

## Merchant Processing Agreement Terms and Conditions

These Terms and Conditions apply to your card processing program. For simplicity, we refer to ourselves (i.e., Worldpay ISO Inc. "NPC") as "Processor", "we", "our", or "us" in this document. We refer to you (i.e., the legal entity or sole proprietorship on the Application) as "you" or "your" or "Merchant." Other parties may also be parties to this Agreement (e.g., Fifth Third Bank, N.A. "Member Bank", Guarantor, etc.). Terms that are capitalized but not defined are defined in Section 18.

### 1. Term and Exclusivity.

**A. Term.** This Agreement binds you on the earlier of your execution of this Agreement or your submission of a transaction for processing. This Agreement binds us the earlier of (i) the date we issue you a Merchant Identification Number; or (ii) the date we process your first transaction. Unless otherwise stated in the Application, the term of this Agreement is thirty-six (36) months ("Initial Term"). Following the end of Initial Term, unless otherwise stated in the Agreement/Application, the Agreement automatically renews for periods of thirty-six (36) months, unless either party gives written notice of its intent to terminate or not renew the Agreement at least ninety (90) days before the then-current term expires, provided that if automatic renewal of this Agreement violates the provisions of applicable law, the renewal term will be thirty (30) days. For clarity, termination of this Agreement does not terminate your equipment lease.

**B. Exclusivity.** This Agreement is a "requirements contract." This means you shall exclusively receive the Services from us. However, we have no obligation to process a Visa or MasterCard transaction beyond the authority of a U.S. member of Visa and MasterCard, or to process Discover or American Express transactions outside the United States. Merchant agrees that Processor is Merchant's exclusive provider, at all of your locations, of the Services and any services that are the equivalent of the Services available from another provider, including any Services or their equivalents that relate to any Cardholder transactions originating at or with your Supplier that incorporates your goods and/or services. Prior to exercising any right of termination or non-renewal, you agree that we shall have a right of first refusal before you enter into an agreement with a third party for the Services. Except for term length, you agree that our right includes terms and conditions that are substantially similar to those discussed with the third party.

**2. Rules, Regulations and Laws.** As part of this Agreement, you agree to comply with, and to cause your employees and agents to comply with: (i) the Laws; (ii) the Rules Summary; (iii) the Operating Regulations and terminal update requirements related to optional Association programs, if applicable (and any related costs); and (iv) the confidentiality and security requirements of (a) USA Patriot Act and any related laws, rules, or regulations; and (b) the Associations and Networks, including the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, the American Express Data Security Requirements (DSR), and any other Association or Network program or requirement. You accept any responsibility or liability (e.g., data breach liability) resulting from your decision not to participate in optional Association Programs (e.g., the Association EMV decision).

### 3. Acceptance of Cards.

**A.** You can elect to accept all card types, or only certain Visa and MasterCard card types ("Limited Acceptance"). You are solely responsible for your Limited Acceptance program. This includes: (i) policing card types at the point of sale; (ii) paying Association fees and charges for only accepting certain card types; and (iii) paying any costs we incur in connection with your Limited Acceptance. Our obligations are limited to those expressed in the Operating Rules. Should you submit a transaction for processing for a card type you have indicated you do not wish to accept, we may process that transaction and you agree to pay any applicable fees, charges, and assessments. The card types are: (i) "Debit Card" -- U.S. and non-U.S. bank issued Visa or MasterCard Cards that access consumer asset accounts within 14 days of purchase, including stored value, prepaid, EBT, gift, or consumer check Cards; (ii) "Other Card" -- all Visa and MasterCard Cards issued by a non-U.S. bank and all Visa and MasterCard Cards other than Debit Cards, including business and consumer credit Cards. Your Limited Acceptance program only applies to U.S.-issued cards. The Visa and MasterCard Operating Regulations require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue accepting both debit and credit Card products issued by non-U.S. members.

**B.** If we are unable to obtain, or choose not to obtain, authorization from an Association or Other Network, we may "stand-in" for the Association or Other Network. If we stand-in, we will authorize the Card transaction based on our own criteria. Our decision to stand-in does not change your obligation(s) to us.

### 4. Our Responsibilities.

**A.** We will provide the Services in accordance with our then-current systems, standards, and procedures. Nothing requires us to provide you with any special programming; any system, program, or procedure implementation; or any special hardware or software.

**B.** We will provide reports online for each fiscal day's activity by 10:00 AM ET the next calendar day. Such reports will include an accounting for each currency with supporting detail of transaction activity, Daily Proceeds, reserves and funds transfers for transaction settlement services. Reports will be available for download on the online reporting tool for a period of 14 months from the date of issue. Reports may be upgraded, enhanced and/or modified by us at any time.

**C.** We will initiate payment to you for the amount of each accepted Card transaction only after we receive payment.

**D.** We have the right to honor and rely on the request(s) or instruction(s) of any person we reasonably believe to be your representative or Agent. In the event we receive returned mail intended for you, we may, but are not required to, procure a replacement address according to our standard operating procedures.

**E.** We are only responsible for processing credits and adjustments for Card transactions that we originally processed. You authorize us to audit all Card transactions and deposits. We have the right to withhold amounts from you if we discover inaccuracies.

**F.** We may report information about your account, late payments, missed payments, or defaults to credit bureaus.

**G.** We may suspend or cease providing any Services to you in response to a Member Bank, Network, or Association request. We will use reasonable efforts to notify you if we suspend or cease any Services.

**H.** We are responsible for the security of Cardholder data we store or transmit on your behalf only while it is in our possession and control.

### 5. Your Responsibilities.

**A.** We have the right to charge your Designated Account without notice or to require payment from you in any appropriate situation for the amount of any Card transactions. This

right includes Card transactions: (i) where merchandise is returned; (ii) where there is no valid authorization response; (iii) where the Cardholder has not given authority (e.g., improperly drawn, accepted, or endorsed transactions); (iv) where the Card transaction record is illegible; (v) where the Cardholder disputes the sale, quality, or delivery of merchandise or performance or quality of services; (vi) where the Card transaction was drawn by, or depository credit given to, you in a way that breaches the agreement or violates the Laws or Operating Regulations; (vii) where we have not received and retained payment for the Card transaction (even if we have already paid you for the transaction); (viii) where it is alleged that you have failed to comply with the Operating Regulations, Rules Summary, or the Laws; (ix) where an Association or Other Network action (e.g., a chargeback or compliance case) is pending or has been resolved against you; (x) where we have incurred claims, damages, or losses from any source including Card issuers, or (xi) where the extension of credit for a Card transaction violated the Laws or Operating Regulations. Additionally, you remain fully liable to us for any transaction returned to us for any reason ("chargebacks" or for PIN debit Card transactions, "reversals"). You agree to review all chargeback-related notices and reports (in any format). Your failure to respond to a chargeback or reversal within the applicable deadline may forfeit your chargeback rights. We have no duty to assist you in defending a non-compliance allegation related to a chargeback or reversal.

**B.** You represent that any information you have supplied to us is true and accurate and that the name and tax identification number ("TIN") on the Application matches the name and TIN that you use to file your tax returns. You agree to update your information with us when it changes. We may need to share your TIN, entity name, processing volume, principal's social security number, or other information with governmental entities. You agree to cooperate with our requests for information for any reason. We may be required to withhold processing funds or to forward processing funds to the IRS if you supply incorrect information, or a state or federal law or government agency so requires. You expressly release us from any liability in connection with our withholding of funds or submission of information to a government agency, even if incorrect. You are responsible for any fines or penalties assessed against you or us.

**C.** You shall not sell, purchase, provide, share, or exchange Cardholder name, address, account number, or other information to any third party (including your Agent) other than us, the Associations, or the Networks, and then only for the purpose of completing a Card transaction.

**D.** You agree to balance and reconcile the Designated Account and the Reserve Account each day. You shall immediately notify us of any missing or improperly deposited funds. Additionally, you agree to review our (or our agents') reports (including those made available online), notices, and invoices. You agree to accept any report, notice, invoice, Service deficiency, or billing or payment error if you fail to reject or dispute it in writing within 30 days of the date we made it available to you. We may make our reports, notices and invoices available to you in accordance with our standard processes, which are subject to change. For 60 days following our receipt of your written notice of an error or deficiency, you agree to refrain from making any loss or expense claims against us so that we have time to investigate the situation. If you notify us that a Card transaction batch has not processed, we may, at our option, attempt to re-present the missing Card batches dated during the 90 day-period preceding the date we received your notice. We have no obligation to correct any errors that flow from your failure to comply with the duties and obligations in this paragraph.

**E.** You shall not sell, assign, transfer, or encumber any part of your interest in the Reserve Account, or any present or future rights under this Agreement, including your right to receive payments or funds. Neither we nor Member Bank are obligated to honor any purported attempt to sell, assign, transfer, or encumber any interest, rights, payments, or funds. In the event you breach this Section, we have the right to withhold funds payable to you, in addition to any other rights we may have at law or equity. You shall indemnify and hold us harmless from and against any claims, liabilities and damages that any person (including a purported assignee) may assert against us arising out of your purported sale, assignment, transfer, or encumbrance of all or any of your present or future rights under this Agreement.

**F.** You agree to provide us with audited annual financial statements for your business using generally accepted accounting principles, at any time upon request. Additionally, you agree to provide any other financial information within fifteen days of a request by us.

**G.** You shall timely assist us in complying with all Laws and Operating Regulations related to the Services. This obligates you to execute and deliver all instruments we deem necessary for you to meet your obligations under the Agreement. Further, you agree to allow our auditors (third-party or internal), and the auditors of any Association or Other Network, to review the documents, records, procedures, systems, controls, equipment, and physical assets related to your transactions upon reasonable notice at any time. You also agree to assist our auditors as necessary. If an Association, Member Bank, or regulatory agency requires a third-party audit, or if the Operating Regulations or applicable law requires a third-party audit, we may retain a third party to perform the audit or require you to immediately retain a specific third-party auditor and provide us with a final audit report. You agree to pay our audit costs or the audit costs of Member Bank, an Association, or Other Network.

**H.** In the case of a delayed merchandise delivery, you agree to deliver the Card transaction record to us within two business days of the merchandise delivery (or as we specify in the Rules Summary). You agree to electronically deliver all other Card transactions and credit records to us in a suitable format within two business days of the transaction (unless the Associations or Networks require the records earlier). You also agree to deliver Card transactions and credit records to us at least once every business day. Your delivery constitutes an endorsement of each recorded transaction. You authorize us or our representative to place your endorsement on any Card transaction at any time. We have the right to refuse to acquire any Card transaction. You waive notice of dispute related to any individual Card transaction.

**I.** You shall not store Cardholder data, including track-2 data, in violation of the Laws or the Operating Regulations. Further, you shall not retain or store magnetic stripe data following the authorization of a Card transaction.

**J.** You are solely responsible for the quality, accuracy, and adequacy of all transactions and information you supply. Accordingly, you shall implement and maintain adequate audit controls for monitoring the quality and delivery of data. When submitting Card transaction, settlement, and other data and information to us, you agree to follow our communications processes and document formats. You agree to only transmit information and data to us with a secure system.

**K.** You may use a third-party agent ("Agent") to perform some of your obligations under this Agreement, subject to our approval. Agents include your software providers and equipment providers. You shall cause your Agent to complete any Association-required steps or

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certifications (e.g., registrations, PABP, PCI-DSS, audits, etc.). You shall ensure that your Agent complies with all applicable requirements of this Agreement. You expressly assume all responsibility for the acts or omissions of your Agent as if they were your acts or omissions. If your Agent qualifies as a service provider under applicable Operating Regulations, you agree, at your expense, to cause the Agent to cooperate with us in our due diligence requests, and in performing any steps required for registration and certification. You are responsible for conducting your own due diligence on your Agents, including the fitness of their services for a particular purpose and for determining the compliance of their services with the Operating Regulations and the Laws. You expressly assume all liability for the acts and/or omissions of your Agent even if we introduce or recommend the Agent, or resell the Agent's services.

L. You agree that it is important to notify us about changes in your business. Because of this, you agree to provide us 30 days prior written notice of your intent: (i) to change business form or entity type; (ii) to sell stock or assets to another entity; or (iii) to make changes that would affect information on the Merchant Application. Additionally, you shall notify us within three days of any judgment, writ, warrant of attachment, execution, or levy against any substantial part (25% or more) of your assets. Should you change or add locations, you agree to follow our standards and procedures. Unless we agree otherwise, you agree that you will only present Card transactions to us that correspond to the activities and volumes described on the Merchant Application. Accordingly, we must pre-approve increases in Card transaction volume of 25% or more over the amount stated in the Merchant Application. Changes in monthly volume, the stated average ticket size, or any other information on the Merchant Application entitle us to increase fees, delay or withhold settlement, or terminate this Agreement. Your failure to notify us of changes under this Section subjects you to liability for any losses or expenses we incur.

M. **Virtual Private Network ("VPN")/ Transport Layer Security ("TLS") Services.** Our standard VPN and TLS services establish an internet connection between you and us for processing your transactions. You are responsible for: (i) ensuring that your communication equipment is compatible with our VPN or TLS; (ii) ensuring that each terminal with a connection to the VPN or TLS has an active personal firewall; and (iii) ensuring a secure key exchange and key management process (including a process for key revocation when your personnel leave). Our VPN or TLS communication interface relies on the internet. You agree that the internet is not always reliable, and that internet problems and issues may interfere with our ability to process your transactions. Any service levels that appear in other parts of the Agreement do not apply to the VPN or TLS connection or to transactions transmitted using the VPN or TLS connection. We provide VPN and TLS services in accordance with our own standards, which are subject to change without notice. You agree to comply with any VPN and TLS standards we or the Associations or Other Networks establish.

N. **Optional Services.** We may offer you products and services through one or more third parties ("**Optional Services**"). You agree that, as available, the applicable third-party provider ("**Provider**") solely supplies and/or supports all Optional Services. We are not a party to your contracts with Providers. You are responsible for conducting your own due diligence on any Provider that you use, including the fitness of its services for a particular purpose and for determining the compliance of its services with the Operating Regulations and the Laws, even if we resell the Provider's services. You bear all of the risks associated with using an Optional Service. Although not an exhaustive list, we are not liable for: (i) exercising control over Provider; (ii) errors related to establishing and maintaining account relationships with Providers; or (iii) ensuring service levels with respect to the Optional Service(s). Our decision to offer any Optional Service shall not limit your duty to: (i) ensure that all account numbers are correct; (ii) notify Providers of changes to ACH, address, and account information; (iii) pay all fees, fines, damages, losses, or expenses arising in connection with your possession or use of an Optional Service; (iv) perform your own due diligence before using an Optional Service; and/or (v) perform any other proper act related to your use of the Optional Service. You agree to indemnify and hold us harmless for any damage, loss, claim, or liability arising from your possession and/or use of any Optional Service. Each Provider has the right to require you to enter into a separate agreement with it. Whether you and Provider enter into a separate agreement, you agree that: (i) your rights and duties regarding the use of an Optional Service are neither assignable nor delegable without Provider's prior written consent; (ii) you acquire no property right, intellectual property right, claim, or interest in any of Provider's systems, equipment, software, processes, programs, or data; and (iii) you shall protect the confidentiality of Provider's software and documentation.

