liable for all loss, cost, and expense suffered or incurred by Service Provider arising out of the failure to return or destroy such materials following termination.

## ARTICLE VI – INDEMNIFICATION, LIMITATION OF LIABILITY, WARRANTIES

### 6.1 LIMITATION OF LIABILITY

**A. Limitation of Liability.** Any liability of Service Provider under this Agreement whether to Merchant or to any other party, whatever the basis of liability, shall not exceed in the aggregate the difference between: (i) the amount of fees paid by Merchant to Service Provider during the month in which the transaction out of which the liability arose occurred; and (ii) assessments, Chargebacks, and any offsets authorized under this Agreement against such fees which arose during such month. In the event more than one month was involved, the aggregate amount of Service Provider's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one-month involved. In no event will Service Provider, nor its officers, agents, directors, or employees be liable for any indirect, special, or consequential damages including loss profits, revenues and business opportunities. **IN NO EVENT SHALL SERVICE PROVIDER, OR ANY OF ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORSEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MERCHANT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE AS PROVIDED IN ARTICLE V, SECTION 5.02.C ABOVE SHALL NOT BE PROHIBITED BY THIS SECTION.**

**B. Indemnification.** Merchant shall hold harmless and indemnify the Card Associations, Service Provider, affiliates, officers, directors, agents, representatives and their employees harmless from: (i) any claim relating to a dispute between Merchant and a Cardholder; (ii) against all claims by third parties arising out of this Agreement; (iii) any Sales Draft paid for by Service Provider as may be made by anyone by way of defense, dispute, off-set, counterclaim or affirmative action, or for any damages of, or losses that Service Provider may incur as a result of Merchant's breach of this Agreement; and (iv) for all attorney fees and other costs and expenses paid or incurred by Service Provider in the enforcement of the Agreement, including but not limited to those resulting from any breach by Merchant of this Agreement and those related to any bankruptcy proceeding.

**C. Service Agreement.** THIS AGREEMENT IS A SERVICE AGREEMENT. SERVICE PROVIDER DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER INDIVIDUAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED UNDER THIS

## AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

### 6.2 REPRESENTATIONS AND WARRANTIES

**A. Performance.** Service Provider will perform all services in accordance with this Agreement. Service Provider makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such warranty. Service Provider disclaims all implied warranties, including those of merchantability and fitness for a particular purpose. Service Provider will not be liable to the other parties for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of Service Provider. Service Provider is not liable for the acts or omissions of any third party.

**B. Terminals not Provided by Service Provider.** Merchant will notify Service Provider immediately if Merchant decides to use electronic authorization or data capture Terminals or Software provided by any entity other than Service Provider or its authorized designee ("Third-Party Terminals") to process transactions. If Merchant elects to use Third-Party Terminal(s), Merchant agrees: (i) the third party providing the terminals or software will be Merchant's agent in the delivery of the Transactions to Service Provider via a data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules of this Agreement and the provisions of Article III, Section 3.04 of the Agreement. Service Provider will not be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a third party's software or terminal.

**C. Warranties of Merchant.** Merchant represents and warrants to Service Provider at the time of execution and during the term of this Agreement the following: (a) All information contained in the Merchant Application or any other documents delivered to Service Provider in connection herewith and therewith is true and complete and properly reflects Merchant's business, financial condition, and principal partners, owners or officers. (b) Merchant is a Corporation, Limited Liability Company, Partnership, Sole Proprietorship or other legitimate and legally organized organization validly existing and organized in the United States. (c) Merchant and individual signing this agreement have the power and authority to execute, deliver, and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject. (c) Individuals signing this agreement ("Signers") are duly authorized by the legal entity represented by Signers in the Merchant Application to bind Merchant into this Agreement on behalf of Merchant. (d) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so. (e) Merchant is not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Merchant Application, unless Merchant obtains the prior written consent of Service Provider. (f) There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations. (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby. (h) Merchant has complied with Service Provider procedures accepting Cards, and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any Cardholder under the rules, the Consumer Credit Protection Act (15 USC § 1601) or other relevant state or federal statutes or regulations. (i) Merchant warrants that any Credit Voucher, which it issues represent a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted. (j) Unless Merchant notifies Service Provider in writing, either on Merchant Application or otherwise, no other processing relationship exists between Merchant and any other Bankcard processing institution, for this business, or any other business managed or owned by Merchant. (k) All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from Merchant.