O. You agree to pay us all Provider-imposed fees and assessments in connection with your use of the Optional Service(s). Your obligation to pay us shall continue until: (i) you have notified Provider(s) of your intent to cancel the Optional Service(s); (ii) you have provided us with notice that (a) you have notified Provider of your intent to terminate, (b) you have returned all equipment and software to Provider, and (c) you have ceased receiving all Optional Services; and (iii) Provider no longer assesses us for your receipt of the Optional Services or for possession of the equipment or software. You waive all rights to contest, challenge, or withhold payment for any fees we assess for Optional Services until you have satisfied the conditions in the preceding sentence.

P. You authorize us to contact your customers or their Card issuing bank(s) to find out information about any Card transaction. You shall not contact a Discover Cardholder unless authorized to do so by the Operating Regulations or required by Law.

Q. **Bankruptcy.** You agree to execute and deliver to us any documents we request to perfect and confirm the lien, security interest, and setoff rights in this Agreement. You shall immediately notify us of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against you or any of your principals. Further, you shall include us on the list of creditors filed with the Bankruptcy Court, even if no claim exists at the time of filing. This is an executory contract to make a loan or extend other debt financing or financial accommodations to or for your benefit and, as such, cannot be assumed or assigned in the event of your bankruptcy. This is a contract of recoupment and we are not required to file a motion for relief from the automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest a motion for relief from the automatic stay. You must adequately fund the Reserve Account to provide us with adequate protection under Bankruptcy Code § 362. We have the right to consume and offset against the Reserve Account to cover your obligations under this Agreement, regardless of whether they relate to transactions created before or after your bankruptcy filing. Because this Agreement contemplates the extension of credit for your benefit, you acknowledge that you cannot assign the contract in the event of a bankruptcy. We may immediately terminate the Agreement if you fail to comply with any part of this Section.

R. **Wireless Service Acknowledgement.** We are not responsible for verifying your wireless service coverage, or for losses in coverage, or for your failure to maintain coverage. By selecting wireless service, you acknowledge that wireless coverage is not guaranteed and we have no control over the wireless service providers or the decisions they make. Additionally, you acknowledge that if wireless service is lost in your area, the equipment will not operate with another wireless carrier. We are not liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

S. **Virtual Terminal Processor Services and Fees.** Our Virtual Terminal Processor Service (the "**VT Service(s)**") is an additional service (subject to separate fees and charges). It allows you to effectuate Card transactions within the merchant portal application in accordance with our standards. You represent and warrant that you have implemented and will maintain secure systems for using the VT Services and transmitting information to us. You are responsible for any authorized or unauthorized transactions initiated using your user IDs. You assume all liability for (i) acts or omissions arising out of your use of the VT Services; and (ii) risks associated with using software with internet connectivity.

### 6. Fees and Other Services.

A. You agree to pay fees, cost escalations, assessments, tariffs, penalties, fines, claims or other items under this Agreement or the Operating Regulations. We will periodically (daily, monthly, etc.) calculate your fees and charges and debit the account(s) that you designate ("**Designated Account(s)**") to collect those amounts. We have the right to determine and change the periodic basis in the previous sentence in our sole discretion, without notice. We have the right to round, assess and calculate interchange and other fees and amounts, and on return, chargeback, and other transactions retain such amounts, in accordance with our standard operating procedures. We also have the right to assess some or all of the fees and charges via a separate or combined Services invoice(s). We will charge you for any fines, fees, penalties, loss allocations, assessments, registration expenses, certification expenses, telecommunication expenses, sponsorship fees, and other amounts assessed by Member Bank and/or third parties or incurred as a result of your actions, omissions, or use of the Services, or those we incurred on your behalf under the Operating Regulations, the Rules Summary, and the Laws.

B. Transaction fees are fees charged on each authorization, Card draft, credit draft, or other transaction type, regardless of the stated total ("**Transaction Fee(s)**"). We may charge a Transaction Fee for any transaction activity. If applicable, we may also assess a Risk Fee based on your MCC code.

C. VISA, MasterCard, and Discover Interchange fees, assessments, and other amounts will be either: (i) assessed to you separate from and in addition to the Discount Rate, Transaction Fee, and other fees listed in the Application, or (ii) included in the Discount Rate and/or Transaction Fee listed in the Application. For American Express Card transactions, we will assess interchange fees, assessments and other fees in addition to the Authorization Transaction Fee and other fees described on the Application. For American Express Card transactions under Tiered Transaction Pricing, interchange fees and other amounts will be included in the Discount Rate and/or Transaction Fee listed on the Application. For PIN debit Card transactions under Tiered Transaction Pricing, we will assess interchange fees, sponsorship fees, switch fees, and gateway fees as pass through, and other amounts will be included in the Discount Rate and/or Transaction Fee listed on the Application. Certain fees are available upon request or through the Associations. You are responsible for conducting your own inquiry into the nature and type of applicable fees. The Discount Rate, Transaction Fee and other fees may be based, in whole or in part, on interchange rates, assessments, and other fees that the Associations and Other Networks periodically change.

D. You acknowledge that in order to receive the best Discount Fee and Transaction Fee on a particular Card transaction, the transaction must first "qualify" and exactly meet certain criteria. Several factors can prevent a Card transaction from qualifying, including that it: (i) was hand entered (i.e., the encoded card information was not read by a point of sale device); (ii) was voice-authorized; (iii) was not authorized; (iv) was not transmitted for processing within 24 hours; (v) was a Consumer or Commercial Reward transaction, a Visa Signature transaction, or a MasterCard World Elite Card transaction; (vi) was deemed a "Non-Qualifying" transaction by the Operating Regulations (e.g., certain foreign transactions or transactions from business, commercial, purchasing, or government Cards); (vii) was difficult to capture; (viii) was difficult to authorize; (ix) was submitted incorrectly; or (x) was not eligible for the lowest electronic interchange fee for any other reason. Additionally, you might not qualify for the best Transaction Fee or Discount Rate if your average ticket differs from what we used to calculate the Transaction Fee and/or Discount Rate; if you submit more than five percent of your monthly Card drafts without electronic transmission; or if your terminal, software, or communications lines fail to function properly. The Associations change the transaction qualification criteria from time to time. For certain non-qualifying transactions, we assess a surcharge of a certain percent of the transaction amount. In the event that your Card transactions under Tiered Transaction Pricing do not qualify or only partially qualify for the qualified discount rate quoted on the Merchant Price Schedule and/or the Operating Regulations, you agree to pay the Mid-Qualified Discount Rate and/or Transaction Fee, or Non-Qualified discount Rate and/or Transaction Fee set forth on the Application. We do not guarantee that your transactions will qualify for any given rate, and we disclaim all responsibility and liability for a transaction's failure to so qualify. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

E. You shall pay all taxes imposed in connection with the Services. If we pay taxes for you, we can immediately debit your Designated Account or demand payment from you.

F. We may charge and you agree to pay for any non-specified service we provide and expense we incur at the request of or on behalf of you. Your use of any service not listed on the Application or provided at the commencement of the Agreement obligates you to pay any accompanying fees, charges, and related expenses. If you receive these Services you will be deemed to have consented to the fees, charges and expenses. We have no obligation to enhance or customize Services or additional services, but we may choose to do so for a separate fee. You shall take all necessary steps to ensure that you can receive the Services, at your own cost. This includes procuring equipment and software, and taking other steps as we direct.

G. We reserve the right to charge you a reasonable fee if we reasonably believe you are not fully compliant with the Rules Summary, Operating Regulations, Payment Card Industry Data Security Standard ("PCI-DSS") or any Laws, or if you fail to prove compliance upon our request. This fee will be in addition to any other amounts payable under the Agreement.

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H. After your initial conversion to us, you agree to pay all direct and indirect costs (including those we, our affiliates, or our agents incur) related to any conversion to or from us as applicable, and/or relating to any programming effort affecting the Services.

I. If we advance funds to you or delay your obligation to pay funds, we reserve the right to assess you a cost of funds in the manner and amount of our choosing.

J. After we approve your Application, we will begin assessing any applicable monthly recurring charges. This Agreement subjects you to a Minimum Monthly Bill unless otherwise noted on the Application. In the event this Agreement expires or terminates for any reason, the Annual Fee or Semi-Annual Fee, as applicable, will not be prorated or refunded. If applicable, we may assess the ACH/DBA Fee listed on the Merchant Application for administrative services.

K. **Transaction Risk Fees; Tiered Transaction Pricing (if applicable).**

i. **Transaction Risk Fees.** We assess Transaction Risk Fees on certain transactions that we determine carry a higher degree of risk. These higher-risk transactions may increase our operational, monitoring, and/or compliance obligations and costs. Factors that influence whether a transaction will be subject to a Transaction Risk Fee include whether it: (a) was key entered (i.e., the encoded card information was not read by a point of sale device); (b) was voice-authorized; (c) was not authorized; (d) was not transmitted to us for processing within 24 hours; (e) was a Consumer or Commercial Reward transaction, a Visa Signature transaction, or a MasterCard World Elite Card transaction; (f) was deemed a "Non-Qualifying" transaction by the Operating Regulations and/or us (e.g., certain foreign transactions or transactions from business, commercial, purchasing, or government Cards); (g) was difficult to capture; (h) was difficult to authorize; (i) was submitted incorrectly; and/or (j) was not eligible for the lowest interchange fee for any other reason. Additionally, your Card transactions may be subject to Transaction Risk Fees in instances where (1) your activities are outside the scope of or different from what was designated under your merchant category code or in the initial setup criteria used to establish the MID(s) associated with your account (e.g., your average ticket amount differs from what we used to calculate the Transaction Fee and/or Discount Rate, etc.); and/or (2) your terminal, software, or communications lines fail to function properly. The factors in this paragraph are not exhaustive and may change from time to time. The Associations require that information from the original authorization, including a lifecycle identifier, be retained and returned with subsequent authorizations and/or the settled transaction data; the Associations validate this information as part of the clearing and settlement process. If authorization data is not retained and returned at settlement, then the transaction will not clear as priced and will incur Transaction Risk fees.

ii. **Tiered Transaction Pricing.** A tiered transaction is assessed a Qualified, Mid-Qualified, Non-Qualified, or High-Risk Transaction Fee and Discount Rate, which is primarily based on interchange classifications under the Operating Regulations but may depend on other factors. You may be able to avoid processing certain non-qualified transactions by using a product established by the Associations that supports authorization and market data requirements. We do not guarantee that your transactions will qualify for any given rate, and we have no liability for a transaction's failure to so qualify. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback. The items listed in this Section are not intended to be a comprehensive list of all instances in which a transaction may not qualify as fully qualified.

L. **Tokenization (if applicable).** Tokenization is a service in which cardholder PAN data, once received by the Processor, is replaced with a surrogate ("Token") value. Deliverables of the Tokenization service include: (1) the creation of tokens and (2) the recognition and use of a Processor issued pre-existing token to support all post authorization transactions with the Processor, which includes initiating a new authorization with a token value. Data necessary to convert tokens back to Cardholder data will be maintained in Processor's systems. Merchant access to the Tokenization service requires integrating systems to certify token services using Processor's appropriate message specification. Message specifications are limited to those that exist in Processor's current Service offering. The Parties agree that the scope of the Tokenization service does not include the certification or systematic configuration of third parties or firmware licensing as selected by the Merchant to support Tokenization services. Non-Standard, GUI and Batch Tokenization are separate and unique service offerings and respective fees will be quoted to merchant for the use of each service.

7. **Termination or Suspension of Services.**

A. **Default Event.** You are in default under this Agreement ("Event of Default") if: (i) we believe there has been a material or potentially material deterioration of your financial condition; (ii) you become subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for you, or you make an assignment for the benefit of creditors, or admit your inability to pay your debts as they become due; (iii) you cease doing business as a going concern, or there is a change in the identity of any person or entity owning, directly or indirectly, ten or more percent of the business; (iv) you are in breach any of the terms of the Agreement; (v) we reasonably believe fraud may be occurring, including splitting tickets or laundering tickets; (vi) your name or your principals' names are listed on the MATCH (Membership Alert to Control High Risk Merchants) System or other security or credit alert systems, or you are identified under an Association risk monitoring program; (vii) we determine that your Card transactions or the circumstances surrounding your Card transactions have become irregular or increase our exposure to chargebacks, reputational, or other security risks; (viii) we receive instructions from an Association or Other Network to close your account; (ix) circumstances exist that could cause harm or loss of goodwill to the Associations or Other Networks; (x) you no longer meet the eligibility requirements of an Association or Network; (xi) your volume in a calendar month exceeds 120% of the average annual volume indicated on the Merchant Application; (xii) your non-card present transactions in a calendar month exceed 120% of the MO/TO and internet volume on the Merchant Application; (xiii) you experience returns greater than three percent; (xiv) you cease doing the kind of business described in the Merchant Application; (xv) you fail to pay any amount to us when due; (xvi) in our opinion, provision of a Service might violate the Operating Regulations, Rules Summary, or the Laws; or (xvii) we believe that you have violated or are likely to violate the Operating Regulations, Rules Summary, or the Laws. We shall determine the existence of an Event of Default or Improper Transaction (defined in Section 7.A.). Our determination is conclusive unless you contest it in writing within one year. Upon the occurrence of an Event of Default, we may exercise any right or remedy in this Agreement without notice. These include: (i) terminating the Agreement; (ii) suspending or

ceasing to provide the Services; (iii) collecting the early deconversion fee, if applicable; (iv) establishing a Reserve Account; (v) collecting any amounts you owe us by means of setoff, recoupment, or any other legal means; and/or (vi) assessing fees and recovering costs associated with the investigation of any suspected fraudulent activity or Event of Default. Termination for any reason shall not relieve you of any liability or obligation you owe us. We have a right to assess fees and recover all costs associated with our investigation of suspected fraudulent activity or an Event of Default. You agree that we may retain the entire amount of the Reserve Account as liquidated damages if you engage in an Improper Transaction. If you accept transactions in connection with an Event of Default, we have the right to hold settlement funds and to subject them to a per month fraudulent transaction fee equal to 15% of the amount held. We have no liability to you for any direct or indirect losses you may suffer as a result of our suspension of funds disbursement or failure to pay transactions in connection with an Event of Default.

B. **Early Deconversion Fee/Liquidated Damages.** If we terminate this Agreement after a breach by you, or if you wrongfully terminate the Agreement, you shall: (i) pay us the Early Deconversion Fee set forth on the Merchant Application for each Merchant Identification number and Merchant location; and (ii) pay us liquidated damages equal to your average monthly fees (excluding Card Organization interchange and assessment fees), for the three calendar months and that your revenue was highest during the preceding twelve (12) months (or shorter period if the Agreement has not been in effect for twelve (12) months), multiplied by the number of months then remaining in the term of the Agreement. For clarity, the Early Deconversion Fee includes costs of processing Chargebacks, restocking equipment, and deleting numbers related to your deconversion. You agree that the liquidated damages are fair and reasonable because it is difficult or impossible to estimate our damages following a breach or wrongful termination. Notwithstanding the foregoing, no Early Deconversion Fee will be charged to the extent it is prohibited by Law. Additionally, you agree to pay us (i) any unpaid invoice; and (ii) any damages, losses, expenses, fees, fines, penalties, chargeback amounts, and adjustments we incur in connection with the Agreement. You authorize us to debit your Designated Account or to deduct amounts you owe us under this Section from the settlement funds we owe you. You are responsible for any collection fees, legal fees, and other expenses we incur in recovering your delinquent amounts.

C. **Return of Equipment/Materials.** You shall return our equipment, promotional materials, advertising displays, emblems, Card drafts, credit memoranda, and other forms within 14 days of termination. You agree to immediately pay any amounts you owe for equipment costs.

D. **Remedies Cumulative.** Our rights and remedies under this Agreement and/or at law or in equity are cumulative.

E. **Terminated Merchant File.** You acknowledge and consent to our obligation to report your business name and the name of your principals to the Associations if we terminate you due to the reasons listed in the Operating Regulations, including for breaching this Agreement. You agree to refrain from bringing any claims against us for reporting you to the Associations.

F. Termination of this Agreement for any reason does not automatically terminate your equipment lease, if applicable.

G. If we believe that any of your activities or our performance of any service under the Agreement could subject us to increased regulatory scrutiny or reputational harm, we reserve the right to (i) terminate the Agreement at any time; or (ii) suspend or cease providing any service or the Services at any time.

H. **Other Termination Rights.** We have a right to terminate this Agreement at any time by providing you with thirty (30) days written notice.

8. **Authorization, Setoff, Reserve, and Security Interest.**

A. You authorize us, our agents, and third parties to initiate ACH credit/debit entries to or from the Designated Account, the Reserve Account, or any other account you maintain at any institution that is a receiving member of ACH, including for amounts you owe us, that we owe you, or for correction of errors. This authorization applies even after you change accounts. It survives the termination of this Agreement, until the later of: (i) two years from the Agreement's expiration; or (ii) the date you have satisfied all of your obligations to us. You shall ensure the Designated Account(s) have funds sufficient to satisfy your contingent and accrued obligations and duties under this Agreement. No attempt to change or alter the account (an "Account Change") is effective until we acknowledge the change on our system. Accordingly, you shall not close an old account until the new account receives the third deposit. We are not responsible for checking the accuracy of any Account Change your purported representatives submit in connection with an Account Change. Additionally, we are not responsible for liability associated with any Account Change unless it is due to our gross negligence or willful misconduct. You are solely liable for all fees and charges your financial institution assesses, including overdraft and NSF charges. You release and hold us harmless from any financial institution fees or charges, regardless of cause. We are not liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties, including the Associations, Other Networks, a clearing house, or your financial institution. We may audit and verify all Card and credits you accept. You agree that we may debit or credit your Designated Account for any inaccuracies. You also agree to be bound by the National Automated Clearing House Association's operating rules.

B. You agree that payment is due the date we originate an ACH debit transaction record to your Designated Account. Fees not paid when due bear interest at the rate permitted by Law. You are responsible for paying all fees, without set-off or deduction. We have a right to set-off amounts you owe us from amounts we owe you or your affiliates.

C. The closing of your Designated Account does not constitute a mutually agreed upon termination of this Agreement.

D. As a specifically bargained for inducement for us to enter into this Agreement with you, we reserve the right at any time to: (i) create a reserve of funds ("Reserve Account") from settlement amounts or any other amount payable to you; (ii) require you to pay us the amount needed to fund a Reserve Account during this Agreement and/or pay any additional funds needed to maintain the Reserve Account at all times; and/or (iii) require you to establish an irrevocable standby letter of credit naming a beneficiary we designate ("Letter of Credit"). If we require security as described in the preceding sentence, you will immediately fund the Reserve Account or provide the Letter of Credit, and maintain the Reserve Account or renew or replace the Letter of Credit as we instruct. We have complete discretion to determine the amount of any Reserve Account or Letter of Credit. You will increase either at any time upon our request. If a Letter of Credit will be cancelled, will not be renewed, or will not be in full force and effect, you

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will provide a replacement Letter of Credit upon our demand, on or before the date that we determine Any Letter of Credit will be issued by a financial institution, in a format, and with an expiration date acceptable to us. We have the right to use the Reserve Account(s) and/or Letter(s) of Credit to cover amounts due or that might become due to us at any time. Reserve Account funds may be commingled with other funds, and need not be maintained in a separate account designated in your name. Subject to the other terms of this Agreement, we have the right and discretion to retain funds placed into the Reserve Account until you request the funds in writing, and the later of (i) 270 days has passed following the termination of this Agreement; or (ii) 180 days has passed since the last possible chargeback (the later date shall be the "Refund Request Date"). The Reserve Account becomes our property upon our notice to you if you engage in, or are suspected to have engaged in, (i) illegal business activities; (ii) collusive fraudulent transactions with Cardholders; (iii) laundering or aggregating illegal and/or brand damaging transactions; (iv) establishing your account with us through identity theft; or (v) any other fraudulent act. (each an "Improper Transaction"). You waive any contract right you have in the Reserve Account and its balances if you fail to object in writing within 90 days of the Refund Request Date or our notification of an Improper Transaction event.

E. We have the right to divert your funds to a Reserve Account or to temporarily suspend processing for a reasonable time to investigate any real or potentially improper transaction activity. Following an investigation, we may continue to maintain the diverted funds in a Reserve Account in accordance with this Section 8. We have no liability to you for diverting funds or suspending processing.

F. This Agreement is a security agreement under the Uniform Commercial Code. You grant us a security interest in and lien upon all: (i) funds in the Designated Account; (ii) funds in the Reserve Account; (iii) amounts due you under this Agreement, including rights to receive payments or credits; and (iv) proceeds in any account or from any sale (collectively, the "**Secured Assets**"). To secure all of your obligations under this Agreement. For Secured Assets maintained by Member Bank, you authorize Member Bank to comply with our demands regarding the Secured Assets. Our control of the Secured Assets with Member Bank constitutes a perfected interest under Article 9 of the Uniform Commercial Code. We may direct the disposition of the Secured Assets without further consent from you. You represent and warrant that we have the only security interest in the Secured Assets. You agree not to grant a security interest in the Secured Assets to a third party without our prior written consent. Additionally, we have a contractual right of set-off against the Secured Assets. Our right of set-off shall be deemed to have been exercised immediately upon the occurrence of an Event of Default without any action by us or notation in our records, even if we enter the set-off on our books and records at a later time.

### 9. **Indemnification and Limitation of Liability.**

A. You shall indemnify and hold us, and our directors, officers, employees, affiliates, and agents harmless from and against all proceedings, claims, demands, losses, liabilities, damages and expenses (including any fines, fees, assessments, audit fees, card replacement costs, or penalties levied against us by an Association, any Card issuer, or any Other Network, and attorneys' and collection fees and expenses) resulting from or otherwise arising out of: (i) the Services; (ii) any breach of any term or condition of this Agreement; (iii) any misrepresentation by you under this Agreement; (iv) your acts or omissions in connection with the Services under this Agreement, including the acts and omissions of your employees and agents; (v) your processing activities and provision of goods and services to Cardholders; (vi) any violation of the Operating Regulations, the Rules Summary, or the Laws; (vii) any guarantees we provide to a third party for your benefit, including lease guarantees; (viii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of, or in any way related to your ability to use the Services, including your use of an Agent or any other third party processor or system, or your ability to connect to the Internet or an external network; (ix) any act or omission of a third-party with which you have contracted; (x) any bankruptcy proceeding; (xi) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card; (xii) any action you institute against any Association, Other Network or Card issuer following a chargeback or fine; or (xiii) any action we take against the Designated Account, Reserve Account, or any other account you own, pursuant to this Agreement. You shall also defend, indemnify, and hold harmless the institution that maintains your Designated Account for acting in accordance with any instruction from us regarding the Designated Account. This indemnification shall survive the termination of the Agreement.

B. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. You acknowledge and assume all risks associated with the acceptance of cards. We are not liable for lost profits, lost business, or any incidental, special, consequential, or punitive damages (whether or not arising out of circumstances known or foreseeable by us) you or your customers or any third party suffers in connection with the Services. We are not liable for damages or losses wholly or partially caused by you or your employees or agents. Nor are we liable for any damages or losses you may sustain as a result of our exercise of post-default rights or remedies under this Agreement, provided we had a good-faith, reasonable basis to believe an Event of Default occurred. Our liability related to or arising out of this Agreement shall not exceed the fees paid to us for the particular Services in question for the calendar month preceding the date of our relevant act or omission. The parties acknowledge that the limitations in this Section are integral to the amount of fees we charge for the Services. Except as otherwise described in this Section, your exclusive remedy for any claim against us is termination of the Agreement. We are not in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from errors in data you or other parties provide to us, or any event beyond our reasonable control, including the Force Majeure Events defined below. If we defend a claim you bring against us and prevail, you shall reimburse us the costs, attorneys' fees, and other related expenses we incurred.

C. We are not liable for, nor in default under this Agreement, for any delays, failure to perform, loss of performance, or interruption in service resulting directly or indirectly from a Force Majeure Event. A "Force Majeure Event" includes labor disputes; fire; weather; acts of God; acts of a public enemy; other casualty; power outages; funding delays (however caused); governmental orders or regulations; errors in data provided by you or others; international, domestic, and/or economic terrorism; or any other cause, whether similar or dissimilar to those just mentioned, beyond our reasonable control.

D. Except for actions related to your failure to pay amounts due under the Agreement, no cause of action shall be brought by either party more than one year after it accrued.

E. You recognize and agree that any limitations of liability set forth in this Agreement are fair and reasonable.

### 10. **Confidentiality.**

A. We will be providing you with Confidential Information. "**Confidential Information**" includes this Agreement and information relating to our methods, techniques, programs, devices and operations and those of Providers, the Associations, and Other Networks. You shall not disclose Confidential Information to any person or entity, other than to your employees and agents who participate directly in the performance of this Agreement and need access to the information. You agree to comply with the confidentiality and security requirements of the Rules Summary, the Laws, and the Operating Regulations. This includes the Visa Cardholder Information Security Program ("**CISP**") found at [www.visa.com/cisp](http://www.visa.com/cisp); the MasterCard Site Data Protection Program ("**SDP**"), found at [www.mastercard.com/sdp](http://www.mastercard.com/sdp); and the American Express Data Security Operating Policy ("**DSOP**"), found at [www.americanexpress.com/merchant](http://www.americanexpress.com/merchant); and any similar Association or Other Network program requirement. You acknowledge receipt of the Worldpay, LLC Privacy Notice or the NPC Privacy Notice, as applicable ("**Privacy Notice**") also available on [www.NPC.net](http://www.NPC.net). Notwithstanding anything to the contrary in the Privacy Notice or this Agreement, we have the right to use, disclose, share, and retain any information you provide or that arises out of the Services, during the term and thereafter: (i) with your franchisor or franchisee(s), association(s) you belong to or belonged to at the commencement of this Agreement; (ii) with your affiliates; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable Laws; (vi) with our affiliates, business partners and agents; (vii) to Associations and Other Networks and their designees, (viii) to Providers and their designees; (ix) to any other referral source or processor, including the applicable referrer, ISO/MSP, or independent Card office; (x) to perform analytic services for you, us and/or others, including analyzing, tracking, and comparing transaction and other data to develop and provide insights for those parties as well as for developing, marketing, maintaining and/or improving our products and services; and/or (xi) to offer or provide the Services under this Agreement. You authorize us to (i) make public the execution of this Agreement and/or the provision of Services under this Agreement; and (ii) include your name and logo on a list of our customers that may be shared with the public. Upon our request, you agree to provide testimonial information regarding the Services.

B. You must secure and prevent the unauthorized access of any systems and media containing account, Cardholder, or transaction information (physical or electronic, including account numbers, Card imprints, and terminal identification numbers). Except for Card drafts you maintain in accordance with this Agreement or the Laws or Operating Regulations, you shall render inoperative and unreadable any media you no longer deem necessary or appropriate to store. You shall notify us of the identity of any third party who will have access to Cardholder data ("Merchant Provider(s)"). You shall also ensure that (i) Merchant Providers cannot access Cardholder data unless authorized by the Operating Regulations; (ii) Merchant Providers have proper security measures to protect Cardholder data; (iii) you and Merchant Providers comply with the PCI DSS; and (iv) you have written agreements with Merchant Providers requiring compliance with the terms of this Section. You shall immediately notify us of any suspected or confirmed loss or theft of any transaction information. This includes any loss or theft from a Merchant Provider. You are responsible for demonstrating your and Merchant Providers' compliance with the PCI DSS programs. You agree to provide us reasonable access to your locations and the locations of your Merchant Providers so that we can, at our option, verify whether you and your Merchant Providers can prevent future security violations. In the event of a suspected or confirmed loss or theft of information, you agree, at your expense, to provide any information, whether requested by us, an Association, financial institutions, or a local, state, or federal official in connection with the event. You further agree to cooperate in any ensuing investigation, including any forensic investigation. The information you provide in response to an investigation shall be considered our confidential information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether you process transactions via internet, mail, phone, face-to-face or any other method.

C. Our proprietary and confidential online portal service provides reporting detail about your use of the Services ("Portal Services"). We reserve the right to disallow, discontinue, suspend, or change your use of Portal Services at any time without notice. You agree to maintain the confidentiality of any Portal Services passwords in your possession. If we provide Portal Services to you, our only obligation is to make the Portal Services available in accordance with our standard operating procedures (e.g., then-current timeframes, standards, scheduling, and procedures, including those for setup, account access, and suspension of Portal Services). You shall provide us with prompt written notice of account or user ID changes, including User IDs that are no longer active or should be deleted. You are solely responsible for any unauthorized access to Portal Services, including unauthorized employee or agent access, or third party access. We have no liability for third-party interruptions in Portal Services (e.g., internet providers), or errors or inaccuracies in the data reported to you.

**11. Continuing Unlimited Guaranty. This Section ("**Continuing Unlimited Guaranty**") applies to each person who signs this Agreement as a Guarantor (each a "**Guarantor**"). To induce us to enter the Agreement, each Guarantor jointly and severally guarantees the prompt and full payment of all Obligations (defined below) when due.**

A. The word "Obligation" is used in its most comprehensive sense. It includes all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) that Merchant owes us, whether Merchant created the obligation alone or with others, and whether Merchant is primarily or secondarily responsible. Obligations can be secured or unsecured, absolute or contingent, liquidated or unliquidated, and direct or indirect. Obligations can be evidenced by note, draft, a guaranty agreement, or otherwise. Obligations can exist now or arise in the future. It includes all payment obligations, indemnification obligations, and indebtedness Merchant owes us arising from or related to the transactions or Services under this Agreement.

B. Guarantor promises to pay any Obligation that Merchant has not promptly paid when due. Guarantor promises to pay irrespective of our actions or inactions regarding the Obligations, or whether we have enforced any security interest created under this Agreement. Guarantor further promises to pay irrespective of the invalidity, insufficiency, or unenforceability of any Obligation. Guarantor's obligations shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against you (Merchant) or us, except payment or performance of the Obligations.