(l) Merchant and Guarantor(s) acknowledge that all documents submitted in conjunction with this Agreement are being submitted in order to induce a federally insured financial institution to extend them credit and that submission of any false information herein may subject them to criminal prosecution, fine and/or imprisonment. (m) Merchant has supplied its true and correct taxpayer identification number on the Merchant Application.

**D. Authorization of Agreement.** Merchant represents and warrants that the individual signing the Merchant Application and Agreement, physically or by acknowledging consent by electronic means, is duly authorized to bind Merchant to all provisions of this Agreement and that such individual is duly authorized to execute any contract document on behalf of Merchant. Merchant will execute a separate Entity Certification if requested to do so by Service Provider.

**E. Signature.** Merchant, by its signature, upon its first transmission of Transactions, or first payment of fees, acknowledges receipt, acceptance and comprehension of this Agreement. If Merchant has not entered into this Agreement by executing this Agreement via counter signature or electronic means, Merchant agrees that Merchant's first transmission of a transaction or first payment of fees to Service Provider constitutes Merchant's acceptance of this Agreement.

**F. Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Service Provider for all attorneys' fees and other costs and expenses paid or incurred by Service Provider or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

## ARTICLE VII – MISCELLANEOUS

### 7.1 USE OF TRADEMARKS AND CONFIDENTIALITY

**A. Card Signage.** Merchants will prominently display Card signage provided by Service Provider in its place(s) of business and the type of signage displayed



will be in accordance with the card brands accepted by Merchant and if Merchant participates in full or limited acceptance.

**B. Use of Trademarks.** (a) Use of trade name, trademark, service mark or logotype ("Marks") associated with any of the Card Associations and their brands shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Service Provider and must fully comply with the Rules. (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease their use and return any inventory to Service Provider upon termination thereof. (c) Merchant shall not use any promotional materials or Marks associated with the Card Associations and Debit Networks in any way that implies that the Card Associations or Debit Networks endorse any goods or services other than their own.

**C. Confidentiality.** Merchant acknowledges that Service Provider through the expenditure of a significant amount of time, effort, cost, and research, developed and secured the right to use various computer programs, forms, logos, manuals, and related materials, including without limitation the Operating Rules, which constitute property of great value and trade secrets, and that disclosure to others of such materials may result in loss and/or irreparable damage. Merchant further acknowledges that the system in its entirety constitutes a trade secret which is revealed to Merchant in confidence. Accordingly, Merchant agrees to hold and use any and all such property or information regarding the system in confidence, and not to disclose, reveal, copy, sell, transfer, sublicense, assign, or distribute any part of it, in any form, to any individual, firm, corporation, or other entity, nor permit

any of its employees, agents, or representatives to do so, except as permitted by the Operating Rules, or otherwise expressly permitted in writing by the Service Provider. The Merchant further agrees that upon termination of this Agreement for any reason, it will immediately return all such property to Service Provider.

## 7.2 GENERAL PROVISIONS

**A. Entire Agreement.** This Agreement, including the Merchant Application, the Schedule of Fees, the Rules, and Exhibits to this Agreement expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, all prior or other agreements or representations, written or oral, are superseded. Reference to "this Agreement" also includes all documents incorporated into this Agreement by reference. If copies of this Agreement or any amendments are to be physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.

**B. Governing Law and Venue.** Service Provider, Merchant and Guarantor(s) agree that all performances and transactions under this Agreement will be deemed to have occurred in California and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of California. This Agreement will be governed by California law, without regard to its conflicts-of-law principles, and applicable federal law. Service Provider, Merchant and Guarantor(s) hereby consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in Sonoma County, California and/or California Superior Court in Sonoma County, California and/or United States District Court for the Northern District of California. The parties consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the State of California or United States federal law.

**C. Exclusivity.** During the Initial and any Renewal Term of this Agreement, Merchant shall not enter into an agreement with any other entity that provides Card processing services similar to those provided by Service Provider as contemplated by this Agreement without Service Provider's written consent.