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C. Guarantor waives notice of any acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest, notice of protest, and notice of dishonor or other nonpayment of any Obligations. Further, Guarantor waives notice of sale or other disposition of any collateral or security we now hold or later acquire. The duties of Guarantor shall not be released, discharged, or modified by: (i) our extending the time for payment (for Merchant or Guarantor); or (ii) our delay or omissions in exercising any rights, taking any actions, or pursuing any remedies against Merchant or Guarantor. Guarantor agrees that we may release or modify any collateral, security, or other guaranties without notice or consent from Guarantor and without modifying Guarantor's duties to us. This is a guaranty of payment and not of collection. We have no obligation to demand or pursue any rights against Merchant, anyone else (including another Guarantor), or to exhaust any rights or remedies related to any collateral, security, or other guaranties before demanding payment from Guarantor. Guarantor waives all defenses based on suretyship or impairment of collateral. Following a default under this Agreement, we may apply and/or setoff against amounts due to us any deposits, account balances, or other credits of Guarantor in our possession. Guarantor grants us a security interest in the items just described.

D. The obligations of any Guarantor shall be joint and several with Merchant and any other Guarantor under this Agreement. The property described in any collateral security documents Guarantor provides, whether previously, contemporaneously, or in the future, secures this Continuing Unlimited Guaranty. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees and assignees. Other terms and conditions applicable to this Continuing Unlimited Guaranty can be found in Section 12.L.

12. **Miscellaneous Terms and Conditions.** The following terms and conditions also apply.

A. **Title to the Services.** You agree that the Services are licensed and not sold. As a result, you only acquire a nontransferable, revocable, non-exclusive right to use the Services. The right exists only during the term of the Agreement, and only for the purpose of accepting and managing payments. We retain all right(s), title, and interest in and to the Services. This includes rights in materials we deliver to you, and any invention, development, product, trade name, trademark, service mark, software program, or derivative from any item just listed. You shall not: (i) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell, or distribute any of our material; (ii) permit any third party to use or benefit from the Services through a rental, lease, timesharing, service bureau, or other arrangement; (iii) work around, bypass or circumvent any of the technical limitations of the Services, use any tool to enable disabled functionalities, or decompile, disassemble, or reverse engineer the Services (unless the restriction is prohibited by the Laws); (iv) perform any act that interferes with proper access or use of the Services; or (v) use the Services in any manner not expressly allowed under this Agreement.

B. **Notices.** Unless otherwise stated, you shall deliver notices and other communications in writing via certified mail or reputable overnight courier (postage prepaid) to the following address: Worldpay ISO Inc, Attention: General Counsel/Legal Department, 8500 Governors Hill Drive, MD# 1GH1Y1, Symmes Township, OH 45249-1384. Notices delivered in this manner become effective upon our actual receipt. Our communications to you shall be delivered via email, facsimile (effective upon transmission confirmation), ordinary or certified mail (effective the seventh day after mailing), reputable overnight courier (effective the first day after submission to the courier), or via a report, communication via Portal Service or invoice (effective when made available).

C. We have no obligation to process any Visa or MasterCard transaction beyond the authority of a U.S. member of Visa and MasterCard or any Discover Network Card or American Express transaction outside the United States and other United States territories.

D. **Account Debiting Authorization.** In addition to our other collection rights in this Agreement, you expressly authorize us or our affiliate to collect amounts due us or our affiliate by debiting any deposit account you maintain with Member Bank.

E. **Amendments.** We may amend this Agreement or change rates at any time. You do not have the same right. We will provide notice of changes in accordance with the notice Section of this Agreement. If you continue to process transactions after, or fail to notify us that you contest a change within seven days of actual or constructive notice, you will be deemed to have accepted that change. We have the right to make Association and Other Network changes and increases in interchange, fees, or assessments without providing you notice. You agree to pay these increased fees and charges throughout the term. We are not bound by any changes, additions, or deletions you make to the Agreement unless they are part of a written amendment that is signed by you and us.

F. **Assignment.** We have a right to assign this Agreement. Unless you get our prior written consent, you do not. This means that any assignment, even an assignment by operation of law, is prohibited without our consent. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees, and assignees (if applicable). If you assign this Agreement without our consent, the assignee will be bound by the terms of this Agreement. Your sale of the business does not relieve the original owner or original Guarantors of chargeback or other liabilities, even those occurring after sale.

G. **Independent Contractors.** We are not your agent, and we are not in a joint venture, or partnership with you (or vice-versa). Both you and we are independent contractors.

H. **No Third-Party Beneficiary.** Unless expressly stated in these Terms and Conditions, this Agreement is for the benefit of, and may be enforced by, only you and us, and our successors and permitted transferees and assigns. It is not for the benefit of any third party.

I. **Employee and Agent Actions.** You are responsible for the acts or omissions of your employees and agents related to this Agreement and the use of the Services.

J. **Severability and Non-Waiver.** The invalidity or illegality of any part of this Agreement shall not invalidate the rest of the Agreement. The Agreement shall instead be construed as if the invalid or illegal provision were not part of the Agreement. Our delay or failure to exercise any right under this Agreement shall not operate as a waiver or estoppel of that right.

K. **Signature.** An original, a copy, facsimile copy, or digital, photographic or electronic copy of your signature serves as the signature for this Agreement. Further, duplicate original records of this Agreement (digital, photographic, or otherwise) have the same force and effect as the original. The parties agree that contracting through electronic means including e-signature or "click to agree" processes is an acceptable form of showing agreement.

L. **Arbitration, Governing Law, Jury Waiver, and Class Action Waiver.** This Section applies to you, any Guarantor, or any other party who claims an interest in this Agreement.

i. **Arbitration.** The parties agree to submit any unresolved dispute, controversy, or claim between them to binding arbitration in lieu of litigation or other court or administrative proceedings. ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. The Federal Arbitration Act governs the interpretation and enforcement of the arbitration provisions in this Section. It also governs any arbitration proceedings that take place pursuant to this Section. The parties shall make arbitration filings in Cincinnati, Ohio or Hamilton County, Ohio. Filings must comply with the Commercial Arbitration Rules of the American Arbitration Association. The parties shall share the costs, fees, and expenses of the arbitration and the arbitrators equally. The arbitrator's award, including awards of attorney's fees, costs, and expenses, shall bind the parties and may be entered as a judgment in any court of competent jurisdiction. The statute of limitations is a defense to the commencement of an arbitration proceeding. However, the filing of an arbitration proceeding tolls the statute of limitations. Nothing in this Section prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

ii. **Governing Law.** The parties have entered into this Agreement in Ohio. The laws of Ohio govern the interpretation, construction, and enforcement of this Agreement, including the Continuing Unlimited Guaranty. Without waiving our right to enforce the Arbitration provisions in this Section, you/Guarantor agree only to bring a legal suit, action, or proceeding arising out of or related to this Agreement or pertaining in any way to the relationship between us and you, or us and Guarantor (an "Applicable Claim"), in a state or federal court in Hamilton County, Ohio. With respect to any Applicable Claim brought by us, you or Guarantor, you/Guarantor waive any objection to venue, and submit to the jurisdiction of a state or federal court in Hamilton County, Ohio. Nothing in this Section prohibits us from bringing any action or from exercising our rights under this Agreement in another state or country. You/Guarantor agree that our service of a Summons and Complaint at the address listed in the Agreement constitutes proper service and subjects you/Guarantor to the personal jurisdiction of the respective court. Unless the Operating Regulations require otherwise, you shall bring any claim you have against Member Bank against us (subject to the limitations and restrictions of the Agreement), and not against Member Bank.

iii. **Jury Waiver.** YOU AND/OR GUARANTOR KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS TO HAVE A CASE DECIDED BY A JURY. YOU AND/OR GUARANTOR AGREE THAT OUR FILING OF A COPY OF THIS PARAGRAPH IN ANY PROCEEDING CONCLUSIVELY PROVES YOUR WAIVER.

iv. **Class Action Waiver.** YOU AND/OR GUARANTOR ALSO WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST US OR MEMBER BANK.

M. **Headings and Construction.** The parties have used the headings in this Agreement for convenience only. No heading shall affect the interpretation of any provision. These Terms and Conditions are subordinate to the Rules Summary, the Operating Regulations, and the Application (unless the Application is blank). Our approval of the Application does not guarantee you a right to receive processing. The parties have chosen the language in this Agreement to express their mutual intent. No rule of strict construction shall operate against any party. This Agreement constitutes the entire agreement between the parties with regard to the Services, and supersedes all prior or other agreements or representations regarding the Services, whether written or oral. All prior understandings have merged into this Agreement.

N. **Other Rights and Acknowledgements.** We may change Member Banks at any time without notifying you. Any Member Bank may delegate all or part of its duties to its affiliate at any time, also without notifying you. We are an agent of Member Bank in connection with Visa and MasterCard transactions, and may use an ISO/MSP in connection with this Agreement. The ISO/MSP is an independent contractor and not our agent. Accordingly, ISO has no authority to execute an Agreement on our or Member Bank's behalf. You owe Member Bank the same obligations you owe us. We may exercise any rights or remedies in this Agreement individually or jointly with Member Bank, and may likewise exchange or allocate the duties and obligations each owes to you.

O. **Attorney's Fees.** You shall reimburse and indemnify us for all attorneys' fees and other costs and expenses we incur or pay in: (i) defending our rights under this Agreement; (ii) enforcing the Agreement; or (iii) collecting any amounts you owe us under the Agreement.

P. **Survival.** Provisions that impose or could impose a continuing obligation on you shall survive the expiration or termination (for any reason) of this Agreement. This includes your liability for chargebacks and reversals, your duty to indemnify us and Member Bank, and your duties with respect to account maintenance.

Q. **Association/Other Network Agreements.** You may sign an agreement with an Association or Other Network ("Other Merchant Agreement"). An Other Merchant Agreement is a separate and independent agreement. We have no responsibility for Association's, Other Network's, or your breach of an Other Merchant Agreement. We do not have to comply with the terms or conditions of an Other Merchant Agreement. We have a right to cease providing Services for any Other Networks or Associations in our sole discretion. You agree to pay all fees, fines, assessments and penalties the Associations or Other Networks impose. We may allocate those fees, fines, assessments, or penalties in any manner and in our sole discretion. You agree that all POS terminals operate with unique keys according to PIN debit network requirements.

R. **Routing.** You authorize us to decide where to route a Card transaction.

S. If applicable, we and you shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their color, race, religion, sex, or national origin. Moreover, these regulations, if applicable, require each of us to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

13. **Regulatory Accounting Assistance Program.** The Regulatory Accounting Assistance Program ("RAAP") is an online and paper reporting tool that will assist you with reconciling your gross sales with your net sales (for sales processed with us). We have a right to charge you a RAAP fee for each of your unique Taxpayer Identification Numbers.

## Merchant Processing Agreement Terms and Conditions

**14. Alternate Funding.** If you request and are approved for Alternate Funding, we will generally initiate an ACH of settlement funds due to you to the Designated Account within one business day (i.e., any day the Federal Reserve is open for business, other than Sundays or State or Federal holidays), provided we receive the complete transaction data by the applicable cutoff time. We have no liability to you if we do not ACH your settlement funds within one business day. If you are not approved for Alternate Funding, we will set you up with Premium ACH for your deposit timeframe. We can change your deposit timeframe from Alternate Funding to Premium ACH at any time and without giving you advance notice. We can also, in our sole discretion, delay your settlement payments for up to seven days from the date we received the settlement payment. This does not preclude us from exercising our right to establish a Reserve Account or to suspend payments pursuant to this Agreement. On the next business day following the expiration of the delay period, we will begin crediting the settlement payments to your Designated Account, less any amounts you owe us. This delay of the settlement payments will be ongoing and will continue as long as we are providing you with processing Services (i.e., it will be a rolling delay). Additionally, we have a right to delay, in our sole discretion, crediting the Designated Account with funds evidenced by submitted Card transactions. You are responsible for verifying the amount of funds actually deposited to and available in your Designated Account on a daily basis. We are not responsible for the availability of funds represented by submitted Card transactions, or for any charges you incur for overdrawing the Designated Account.

**15. NPC Security Services.** Security Services may individually or collectively mean EMV Support, PCI Program, and point-to-point encryption ("P2PE") or such other service as designated by us. You may utilize P2PE products and services on select terminals using services provided wholly or partially by a third party with our support (collectively referred to as "Security Services"). You bear all risk and responsibility for conducting your own due diligence regarding the fitness of Security Services for a particular purpose and for determining compliance with the Rules Summary, the Operating Regulations, and the Laws. Accordingly, your use of Security Services is at your own risk. Our decision to offer Security Services shall not limit your duties and obligations contained in this provision or the Agreement. You acknowledge that the receipt of Security Services may require the use or upgrading of certain terminals and/or equipment or new message specifications (which shall be at your sole expense) and may not be supported on all terminals/equipment. We do not warrant or guaranty that use of the Security Services, in itself, will: (i) result in your compliance with Rules Summary, Operating Regulations, and/or Laws; (ii) prevent any and all unauthorized breaches of your terminals, systems or facilities; or, (iii) be uninterrupted or error-free. You shall not acquire any interest in (ownership, intellectual property or otherwise) any of the third party provider software used to provide the Security Services. You shall not, and shall have no right to, own, copy, distribute, sub-lease, sub-license, assign or otherwise transfer any portion of such third party provider software used to provide the Security Services or any materials provided by us or to modify, decompile, or reverse engineer any such software, materials, or the Services.

**A. EMV Non-Enabled Fee.** The EMV Non-Enabled Fee is effective if you do not have EMV enabled equipment and/or software. The EMV Non-Enabled Fee is determined based on the chargeback liability risk of your MCC as determined by us. Transactions will be evaluated and assessed monthly at the MID level. This fee is based on the gross sales amount of each card present transaction.

**B. EMV Support.** Europay, MasterCard, and Visa ("EMV") is a set of global standards for credit, debit and contactless card payments. EMV chip cards help prevent in-store fraud and are nearly impossible to counterfeit. If you have not made the investment in chip-enabled technology, you may be held liable for card-present fraud. EMV acceptance requires an EMV enabled standalone terminal or POS system. We are enabled to process in-store EMV transactions to help reduce fraud liability.

**C. Point to Point Encryption.** The P2PE Service is a two part service designed to: (i) encrypt (make unreadable) card data information at the origin of the payment transaction, which is a PCI-PTS certified Secure Cryptographic Device (SCD) that has licensed P2PE functionality that aligns with the P2PE technologies hosted by the us; and, (ii) decrypt card data information at the destination of the transaction, which are our data systems. You acknowledge and agree that SCD P2PE functionality is required and may require you to engage an appropriate third party provider or authorized reseller and said licensed functionality may incur fees in addition to those set forth herein. Card data information protected by the P2PE Service may include Track 1 or Track 2 data (Magnetic Stripe Data obtained through a magnetic card swipe read) or PAN Data (Manually Entered Personal Account Number ("card") data) as appropriate to the type of transaction processed on the SCD. The SCD functionality supporting the P2PE Service is designed to securely store or generate encryption keys which are used in conjunction with the P2PE functionality to encrypt card data at the moment that the card data is captured by the SCD. The P2PE Service applies only to transactions that were encrypted by the SCD and sent from the terminal to our authorization and settlement systems pursuant to the Agreement. Supported transactions include those associated with credit (signature), debit (signature) and debit (PIN). Our provision of P2PE Service to you is subject to the availability of the licensed encryption software from the applicable third party provider and your compliance with the Agreement.

**D. PCI Program.** The Card Organizations have mandated that all merchants must comply with the PCI DSS found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) (see [www.visa.com/cisp](http://www.visa.com/cisp) for additional information). We have a PCI DSS program ("PCI Program") to assist merchants with PCI DSS validation. Member Bank is not a party to or liable for PCI Program.

**a. Benefits of PCI.** Upon enrollment in the PCI Program, you are eligible to receive:

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

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

**b. PCI Compliance Validation Process**

(i) Validation Requirement. In order to take full advantage of the PCI Program, you must validate your compliance with the PCI DSS on an annual basis or as otherwise required by us or a Card Organization as more fully set forth herein. To validate your compliance

with the PCI DSS, you must successfully complete a SAQ and, if applicable, a vulnerability scan as provided below.

(ii) Self-Assessment Questionnaire (SAQ). A SAQ is a list of questions developed by the Payment Card Industry Security Standards Council ("PCI SSC").

(iii) **Vulnerability Scans.** A vulnerability scan ("Scan") is necessary for any merchant with Internet accessible I/P addresses connected to or that could allow access to their cardholder data environment. This includes, but is not limited to internet connected terminals, internet connected registers, and ecommerce environments. Here are the steps to receive your Scan:

1. Once you have completed your SAQ, the system will guide you to schedule a Scan, if applicable.

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

3. Upon completion of the Scan, you will receive a link to your full compliance report. A network vulnerability review failure means that the Scan discovered areas of severe vulnerability. The report describes the issues found and provides you with recommendations for scan resources to begin fixing the problems. The tool will guide you to remediate the failed Scan and work toward achieving compliance. Once you have addressed the vulnerabilities, simply schedule a follow-up Scan to ensure your remediation of the problem meets the PCI DSS requirements.

(iv) **Certificate of Validation.** Upon successful completion of the SAQ and Scan, if applicable, your Certificate of Validation will be issued. You can print your Certificate through our online portal or, if you have completed a paper version of the SAQ, your Certificate will be mailed to you.

(v) **Re-Validation.** You must maintain a current, successfully completed SAQ and timely pass quarterly Scans, if applicable, in order to take full advantage of the PCI Program. A SAQ is no longer current if the Certificate of Validation issued by us to you is more than one (1) year old. You are also required to re-validate by completing a new SAQ and passing Scans, if applicable, when you make a change in your processing environment or if you fail to timely complete a required quarterly Scan.

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

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

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

Once you have successfully completed the re-validation of your PCI DSS compliance, we will issue you a new Certificate of Validation for the current validation period.

**c. Costs.**

(i) We may assess you a non-compliance fee if you do not validate your compliance with the PCI DSS.

**E. Security Policy.** As part of PCI DSS, the Card Organizations require that you have a security policy that covers the security of credit card information.

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

**G. Further Information.** Please contact our customer service representative.

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

The Waiver provided under this Section is also subject to the following:

(i) Our agreement to waive your liability to us for the fees and costs described in this Section is only effective upon: (1) your continued validation of compliance with the PCI DSS and participation in the PCI Program; and (2) your successful completion of the PCI Compliance Validation Process described in Section 15.D.b above; provided, however, that there is no change in your business practices regarding Card acceptance. Your continuing qualification for the PCI Program is premised upon initial validation of your compliance with the PCI DSS as described in Section 15.D.b above and timely re-validation of your compliance with the PCI DSS, including annual completion of a SAQ and passing quarterly vulnerability scans, if applicable, payment of the Program cost, and otherwise complying with the terms of the Program and the Agreement.

(ii) If you are in compliance with the requirements of subsection (i) above, we agree to waive up to \$50,000 in fees and costs described in this Section for each unique Merchant Identification Number (MID). If you have multiple MIDs that have the same federal tax identification number (or in the case of a sole proprietorship, the same social security number),

## Merchant Processing Agreement Terms and Conditions

then the maximum aggregate Waiver amount for those MIDs is limited to \$100,000. In addition, if a MID is one of a group of MIDs that are eligible for and receive a multi-merchant discount for the PCI Program fees, the aggregate Waiver for all MIDs in such group is \$100,000.

(iii) Your validation of compliance with the PCI DSS through the PCI Program is required to be eligible for the Waiver. To validate your compliance, Merchant must successfully complete the PCI Compliance Validation Process described in Section 15.D.b, including any required re-validation of your compliance with the PCI DSS as described in Section 15.D.b (v). You will not be eligible for the Waiver if your SAQ is not current, if you have not timely completed the quarterly vulnerability scans, or if you have otherwise failed to maintain compliance with the PCI DSS through the PCI Program.

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

**16. Representations and Warranties.** You represent and warrant that:

A. **Information.** Any information you have submitted is true, complete, and accurate. This includes information about your entity type, the nature of your business (e.g., products and services sold, manner of sale, etc.), and the financial condition and ownership and executive structure of your business.

B. **Corporate Power.** You and the person signing this Agreement on your behalf have the power to execute this Agreement and to perform under this Agreement. The person signing this Agreement may execute any future documents and take any future action on your behalf.

C. **Existence/Organization.** You are a person or an entity validly existing and organized in the United States.

D. **No Litigation.** You have no knowledge of an actual or threatened action, suit, or proceeding against you that might impair your financial condition or prevent you from operating your business as you now conduct it. You have never appeared on MasterCard's MATCH system or the Combined Terminated Merchant File, except as already disclosed in writing.

E. **Transactions.** The Card Transactions you submit to us: (i) represent the obligations of the authorized Cardholder for merchandise or services actually sold, rented, or rendered (except for any delayed delivery or advance deposit authorized by the Rules) and must not involve any element of credit for any other purpose; (ii) represent *bona fide* Card/rentals of merchandise and/or services not previously submitted and do not represent a refinancing of any prior obligation; (iii) are not subject to any dispute, setoff, or counterclaim against the price; (iv) are not, to your knowledge or notice, fraudulent, not authorized by the Cardholder, or subject to any other infirmity or impairment; and (v) do not result from any sale outside your normal course of business, as described in the Application.

F. **Products and Services.** The following items are true: (i) you have complete power and authority to sell the products and services you offer and to display the advertisements you use; (ii) your products and services are not illegal, and you will not accept a Card for any illegal transaction; (iii) you will prominently and unequivocally inform each Cardholder of your identity at all points of interaction during the transaction to distinguish you from any other party; (iv) your products, services, and business name do not infringe upon the rights of any other person, including trademark, copyright, confidentiality or patent rights; and (v) you will not sell, market, or display any products or services that would jeopardize our reputation.

G. **PIN Debit & EBT Card Processing Services; Availability of Terminals.** We will process PIN debit Card transactions for you if indicated in the Application or an amendment. If you accept EBT Cards, the terms in Schedule I shall apply. We will provide sponsorship services to you (through a third party bank), if applicable. You will take all steps necessary to ensure that point-of-sale devices and PIN pads will be available for Cardholder use and will function in a reliable manner.

**17. Special Association Considerations.** There are a few special rules regarding your participation in the Discover or American Express Card programs.

A. **Discover.** We have no liability for not processing or settling a retained Discover merchant's Discover Cards (as defined by Discover).

B. **American Express.** The following terms apply only to your American Express Program (see the American Express merchant requirements for capitalized terms).

- i. You authorize us to exchange transaction and settlement information with American Express on your behalf.
- ii. You agree to comply with the American Express Program terms provided in the Rules Summary, and the American Express Merchant Operating Guide, which can be located at <http://www.americanexpress.com/merchantopguide> and is incorporated herein by reference.
- iii. We may disclose Transaction Data, Merchant Data, and other information about you to American Express. American Express may use the disclosed information for any lawful business purpose.
- iv. In the event your Charge Volume exceeds (1) \$1,000,000 in a rolling twelve month period, or (2) \$1,000,000 in any three consecutive months ("High CV Merchant"), American Express may convert you to a direct Card acceptance relationship. Upon conversion, you will be bound by American Express' then-current Card Acceptance Agreement and corresponding pricing and fees.
- v. You shall only sell *bona fide* goods and services at your establishment(s). Your Card transactions shall be free of liens, claims, and encumbrances, other than ordinary Card tax. Additionally, you shall not assign any payments you are due under the Agreement to a third party. However, you may sell and assign future transaction receivables to us or our affiliated entities and/or any other cash advance funding source we (or our affiliates) partner with.
- vi. This Agreement confers third party beneficiary rights in American Express for enforcing terms against you. It imposes no obligations on American Express.
- vii. You may opt out of accepting American Express Cards in writing without affecting your rights to accept other payment products.
- viii. We may terminate your right to accept American Express Cards if: (i) you breach the Agreement; (ii) American Express instructs us to do so; or (iii) you engage in fraudulent or any other activity justifying termination.

- ix. You may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless chargeback has been exercised, you have fully paid for the charge, and you otherwise have the right to do so.
- x. You agree to remove any American Express Licensed Marks from your website or any other location when your participation in the Program ends.
- xi. If you do not participate in the American Express Program or EA Program, we will have no liability for not processing or settling your American Express transactions. Further, American Express cards will not be included in the definition of Cards.

**18. Key Definitions.** The following definitions are especially important:

A. **"Agreement"** means the Merchant Processing Agreement (including these Terms and Conditions), the Application, Rules Summary, Operating Regulations, and any attached addenda, exhibits, schedules, or other documents.

B. **"Associations"** means, collectively, MasterCard International Inc. ("**MasterCard**"), VISA U.S.A., Inc. ("**VISA**"), DFS Services LLC d/b/a Discover Network ("**Discover**") (including any card issuer of payment cards processed and settled through the Discover network, which may include Japanese Credit Bureau ("**JCB**"), China Union Pay ("**CUP**") and Diners Club International ("**DCI**"), and American Express Travel Related Services Company, Inc. ("**American Express**") and certain similar entities.

C. **"Application"** means either the physical/virtual form or the act of making application to Worldpay ISO Inc. by providing information via a web page user interface.

D. **"Cards"** means Association or Other Network branded cards that enable consumers to purchase goods and services from Merchants.

E. **"Cardholder(s)"**: persons authorized to use Association or Network branded cards.

F. **"Effective Date"** means the later of (i) the date you signed the Application, or (ii) the date we approved the Application.

G. **"ISO/MSP"** means an independent Card organization/member service provider operating under the Operating Regulations.

H. **"Laws"** means all applicable state, federal, and local laws, rules, and regulations.

I. **"Member Bank"** means a member of VISA®, MasterCard® and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement.

J. **"Operating Regulations"** means the Association and Network bylaws, operating regulations, rules, policies and procedures. The Operating Regulations may be changed or updated from time to time without notice.

K. **"Other Networks" or "Networks"** means, collectively, all Processor supported networks not defined above as Associations.

L. **"Rules Summary"** means the document containing a summary of key Operating Regulations governing this Agreement as amended from time to time.

M. **"Service"** means payment processing (i.e. the facilitation of Card transaction) and any additional services described in this Agreement and/or provided by us.

**ATTACHMENTS TO THIS MERCHANT PROCESSING AGREEMENT include:**

- **Exhibit A – Rules Summary**

- Schedule I – Applicable and included if Voyager Fleet Card is selected on the applicable Merchant Addendum

- Schedule II – Applicable and included if EBT is selected on the applicable Merchant Addendum

- Schedule III – Applicable and included if wireless terminals using GPRS services or CDMA services are selected on the Merchant Application.

## **EXHIBIT A** **Rules Summary**

All capitalized terms not defined below will have the meanings ascribed in the Bank Card Merchant Agreement/Merchant Processing Agreement.

### **Good Business Practices That Will Help Reduce Your Processing Costs**

- Use an imprinted sales ticket with signature for all “key entered” transactions. This will assist you with issues such as chargebacks.
- Close and settle your sales transactions daily. This will help reduce those instances where “Mid-Qualified” or “Non-Qualified” discount rates are assessed.
- Balance your Merchant Account, processing statements from Processor, Member Bank, Associations, and Third Party Service Providers, and your sales slips to assure that you are receiving anticipated funds in a timely fashion, as more fully described below. Because of the number of parties involved in the processing of credit card and other electronic transactions, the only way to ensure that you receive all funds is by balancing each day’s sales tickets against daily ACH deposits.
- Respond within the acceptable time frame to retrievals and/or chargebacks in order to assure the most favorable outcome possible.
- Do not call the voice authorization center for services other than authorization.
- Settle disputes with your customers before they reach “chargeback” status. A chargeback is like a returned check, it is expensive and time consuming.
- Read your Merchant Processing Agreement and these Rules closely and thoroughly.
- Shipping products overseas without a card present should be closely monitored. Merchant has little ability to prevent a chargeback in this type of situation.
- You should carefully reconcile sales tickets against deposits daily, particularly in the following situations: installation of new equipment, new downloads, adding new products to your terminal, power outages, change in your Merchant Account.

### **1. Honoring Cards**

A. You shall honor all Cards when presented in accordance with these Rules for the purchase of goods or services or in processing a request for credit resulting from such a transaction, by an authorized holder of a Card without imposing any special conditions not required by any Rules. However, if you do not deal with the public at large (for example, if your business is a private club), you are required to honor a valid Card only if presented by a cardholder who has purchasing privileges or a membership with you. You may attempt to steer customers who initially present a Card to an alternative method of payment, such as by providing discounts for cash, but you may not do so in a confusing manner that denies consumer choice. You may also consider whether present circumstances create undue risk, for example if the sale involves high-value electronics, but the card signature panel is not signed, and the Cardholder does not have any other identification.

B. **Cardholder Identification.** You will identify the Cardholder and check the expiration date and signature on each Card. You 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; or (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) or the account number is listed on a current Electronic Warning Bulletin file. Unless permitted under the Laws and Rules, you will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver’s license number, as a condition for honoring a Card.

C. **Responsibility for Transactions.** Merchant is responsible for ensuring that the Cardholder understands that the Merchant is responsible for the transaction, including goods or services that are the subject of the transaction, and for related customer service, dispute resolution, and performance of the terms and conditions of the transaction. A Merchant must prominently and unequivocally inform the Cardholder of the identity of the Merchant at all points of interaction so that the Cardholder readily can distinguish the Merchant from any other party such as a supplier of goods or services to the Merchant.

D. **Card Recovery.** You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member Bank (or its designee), the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and/or encoded account

number do not agree, or the Card does not have a MasterCard hologram on the lower right corner of the Card face. This obligation upon you in no way authorizes a breach of the peace or any injury to persons or property, and you will hold Processor or Member Bank harmless from any claim arising from any injury to person or property or other breach of peace.

E. **Return Policy.** You will properly disclose to the Cardholder, at the time of the transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. **No Claim Against Cardholder.** You will not have any claim against, or right to receive payment from a Cardholder unless Member Bank or Processor refuses to accept the Sales Draft or revokes its prior acceptance of the Sales Draft (after receipt of a chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive such payment, you will promptly remit them to Member Bank. You may not reimburse a Cardholder in cash or check for any transaction.

G. **Disputes With Cardholders.** You must ensure that the Cardholder understands that you are responsible for the transaction, for any related customer service, dispute resolution, and performance of the terms and conditions of the transaction. All Disputes between you and any Cardholder relating to any transaction will be settled between you and the Cardholder. Neither Processor nor Member Bank bears any responsibility for such transactions. You shall not require a Cardholder to waive his or her rights to dispute the transaction as a condition of the sale.