**D. Construction.** The typographical headings used in this Agreement are inserted for reading convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

**E. Assignability.** This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Service Provider. If Merchant nevertheless assigns this Agreement without such consent of Service Provider, Merchant shall remain liable and the Agreement also shall be binding upon the assignee. Original Merchant and Guarantor(s) shall be held personally liable in the event such assignee incurs chargebacks, retrievals, ACH rejects, losses, fines or any other liabilities under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors, and assigns. Service Provider may assign this Agreement.

**F. Amendment.** This Agreement is subject to amendment in order to conform and comply with any amendments or modifications of the Rules or law. From time to time Service Provider may amend any provision of this Agreement, including, without limitation, those relating to discount rates or other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment, and the amendment shall become effective and enforceable unless Service Provider receives Merchant's notice of termination of this Agreement within seven (7) days. Amendments due to changes in either Card Association's fees, interchange, assessments, Rules or any law or judicial decision may become effective on such shorter period of time as Service Provider may specify if necessary to comply with the applicable Rule, law, or decision.

**G. Notices; Consent to Electronic Communications.** By applying for services and confirming that it has read the Merchant Agreement, Merchant is confirming to

Service Provider that it has the means to access the Internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email or by the posting of such information by Service Provider at one or more of Service Provider's sponsored websites, such as "<https://www.trxservices.com/>" Such communications may pertain to the services delivered by Service Provider, the use of information Merchant may submit to Service Provider, changes in laws or Rules impacting the service or other reasons, such as amendment of the Merchant Agreement. In addition, all notices and other communications required or permitted under this Agreement by Service Provider to Merchant may also be delivered by Service Provider to Merchant either by fax, overnight carrier or first class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to Service Provider shall be delivered by Merchant to Service Provider by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Notice by fax or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first business day after mailing or delivery to the carrier. Following are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section: (a) if to ISO, addressed and transmitted as follows: TRX Services, LLC 2727 Paces Ferry Road, Atlanta, GA 30339 (b) If to Bank, addressed and transmitted as follows: **Westamerica Bank, 3750 Westwind Blvd, Suite 210, Santa Rosa, CA 95403, Fax: (707) 578-7055;** (c) If to Merchant, at the address provided as the billing address, or the fax number or e-mail address and to the contact listed on the Merchant Application.

**H. Force Majeure.** Any delay in or failure of performance by Service Provider under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking, ACH or payment networks not under direct control of Service Provider.

**I. Amendments.** Service Provider may amend this Agreement at any time upon notice to Merchant. With regard to increases in existing fees, or imposition of new fees, Service Provider will provide Merchant with a thirty (30) day notice to the extent it has received such prior notification of new fees.

**J. Severability and Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Service Provider to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

**K. Remedies Cumulative.** All rights and remedies conferred upon Service Provider in this Agreement, at law or in equity, are not intended to be exclusive of one another. Rather, each and every right of Service Provider under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

**L. Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

**M. Relationship of Parties.** The parties are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other party.

**N. Employee Actions.** Merchant is responsible for its employee's actions while in its employ.

**O. Survival.** All Sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, limitations of liability, Sections 2.04.C, 2.07, 3.01, 3.04, 3.05, and Articles 4, 5, 6 and 7.01.C.

**P. Further Assurances.** At any time or from time to time, upon the request of Service Provider, Merchant will execute and deliver further documents as Service Provider may reasonably request in order to effectuate fully the purposes of this Agreement.

**Q. IRS Withholding Regulations.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, Merchant will receive a Form 1099-K reporting its gross transaction amounts for each calendar year. The Merchant's gross transaction amount refers to the gross dollar amount of the card transactions processed through its merchant account with Service Provider. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provide Service Provider with the correct name and TIN that it uses when filing your tax return that includes the transactions for its business.

## ARTICLE VIII - TERMS BELOW ARE ADDITIONALLY APPLICABLE TO ONLY THOSE MERCHANTS WITH AMERICAN EXPRESS CARD ACCEPTANCE

**A8.01 Merchant shall be bound by the American Express Merchant Operating Guide:** [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

**A8.02** With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control.

**A8.03 General Terms.** Merchant authorizes ISO and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Service Provider on behalf of Merchant.

**A8.04 Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.

**A8.05 Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OptBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

**A8.06 American Express as Third Party Beneficiary.** Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.

**A8.07 American Express Opt-Out.** Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Brands.

**A8.08 Refund Policies.** Merchant's refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Brand, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

**A8.09 Establishment Closing.** If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services.

Merchant

Initials \_\_\_\_\_