H. **Employee Actions.** You are responsible for your employees’ actions while in your employ.

I. **Prohibitions on Card Acceptance.** You may not do any of the following: (i) submit for payment into interchange any transaction that is illegal or that you should have known was illegal; (ii) require a Cardholder to complete a postcard or similar device that includes the Cardholder’s account number, expiration, signature or any other account-related data in plain view when mailed; (iii) add any tax to a transaction, unless applicable law expressly requires you to impose a tax, and in such event the tax amount must be included in the transaction amount and not collected separately; (iv) request or use an account number for any purpose other than as payment for goods or services, except as permitted by the Rules; (v) disburse funds in the form of travelers cheques, if the sole purpose is to allow cardholder to make a cash purchase of goods or services from you, (vi) permit a Cardholder to purchase travelers cheques, or other similar item, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (vii) accept a Card to collect or refinance an existing debt that has been deemed uncollectible; (viii) enter into interchange a transaction that represents collection of a dishonored check; (ix) require a Cardholder to waive his/her rights to dispute a transaction as a condition of sale; (x) accept Cardholder payments for previous Card charges incurred at the Merchant location; (xi) submit for payment into interchange any transaction that may in the sole discretion of a Card Organization, damage the goodwill of such Card Organization or reflect negatively on a Card Organization’s brands; (xii) add any surcharge to a debit transaction; (xiii) enter into interchange any transaction receipt for a transaction that was previously charged back to Member Bank and subsequently returned to you, irrespective of Cardholder approval (you may pursue payment from the customer outside of the Card Organization system); (xiv) accept a Card for the purchase of Scrip; (xv) accept a Visa Electron Card or a Visa TravelMoney Card for manual cash disbursement; or (xvi) redeem a Visa Prepaid Card for cash. You may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Card Organizations and/or issuers and the minimum transaction amount does not exceed \$10.00 (or any higher amount established by applicable law or the Rules). Unless otherwise set forth below or otherwise allowed by applicable law or the Rules, you may not establish a maximum sale amount as a condition for honoring Cards. You may establish a maximum sale amount as a condition for honoring Cards if you are a department, agency or instrumentality of the U.S. Government, you are a corporation owned or controlled by the U.S. Government, or your primary business is reflected by one of the following MCCs: 8220 (Colleges, Universities, Professional Schools and Junior Colleges), 8244 (Schools, Business and Secretarial), or 8249 (Schools, Trade and Vocational), provided that the maximum transaction amount does not differentiate between Card Organizations and/or issuers.

J. **Security Features.** You are required to examine the Card security features prior to completing a sale. You should examine the Card to be sure there has been no tampering to the signature panel. Specific Card security features are as follows:

i. **Visa:**

- a. The “DOVE” hologram should appear to fly when tilted.



- b. All Visa account numbers begin with a "4" and can be up to 19 digits long.
- c. The first four digits of the embossed account number match the four digits printed on the account number of the Card.
- d. The "V" to the right of the expiration date should be a special letter (a "Flying V" not a normal "V").

ii. **MasterCard:**

- a. The MasterCard Global hologram or the Debit MasterCard hologram and the MasterCard brand mark stacked within a retaining line, or the MasterCard brandmark without a retaining line if the hologram is on the back.
- b. All MasterCard account numbers are 16 digits long.
- c. The first four digits of the embossed account number match the four digits printed on the account number of the Card. The last four digits of the account number are embossed over the hologram.

iii. **Discover Network:** (certain valid devices (e.g., radio frequency enabled Cards, key fobs, contactless Cards, and JCB, CUP and DCI Cards) may not display the features described below).

- a. Card numbers are at least 16 digits embossed on the front of the Card.
- b. The word DISCOVER or DISCOVER NETWORK will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- c. An overprint on the signature panel reads Discover Network.
- d. The Discover Network three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water and stars on a repetitive pattern background (the "Discover Network Hologram"), appears on the front of certain Discover Network Cards. The hologram reflects light and appears to move as the Card is rotated.

When an Electronic Cash Register or Electronic Draft Capture terminal reads the magnetic stripe on the Card, you must check the Card account number on the terminal (if displayed) against the account number embossed on the Card or follow such other security check as is mandated by Processor from time to time. If the Card is read with a terminal that displays the Card number and the Sales Draft is printed, you shall verify that the account number displayed on the terminal and the printed card numbers on the Sales Draft match the embossed numbers on the face of the Card. In the event that they do not match, the sale must not be completed. Failure to follow these checks and procedures will expose you to chargebacks. If the terminal is programmed to require you to key the last 4 or more digits of each Card used for a sale, and the terminal indicates that the numbers keyed are not the same as those present on the Card, the sale must not be completed.

K. **Advertising.** You must display Visa, MasterCard, Discover Network and any other applicable Card issuer, Debit Network and EBT Network decals and program marks on promotional materials that Processor furnishes, including, if applicable, the JCB, CUP, DCI and/or Electron symbol, in equal prominence near the point-of-sale devices and as otherwise required by the Rules. Your use of the promotional materials of Visa, MasterCard, Discover Network or any other Association or State will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network or any other Association or State endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover Network or any other Association or State in stating eligibility for your products or services.

L. **Acceptance Procedures.** You may ask or incent your customers to use alternative forms of payment other than a Visa or MasterCard. Discounts can be offered on alternate card brands, card types or payment types. Card brand or payment method preference can be promoted, as well as the ability to inform your customers of the costs associated with accepting a particular card type or brand.

i. **MasterCard Specific Requirements.** You may request or encourage a customer to use a payment card with an acceptance brand other than MasterCard or other form of payment or a Card of a different product type (e.g., traditional cards, premium cards, rewards cards) than the Card the consumer initially presents. You may do so by methods that include, but are not limited to:

- a. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an acceptance brand other than MasterCard or other particular form of payment;
- b. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer, who initially presents a MasterCard, uses instead another payment card or another form of payment;
- c. expressing a preference for the use of a particular payment card or form of payment;

- d. promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that merchants will abide by the MasterCard trademark standards relating to the display of its marks); or

- e. communicating to customers the reasonably estimated or actual costs incurred by you when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

You are free to engage in the POS practices that are described above, or any other substantially equivalent practices.

ii. **Visa Specific Requirements.** You may steer customers to use a particular network brand, such as Visa or MasterCard; to a type of payment card, such as a "non-reward" credit card; or to another preferred form of payment. You may also encourage a customer who initially presents a Visa card to use a payment card with a different network brand, a different type of payment card, or a different form of payment. You may engage in any of the following steering activities:

- a. offering a customer a discount or rebate, including an immediate discount or rebate at the point of sale;
- b. offering a free or discounted product;
- c. offering a free or discounted or enhanced service;
- d. offering the customer an incentive, encouragement or benefit;
- e. expressing a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- f. promoting a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence or sequencing of payment choices, or through other communications to a customer;
- g. communicating to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment; or
- h. engaging in any other practices substantially equivalent to these.

You are not required to display the Visa mark in a size as large as other payment marks. You may promote acceptance brands other than Visa through the size, prominence, or sequencing of payment choices. However, you must continue to respect a cardholder's ultimate decision to pay with Visa: you still have an obligation to accept for payment properly presented Visa cards, including rewards cards. In addition, surcharging of Visa cards and steering among Visa cards based on the issuing bank are not permitted and you must ensure that your steering practices are not performed in a confusing manner.

iii. **American Express Specific Requirements.** If you accept American Express cards, you must comply with the American Express rules regarding card acceptance. You should review your agreement with American Express for further details on the requirements for American Express card acceptance Section 36 of this Exhibit A.

**2. Authorization.**

A. **Required on all Transactions.** You will obtain a prior authorization via electronic terminal or similar device before completing any transaction, including MO/TO transactions. You will follow any instructions received during such authorization process. Upon receipt of authorization, you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder. If you receive a negative authorization response, you may not complete the sale and may be requested to recover the Card, if you can do so by reasonable and peaceful means. If you do recover the Card, you should notify the voice authorization center and ask for further instructions. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained. For electronic commerce transactions, you must attempt to obtain the Card expiration date and forward it as part of the authorization request. You may not, after receiving a negative response or decline on an authorization request, split the sale amount into multiple transactions in order to obtain a valid authorization for each one so that the separate transactions total the original dollar amount of the sale.

B. **Effect.** Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction or a transaction involving the use of an expired Card. Obtaining an authorization will not assure payment to you for a Card transaction. The fact that an authorization is obtained by you will not affect Processor's or Member Bank's right thereafter to revoke the authorization of a Card transaction or to charge back the transaction to you. In no event will the fact that an authorization is obtained by you be deemed to be Processor's

or Member Bank's representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

**C. Unreadable Magnetic Stripes.** If you authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe on the Card, you will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Member Bank and Processor for processing.

**D. Procedures.** If an unsigned Card is presented at the point of sale, you must request that Cardholder provide proof of identification and sign the card before completing the sale. Details of the identification provided must be placed on the Sales Draft unless prohibited by local law. If the Cardholder refuses to do so, the sale must not be completed. In any of the following cases, you shall obtain authorization from the voice authorization center, designated or approved by Processor or Member Bank, before completing a sales transaction:

- i. paper merchants whose sales exceed your floor limit as established by Processor or Member Bank, or amended from time to time;
- ii. an unsigned Card is presented;
- iii. if you believe the Card may be counterfeit or stolen or that the sale is in some other manner suspicious or unusual, you should state to the voice authorization clerk, "This is a Code 10" and await further instruction; or
- iv. in any other circumstances established by Processor or Member Bank or stated in the Rules and/or this Agreement.

**E.** If you are approved to utilize batch authorization by Processor, you may obtain batch authorization for certain sales after such sales have occurred provided, however, that authorization for each transaction is obtained by end of the calendar day upon which such sale was initiated and that you do not presort the batch by account number or BIN. Further, you explicitly agree that you will be responsible for any fines, fees, chargebacks, assessments, and declined or disputed transactions that may result from using a batch authorization process.

### 3. Sales Drafts.

**A. Forms.** You will use a Sales Draft to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, identification number, and city and state; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (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. If you use an electronic terminal to print Sales Drafts, the account number must be truncated on the cardholder copy of the Sales Draft. This means that only the last 4 digits of the account number may appear. The entire expiration date must be suppressed on receipts provided to cardholders.

**B. Signatures.** Sales Drafts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Sales Draft will only be waived if the Card transaction is a valid MO/TO or electronic commerce card transaction, which fully complies with the requirements set forth in this Agreement, or if otherwise permitted by the Rules.

**C. Delivery and Retention of Sales Drafts.** You will deliver a complete and legible copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You shall store all Sales Drafts and transaction records in a limited access area for at least 1 year after the date of sales. You will retain the Merchant copy of the Sales Draft or credit memorandum for at least 12 months following the date of completion of the transaction for Visa Card transactions, at least 18 months following the date of completion of the transaction for MasterCard Card transactions and at least 3 years following the date of completion of the transaction for Discover Network Card transactions (or such longer period as the Rules may require), which documentation must be maintained in a secure manner in accordance with your obligations under the Bank Card Merchant Agreement. You will submit to Processor or Member Bank a legible copy of a Sales Draft if any Card issuer requests such retrieval. Your deadline for providing Processor or Member Bank a legible copy of the requested Sales Draft will be ten (10) days after the date of the Card issuer's retrieval request, as specified in the notice from Processor or Member Bank. Unless specifically permitted by Processor, goods and services purchased must be delivered to Cardholder at the time of sale. You shall not disclose a Cardholder's account information or any other personal information to third parties other than your agents for the purpose of completing the transaction or as specifically required by the Laws or by the Rules.

**D. Electronic Transmission.** If you utilize electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If you provide your own electronic terminal or similar device, such terminals must meet Processor's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor or its agent in the

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form Processor from time to time specifies or as required under the Laws or Rules. If Member Bank or Processor requests a copy of a Sales Draft, credit voucher, or other transaction evidence, you will provide it within 3 business days following the request. If your terminal cannot successfully read the magnetic stripe, you must imprint the Card, even if it is a key entered transaction. You must imprint the Card on the same Sales Draft containing the remainder of the transaction information and the Cardholder signature. Failure to obtain a signed and imprinted Sales Draft when a transaction is not captured by swiping through a magnetic stripe reader will expose you to a chargeback regardless of the authorization that may or may not be received. Failure to read the magnetic stripe on the Card may result in a discount rate tier downgrade.

**E. Daily Settlement of Transactions.** You must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process by which you total and settle all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmit the information to Processor. In all cases, Merchant must present the record within 3 business days (2 business days for Electron Cards) after the transaction date, unless otherwise permitted by the Rules. Transactions contained in an untimely Batch Out may be refused, held for a 180 day period, become subject to chargeback or be transferred to a Reserve Account and held in accordance with the terms of the Bank Card Merchant Agreement. Merchant is responsible for resubmitting a Batch Out or ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. Processor is not liable to Merchant for amounts it did not collect, including but not limited to amounts collected by Third Party Service Providers.

### 4. Chargebacks.

Failure to comply with the Rules will reduce Processor or Member Bank's ability to reverse chargebacks and increase the likelihood of your receiving a chargeback. You may be subject to a chargeback on sales for a minimum period of 180 days from the date the sale was entered into the Association's processing system. Processor may hold funds from your account to cover any chargebacks for the later of 270 days following the effective date of termination of this Agreement or 180 days from the date of your last chargeback. Processor or Member Bank will mail all chargeback documentation to the address provided by you. You agree to respond promptly to all chargebacks. If Processor or Member Bank elects, at its discretion, to take action on chargebacks after the Association time limits have expired, such action shall be done at additional cost. You will not redeposit sales that have been previously charged back and not represented. This restriction applies whether or not the Cardholder consents to such activity. If you receive a chargeback for an international Cardholder, you are responsible for any currency conversion differences in the dollar amount. You will be charged the fee indicated on the Merchant Application for each chargeback.

### 5. Chargeback Reasons.

**A. Summary.** The summary of reasons for chargebacks include, but are not limited to, any one of the following:

- i. an invalid Card account number submitted by you;
- ii. neither the Cardholder nor a person authorized by the Cardholder received the goods or services requested;
- iii. the Cardholder received the good or services but disputes the quality;
- iv. the Cardholder never received credit for a returned item or a canceled order;
- v. the Cardholder was charged incorrectly;
- vi. the amount of the sale exceeded the floor limit and an authorization was not obtained or was denied;
- vii. the sale was authorized but not for the correct amount;
- viii. the authorization code provided is invalid;
- ix. the Card was expired at the time of the sale or had not reached its effective date;
- x. the Sales Draft was not signed. An exception will be made where MO/TO sales are permitted by Processor;
- xi. the Card issuer has information that a Merchant fraud has occurred;
- xii. the Card account number and the amount of sale is missing from Sales Draft or is illegible;
- xiii. the Sales Draft bears the imprint of a Card which to the Associations is a counterfeit Card because the Card is not embossed in accordance with the standards set forth in the Rules, even if the sale was authorized.

### 6. Chargeback Monitoring Programs.

**A.** If you exceed a 1% chargeback to interchange ratio for all incoming chargebacks for a particular location you are considered an excessive chargeback merchant and may be subject to a Card Organization's monitoring programs. You are responsible for monitoring your monthly chargeback percentage and developing chargeback reduction plans as required by the Card Organizations. Excessive chargeback activity for an unreasonable period of time may result in termination of this Agreement. You must pay Member Bank or Processor for any fine or charge levied by the Associations on Member Bank,

Processor or Merchant as a result of your chargeback activity. This section may be amended from time to time as a result of action by the Associations.

**B. Other Monitoring Programs.** If you are identified by certain Association monitoring programs, Processor or Member Bank's ability to reverse chargebacks may be severely restricted. Certain monitoring programs review the number of lost, stolen and counterfeit Cards accepted by you in the normal course of business and the percentage of Cards used for sales that were not read electronically by terminals or Electronic Cash Registers. The purpose of these programs is to reduce the use of lost, stolen, fraudulent, and counterfeit Cards. In the event that you are identified under these programs as exceeding the acceptable threshold value of such Cards, you may become liable for chargebacks and sales on lost, stolen, or counterfeit Cards regardless of the Card acceptance procedures followed, and this Agreement may be terminated by Processor or Member Bank and/or Processor or Member Bank may immediately cease providing services to Merchant without notice.

**C. Excessive Activity.** Your presentation to Processor of Excessive Activity will be a breach of this Agreement and cause for immediate termination. "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or Merchant Identification Numbers, chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, Member Bank and Processor to take additional actions as either of them may deem necessary, including but not limited to suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

#### **7. Credits.**

**A. Credit Memoranda.** You will issue a credit memorandum, instead of making a cash advance, a disbursement or a cash refund on any Card transaction. Member Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to Processor. You will not submit a credit relating to any Sales Draft not originally submitted to Processor, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will, within the time period specified by applicable law, provide Processor with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.

**B. Revocation of Credit.** Member Bank or Processor may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (i) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws and the Rules; (ii) the Cardholder disputes his/her liability to Member Bank for any reason, including but not limited to those chargeback rights enumerated in the Rules; or (iii) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Member Bank or Processor, as appropriate, any amount previously credited to you for a Sales Draft not accepted by Member Bank or Processor or, where accepted, is subsequently revoked.

**C. Returns.** If you agree to credit a Cardholder for any merchandise or service that was the subject of a sale, you must provide a Credit Transaction Receipt using the same Card as in the original sale. Such credit shall not exceed the original sale amount. You shall not make any cash refund on sales. You may limit the acceptance of returned merchandise or establish a policy to make price adjustments for any sale provided proper disclosure is made and purchased goods and services are delivered to the Cardholder at the time of the sale. Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" are printed in large letters near the signature line on all copies of the Sales Draft prior to obtaining the Cardholder's signature on the Sales Draft. You may stipulate other special circumstances or terms of the sale on the Sales Draft. For each credit transaction, you must be able to provide Processor or Member Bank with evidence of the original purchase.

**D. Fraud and Factoring.** You agree that, except as otherwise contemplated herein or otherwise permitted by Processor, you will use the services provided by Processor only for your own internal and proper business purposes and will not resell, directly or indirectly, any of the services or any portion thereof to any third party. You must deposit only transactions that directly result from Cardholder transactions at your merchant locations. You must not deposit transactions resulting from any transaction involving a Card between a Cardholder and another entity (with the exception of Payment Service Providers (PSPs), who may deposit transactions resulting from a transaction between a Cardholder and a Sponsored Merchant of the PSP). You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of Fraudulent Transactions will be referred to law enforcement officials. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. In addition to Processor's and Member

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Bank's ability to establish and maintain a Reserve Account, you agree that Processor may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Upon completion of Processor's investigation, Processor may transfer such Sales Draft funds into a Reserve Account. Processor and Member Bank will have no liability for any losses you may attribute to any suspension of funds disbursement. You further agree that engaging in the aforementioned activity may result in the incurrence of research fees and may be grounds for termination of this Agreement.

#### **8. Other Types of Transactions.**

**A. Mail Order and Telephone Order.** You may not solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("MO/TO") without prior written authorization from Processor. MO/TO transactions completed without prior written consent of Processor or Member Bank will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws and the Rules. You may be required to use an address verification service ("AVS") on MO/TO transactions and are encouraged to use AVS even if not required. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a Fraudulent Transaction. You will obtain the expiration date of the Card for a MO/TO transaction and submit the expiration date when obtaining authorization of the Card transaction. For MO/TO transactions, you will type or print legibly on the signature line of the Sales Draft the following applicable words or letters: mail order or "MO" or telephone order or "TO". If you are specifically authorized by Processor or Member Bank to accept MO/TO sales, no sale shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the Cardholder. If you supply goods and/or services under a preauthorization order, you shall not charge a Cardholder for goods after receiving notice from a Cardholder that the authorization for goods or services is canceled. The shipping documents indicating the address the goods were shipped to and a signature of an individual (even Cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code. You assume the risk associated with accepting MO/TO sales transactions.

**B. Recurring/Quasi Cash Transactions.** You may not accept transactions where the goods or services are performed periodically without Processor's consent. If you receive such consent, you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder, (ii) notice from Processor or Member Bank indicating that you may not accept such transaction, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction". You shall not accept sales for processing that are classified as "QuasiCash Transactions" including but not limited to the sale of casino gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip. You shall not accept a Card or use a Visa and MasterCard processing terminal to issue script exchangeable for cash, products, or services as a result of a sale. You must not submit for payment into interchange any transaction that represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible, or that arises from the dishonor of a Cardholder's personal check.

**C. Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single sales 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. If the total amount of both Sales Drafts exceeds the floor limit, authorization must be obtained. The use of multiple Cards for one purchase is permissible as long as an individual Sales Draft is used for each Card. The use of multiple sales on one Card, for one purchase, is not permitted.

#### **D. Deposits.**

**i. Prior Consent.** You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor. 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 to be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws or Rules.

**ii. Acceptance.** If you have obtained prior written consent, then you will complete such Card transactions in accordance with this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate.

You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

**E. Future Delivery.** You will not present any Sales Draft or other memorandum to Member Bank or Processor for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor's prior written authorization. If Member Bank or Processor have previously given such consent, you represent and warrant to Member Bank and Processor that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You 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.

**F. Electronic Commerce Transactions.**

**i. Electronic Commerce.** You must obtain the consent of Processor to process electronic commerce ("EC") transactions, and you may process such transactions only if the transactions comply with the Payment Card Industry Security Standard requirements set forth below. If you submit EC transactions without Processor's consent, Processor may immediately terminate this Agreement. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. A Merchant must not refuse to complete an EC transaction using a MasterCard card solely because the Cardholder does not have a digital certificate or other secured protocol. You are liable for all chargebacks and losses related to EC transactions, whether or not: a) EC transactions have been encrypted; and/or b) you have obtained the consent of Processor to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction. You are responsible for contracting with a third party payment engine, payment gateway or other Internet service provider. You must ensure that such third parties transmit Sales Drafts to Processor and Member Bank in an acceptable format and in compliance with the Rules, including but not limited to PCI DSS. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Member Bank into a depository institution of the United States in U.S. currency.

**ii. Requirements.** For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount provided that the additional amount represents shipping costs. Further, your website must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, and f) delivery policy. If you store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, you must follow Association guidelines on securing such data.

**iii. Cardholder Information Security Program.** If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet, keep security patches up-to-date, encrypt stored data and data sent over open networks, use and update anti-virus software, restrict access to data by business "need-to-know", assign a unique ID to each person with computer access to data, not use vendor-supplied defaults for system passwords and other security parameters, track access to data by unique ID, regularly test security systems and processes, maintain a policy that addressed information security for employees and contractors, and restrict physical access to Cardholder information.

**iv. Physical Address.** If you accept EC transactions, your website must include the physical address of your permanent establishment, along with your country of domicile, either:

- On the same screen view as the checkout screen used to present the total purchase amount, or
- Within the sequence of webpages the Cardholder accesses during the checkout process.

**v.** You acknowledge and agree that you will only submit Electronic Commerce Card transactions in U.S. Dollars that arise from a Cardholder's purchase over the Internet. If software is to be purchased by you, you will be responsible for sublicensing fees and all other fees for software and the software program utilized by you that enables you to connect to and maintain communication between you, the Internet and Processor. You will, at all times, maintain in effect a sublicense agreement for any such software. You agree to use any such software and the software program properly and for the purposes for which it was intended.

**G. Third Party Service Provider Transactions.**

**i. Authorization.** Upon your request, Processor will provide access to authorization and/or data capture services for Third Party Service Provider transactions, such as American Express, and all settlement and chargeback obligations and similar financial responsibilities arising from your transactions involving Third Party Service Providers will be governed exclusively by your agreement with such Third Party Service Providers. You must enter into a separate agreement with such Third Party Service Providers and must abide by the terms and conditions of such Third Party Service Providers. Neither Processor nor Member Bank are responsible for funding such transactions. The terms of this Agreement will apply to Third Party Service Providers. Processor may notify you in writing of the fees applicable to Third Party Service Provider transactions. Third Party Service Providers separately invoice Merchants for their services, and their fees are not necessarily included in this Agreement (including the Merchant Application). Any applicable fees and charges for third party services will be disclosed by the applicable Third Party Service Provider and may be subject to adjustment in accordance with the Third Party Service Provider's terms and conditions. Additionally, Processor charges a transaction fee for such transactions in addition to those fees charged by Third Party Service Providers (see the Merchant Application). Your acceptance of cards, bearing the symbols of organizations other than the Debit Networks or the Card Organizations, such as American Express and transmission of such card transactions to Processor will constitute your agreement to the terms of this Agreement with regard to such cards. Termination of your Agreement with Processor does not automatically terminate your agreement with Third Party Service Providers.

**ii. Information.** Processor and Member Bank reserve the right and you agree and consent to allow Processor and Member Bank to share your credit report and credit history with all Third Party Service Providers. Changes made to this Agreement, such as address or ACH changes, do not automatically make the same changes for the Third Party Service Provider. You must contact the Third Party Service Provider to make the changes. Processor is neither liable nor responsible for such changes. If false data is provided to Processor or the Merchant Account has had any suspected fraudulent activity, Processor reserves the right to share such false or suspected fraudulent information with other financial entities and processors.

**iii. Statements.** You must reconcile your sales tickets for each Third Party Service Provider's transactions against deposits to your bank account daily. Each Third Party Service Provider provides its own statement, and you are responsible for reviewing each statement and resolving all issues regarding the transactions directly with that Third Party Service Provider. Each Third Party Service Provider sets its own rates and fees for its services, and may adjust such rates and fees in accordance with your agreement with such Third Party Service Provider. Processor and Member Bank are not liable or responsible for these transactions and have no legal access to such transactions.

**iv. JCB.** The following special provisions apply (notwithstanding any contrary provision in this Agreement) to your JCB Card transactions: (i) you must retain original sales drafts and credit vouchers for at least 120 days after the transaction and must retain microfilm or legible copies of sales drafts and credit vouchers for at least three (3) years after the transaction; (ii) for purposes of your chargeback liability with respect to JCB Card transactions, an Authorization obtained on a transaction does not override any chargeback reason which may apply to the item; (iii) if you process JCB Card transaction data electronically, your account number must be included in the JCB Card transaction data transmitted to us, in addition to the other information required to be included on each sales draft or credit voucher; (iv) if you are a lodging merchant, JCB Cardholders must be allowed to cancel reservations at resort establishments until 4:00 p.m. on the scheduled arrival date; and (v) by contracting for JCB settlement services, you authorize JCB to publish your name, address and telephone number in JCB solicitation materials.

**H. Age Restricted Products.** If you are engaged in the sale of age restricted products such as alcoholic beverages, tobacco products, weapons and/or any other applicable age-restricted products or services, you must comply fully with all local, state and federal laws governing the distribution of age-related products. You certify herein that you will implement age verification procedures governing the sale of such products, including age verification of each customer against an official government records database before entering certain transactions into the credit card payment system. For face-to-face sales, you will require the signature of the Cardholder. To verify legal age, you will also require the Cardholder to present a valid, government-issued photo identification card in the same name and address as the Cardholder. For sales made via mail, telephone and/or the Internet, you will (1) only deliver age-restricted products to the name and address listed as belonging to the Cardholder, and (2) require, without exception, the signature of the Cardholder, as well as presentation of a valid, government-issued photo identification card in the same name and address as the card holder to verify legal age upon delivery of the merchandise. Failure to abide by all applicable

age verification laws may result in fines and/or loss of credit card merchant charge privileges, as well as termination of your account with Processor and Member Bank.

#### 9. Cash Transactions.

You shall not receive money from a Cardholder and subsequently prepare a credit voucher for the purpose of depositing to the Cardholder's account. Cash disbursement by you to a Cardholder is not permitted. Additionally, you shall not make any cash advance to an employee, principal, or family member of Merchant, who is a Cardholder. You will not accept sales from Cardholders where the primary purpose of the transaction is for the provision of working capital to business and not the purchase of goods and/or services from the business.

#### 10. Third Parties.

A. **Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. You are also responsible for demonstrating compliance by your Merchant Suppliers and other Agents with the requirements of the Cardholder Information Security Program and other security requirements. Processor has no responsibility for any transaction until that point in time when Processor receives data about the transaction.

B. **Use of Terminals Provided by Others.** You will notify Processor immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor or its authorized designee ("third party terminals") to process transactions. If you elect to use third party terminals, you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Member Bank via a data processing network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Member Bank nor Processor will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a third party terminal.

#### 11. Vehicle Rental Authorization Procedures.

A. **Estimate.** A special authorization procedure is available if you estimate the transaction amount based upon Cardholder's intended rental length at time of rental, the applicable rental rate, tax, and/or mileage rates. Such estimated transaction amount shall not include ancillary charges representing amounts to cover potential vehicle damages or insurance deductible when Cardholder waives insurance at time of rental.

B. **Procedures.** Special terminal downloads may be required in order to qualify for certain rates on Vehicle Rental transactions. You shall record on the Sales Draft the date, amount, and all authorization approvals obtained. You shall disclose to Cardholder the amount authorized at the time of rental. Subsequent Authorization:

i. If no authorization was obtained at the time of rental and you, based upon Cardholder's actual charges, later estimate that the transaction amount will exceed the applicable floor limit, you may obtain an Authorization approval code for the new estimated amount.

ii. You may obtain authorization for additional amounts (above any amount not authorized) on the car rental pickup date or prior to the car rental return date. Additional authorization is not necessary if the sales transaction does not exceed the sum of the authorized amounts plus 15% of the sum of the authorized amounts.

#### 12. Paper Processing Merchants.

Paper processing merchants shall authorize by using the established floor limits. Any Merchant that wishes to accept a sales transaction that is under the established floor limits, and that is not authorized, is liable for the resulting chargebacks from those Card numbers listed on the Electronic Exception File. In the case of a Merchant depositing paper drafts, such drafts shall be deposited with Processor or Member Bank within 5 days of the sale date.

#### 13. Forensic Investigations.

A. You will fully cooperate with any forensic investigation initiated by an Association (including but not limited to any investigation that is ongoing at the time your Merchant Agreement is signed) until such time as the investigation is completed.

#### 14. T&E Services.

A. **Travel and Entertainment ("T&E") Merchants.** A merchant whose primary function is to provide travel related services shall be referred to as a Travel & Entertainment ("T&E") Merchant. These include, but are not limited to, car rental, lodging, and central reservation services. A T&E Merchant may process delayed or amended charges if the Cardholder has consented to be liable for those charges. These charges may NOT include charges for loss, theft, or damage.

B. **Services.** T&E Merchants may participate in any of the following Visa T&E Services:

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- Priority CheckOut Service
- T&E Advance Deposit Service
- T&E Cash Disbursement Service
- Visa Reservation Service

#### C. Visa Priority CheckOut Service:

You agree to:

- i. accept all Visa Cards in accordance with this Agreement;
- ii. have Cardholder complete, sign, and return a Priority CheckOut Agreement ("PCO Agreement") which includes the Cardholder's mailing address;
- iii. complete a Sales Draft which includes the total sales amount and the words "Priority CheckOut" on the signature line;
- iv. review the completed PCO Agreement and ensure the account number matches the account number on the Sales Draft if applicable;
- v. comply with normal authorization and deposit requirements;
- vi. at the Cardholder's request, you must mail the Sales Draft copy, the itemized bill, and the signed PCO Agreement to the Cardholder within 3 business days of the Cardholder's departure; and
- vii. you must retain the itemized bill and signed PCO Agreement for a minimum of 6 months after the transaction date.

#### D. T&E Advance Deposit Service:

You agree to:

- i. accept all Visa Cards in accordance with this Agreement;
- ii. obtain the Cardholder name, account number, expiration date on the Card, telephone number, mailing address, scheduled date of arrival/embarkation/rental, and intended length of stay/term/rental;
- iii. determine the advance deposit amount, which is the cost of the intended length of stay, cost of the cruise, or cost of the intended term of rental, not to exceed 14 days;
- iv. apply the deposit amount to the total obligation;
- v. provide: (1) reservation confirmation code to the Cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;
- vi. advise the Cardholder the accommodations will be held according to the reservation and provide written confirmation if requested;
- vii. advise the Cardholder that you will retain the deposit amount if the Cardholder has not canceled the reservation within the specified time frames;
- viii. you must not charge for a no show transaction;
- ix. complete the Sales Draft including advance deposit amount, Cardholder name, mailing address, telephone number, account number, expiration date, the words "Advance Deposit" on the signature line, confirmation code, scheduled date of arrival/embarkation/rental, and the date and time the cancellation privileges, if any, expire without forfeiture;
- x. follow normal authorization procedures;
- xi. mail a Sales Draft copy and cancellation policy to the Cardholder within 3 business days of the sales date;
- xii. accept all Cardholder cancellations within the time limits specified by you;
- xiii. upon cancellation, you shall complete a Credit Transaction Receipt with the information set out in (ix) above and include the cancellation code. You must deposit the Credit Transaction Receipt within 5 days of the transaction date and mail a copy to the Cardholder within 3 days of the transaction date of the Credit Transaction Receipt;
- xiv. for a Lodging Merchant, if the reserved accommodations are unavailable, you must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, (2) a copy of the Credit Transaction Receipt to the Cardholder, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) two three-minute telephone calls, (5) message forwarding to the alternate establishment, (6) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and your location; and
- xv. for a Car Rental Merchant if the reserved vehicle is unavailable, you must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, and (2) provide a comparable vehicle for the number of days specified in the reservation, not to exceed 14 days or until the reserved vehicle becomes available.
- xvi. for a Cruise Line Merchant if the reserved accommodations are unavailable, and no comparable accommodations are available on the ship, the Merchant may offer: (1) a comparable cruise within the same approximate sailing dates and number of sailing days specified in the reservation, (2) any extra nights' accommodations or air fare to a different port city necessitated by the Cardholder's acceptance of alternate accommodations. The Merchant must refund the entire T&E deposit amount, if comparable accommodations are not available or the Cardholder does not accept the offered accommodations. The

Merchant must provide a credit receipt to the Cardholder and the Merchant must provide all of the following without charge, (1) one night's hotel accommodation, if required, (2) transportation to the hotel as well as the airport, (3) Airline transportation to the airport nearest the Cardholder's residence, (4) reasonable out-of-pocket expenses incurred by the Cardholder because the guaranteed accommodations were not available.

**E. T&E Cash Disbursement Service:** You may make cash disbursement to a registered Visa Gold or Platinum Cardholder under the following conditions:

- i. Cardholder indicates at registration the intent to pay for services with a Visa Card;
- ii. Before disbursement, you review positive identification, and, if permitted by applicable law, record type and number on the Sales Draft;
- iii. You complete an 80 column Cash Disbursement Sales Draft or a 51 column Cash Disbursement T&E Sales Draft that includes the Cardholder's positive identification or a Cash Disbursement Record;
- iv. You do not disburse more than \$250.00 during the Cardholder's stay. Cash availability may limit cash disbursements; and
- v. You must not include any additional fees or charges except taxes or charges imposed by law on the transaction amount.

**F. Visa Reservation Service:** Any Merchant who accepts Cards to guarantee reservations must do so in accordance with the following requirements:

- i. You must accept all Visa Cards in accordance with this Agreement;
- ii. You must obtain the Cardholder's account number, expiration date, and name embossed on the Card. You must quote to Cardholder the rate of reserved accommodation, Merchant's name and address, and the Confirmation Code advising that it be retained. Advise the Cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the Cardholder will be billed for one night's lodging plus applicable taxes. If requested, you will provide a written confirmation with the above information including the Visa reservation service provisions relating to the Cardholder's obligation, and any other reservation details;
- iii. You must accept all cancellations prior to the specified time. The Merchant must not require more than 72 hours cancellation notification prior to the scheduled arrival date. But, if the Cardholder makes the reservation within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If you require that the Cardholder cancel before 6:00 p.m. on the arrival date, you must mail the cancellation policy to the Cardholder;
- iv. If the reservation is properly canceled, you must provide a cancellation code and advise the Cardholder to retain it. If requested, you must mail a confirmation of cancellation that includes the Cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
- v. If Cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. You may then complete a Sales Draft for 1 night's lodging plus applicable tax, indicating the Cardholder's account number, expiration date, and name embossed on the Card and the words "No Show" on the Cardholder signature line. You must obtain an authorization code for the no show transaction;
- vi. If guaranteed accommodations are unavailable, you must provide Cardholder with comparable accommodations as described in Section 14.D.xiv above. These services shall be provided at no cost to Cardholder.

## 15. Health Care Transactions and Programs

### A. Preauthorized Health Care Transactions.

i. **Order Form.** Merchants accepting Preauthorized Health Care Transactions must have the Cardholder complete an order form containing the following:

- a. a request for the services to be charged to the Cardholder's account;
- b. assignment of insurance benefits to you;
- c. authorization for you to charge the Cardholder's account for only that portion of the bill subsequent to your receipt of any applicable insurance payment;
- d. duration of time, not to exceed 1 year, for which permission is granted; and
- e. if the Preauthorized Health Care Transaction is renewed, the Cardholder must provide an updated order form.

ii. **Procedures.** Merchants accepting Preauthorized Health Care Transactions must:

- a. retain a copy of the order form during the period it is in effect;
- b. provide a copy of the order form upon Processor or Member Bank's request; and
- c. type or print the words "Preauthorized Health Care" on the signature line of the Sales Draft; and

d. submit a Sales Draft within 90 days of the service date and request authorization for the amount due upon receipt of notice of adjudication from Cardholder's insurance company.

iii. **Cancellation.** You must not complete a Preauthorized Health Care Transaction after receiving a decline response or a notice of cancellation from Cardholder, Processor, or Member Bank.

B. **Health Care Auto-Substantiation.** Merchants participating in Health Care Auto-Substantiation must comply with the provisions of the Visa Health Care Auto-Substantiation Transactions Documents. The Merchant must also obtain a license from and be certified by SIGIS, the Special Interest Group for IIAS Standards.

C. **Health Care Eligibility Service.** Merchants participating in the Health Care Eligibility Service must comply with the provisions of the Visa Health Care Eligibility Service Implementation Guide.

### 16. Visa Supermarket Program.

A merchant that wishes to participate in the Visa Supermarket Incentives Program must first obtain a Supermarket Incentives Agreement with Processor or Member Bank.

### 17. Telephone Services.

A telephone service Merchant must not accept payment for a telephone call when the Card number is either entered via touchtone key pad or provided to an operator. This prohibition excludes the following:

- (i) Telephone Service Transactions conducted at an Unattended Cardholder-Activated Terminal
- (ii) Transactions for which the Issuer has a contract with the carrier
- (iii) Transactions involving telephone services that have been explicitly approved by Visa and provide appropriate risk controls
- (iv) Telephone orders for goods and services; and
- (v) Transactions provided by Inbound Teleservices Merchants, as specified in the Visa Merchant Data Standards Manual

### 18. Automated Fuel Dispenser

#### A. Procedures.

i. When an Automated Fuel Dispenser ("AFD") transaction takes place, the card must be presented and the entire, unaltered contents of either Track 1 or Track 2 of the magnetic stripe must be read and transmitted along with a value of "90" in the POS entry mode code field.

ii. The Merchant name, city, state, and zip code of the station location where the transaction took place must be included in any authorization and clearing message.

iii. A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.

iv. You must obtain an authorization for the exact amount of the transaction or use the status check procedure, which requires you to request an authorization for no more than \$1.00.

v. You must use the status check procedure if the floor limit is zero and the actual transaction amount is no more than the maximum set by Visa and MasterCard, which amounts are currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

vi. You must have an established self-service terminal operating plan on file with Processor or Member Bank and must establish a velocity check program that monitors the volume and frequency of account transactions.

vii. The transaction ratio of chargebacks to total Visa Interchange for Merchant must not exceed an average of 0.30% for the previous 6 months.

viii. The transaction ratio of fraud to total Visa Interchange for Merchant must not exceed an average of 0.40% for the previous 6 months.

ix. Under no circumstances should you use an arbitrary estimation of the transaction amount to obtain an authorization.

x. An AFD must not dispense scrip.

xi. Terminals at automated fuel dispensers do not qualify for the Qualified Rate set forth on the Merchant Application. In order to qualify for the Automated Fuel Dispenser Transaction Rate the authorization must be obtained within 1 day of the transaction date and the sale must be for less than the maximum amount set by Visa and MasterCard, currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

B. **Programming.** Processor is not responsible for programming or reprogramming of fuel dispensers.

### 19. Equipment

If you enter into a lease or rental agreement for the use of credit card processing equipment, you understand that such agreement is separate and apart from the Merchant Processing Agreement and is subject to the terms and conditions of the lease or rental agreement. Neither Processor nor Member Bank is a party to such leases and neither is affiliated with the third party institutions. Such leases are typically non-cancelable 48-month leases. Termination of your Merchant Processing Agreement with Processor does NOT automatically terminate your equipment lease, it only terminates your processing agreement with Member Bank with respect to payment card processing and any other electronic transactions that are settled through the

Member Bank as designated on your monthly statement from the Member Bank. You acknowledge that you have selected the equipment set forth on the Merchant Application based upon your own independent evaluation and you are not relying upon any warranty or representation of any third party, including but not limited to the representations of a sales representative, regarding the equipment. Processor is not responsible for and is not able to provide customer service for equipment, such as POS devices, installed by and/or operated by any third party. Merchant should contact the third party for service of this equipment. Merchant shall not allow any third party to install, remove, or modify any terminal software application of Processor or Member Bank without the express written consent of Processor or Member Bank.

#### **20. Imprinters.**

You must be in possession of a working imprinter, a supply of blank Sales Drafts and an accurate imprinter plate showing your DBA name, city, state, and Merchant Identification Number. If you are not in possession of the above equipment, you must contact Processor to obtain such equipment. Failure to use the equipment and supplies listed above will seriously increase your liability for chargebacks. You must obtain an imprint of a Card when a Card will not swipe. Obtaining an imprint of a Card will greatly reduce your chance of a chargeback.

#### **21. Merchant Identification Number.**

You are responsible for ensuring that your Merchant Identification Number ("MID") is kept confidential. When a change to your Merchant Account is required, you must disclose your MID to the Processor representative as confirmation that the person requesting the change has authority to do so. If the person requesting the change discloses the proper MID, Processor or Member Bank shall assume that person has the proper authority to make the change. You shall be fully liable for any changes to your Merchant Account after disclosure of the MID. Processor or Member Bank may request from you additional information to further verify your identity.

#### **22. Use of Third Party Terminals and/or Software.**

If you elect to use the terminal of a third party provider of software (such as POS or Accounting System vendors) to capture and transmit to Processor or Member Bank, you assume full responsibility and liability for any failure of such third party provider to comply with the Rules. The third party provider is the source for information regarding authorizations and reversals that may be needed by Processor or Member Bank. Certain reversals require authorization information to reverse. You are responsible for obtaining this information from the third party provider. Processor and Member Bank are not liable for sales that were not received by them. In addition, Processor will not be liable for third party software or clearing of Association transactions.

#### **THE FOLLOWING RULES APPLY ONLY IF MEMBER BANK OR PROCESSOR SETTLES YOUR DISCOVER NETWORK CARD TRANSACTIONS**

#### **23. Discover Network Marks.**

You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by Processor or Processor. "Discover Network Program Marks" mean the brands, emblems, trademarks, and/or logos that identify Discover® Network cards. Additionally, you shall not use the Discover Network Program Marks other than to display decals, signage, advertising, and other forms depicting the Discover Network Program Marks that are provided to you by Processor or Processor pursuant to this Agreement or otherwise approved in advance in writing by Processor or Processor. You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by Processor or Processor in writing. You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any third party any of the rights to use the Discover Network Program Marks. Your authority to use the Discover Network Program Marks will terminate immediately upon notice from Processor, Member Bank or Discover Network.

#### **24. Priority Check-Out Service.**

If you offer priority check-out services, you must comply with the following requirements: (i) require the Cardholder to sign the registration card at the time of check-in acknowledging responsibility for all charges, and obtain an authorization for the estimated amount of the accommodations at check-in; (ii) complete a Sales Draft at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, convenience bar charges, missing item fees and miscellaneous expenses; (iii) write the words "Priority Check-out" on the Cardholder signature line of the Sales Draft; (iv) obtain a final authorization code for any additional amounts from the check-in estimate to equal the total amount to be billed to the Cardholder by following the normal authorization procedures; and (v) mail (at

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the address shown on the registration card) or otherwise deliver a copy of the Sales Draft and the itemized lodging bill (portfolio) to the Cardholder within seven (7) calendar days of check-out.

#### **25. Card Checks.**

Card checks are frequently issued to Cardholders by Discover Network. You agree to accept card checks on a basis consistent with the terms of your policy applicable to acceptance of other payment card checks. You should handle these card checks like any other personal check drawn upon a bank in the United States.

#### **26. Cardholder Contact.**

You must not contact any Discover Network Cardholder with respect to any matter arising under the Discover Rules, except as required or permitted in the Discover Rules.

#### **IN ADDITION TO THE OTHER REQUIREMENTS SET FORTH IN THIS DOCUMENT, THE FOLLOWING RULES APPLY TO PIN-DEBIT CARD TRANSACTIONS**

**27. Honoring PIN-Debit Cards.** You shall not require Cardholders to provide personal information (such as telephone number or address) as a condition for honoring a PIN-Debit Card, unless required by the Rules. You may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity. You shall place the PIN Entry Device in an area accessible by all Cardholders and that will reasonably prevent others, including Merchant employees, from observing the PIN. Any penalties incurred by you for failure to comply with Debit Network Rules will be your responsibility. You assume exclusive responsibility for the consequences of any oral or written instructions you may give to Processor and/or Member Bank, for your failure to properly access the services in the manner prescribed by Processor or Member Bank, and for your failure to supply accurate input information. You will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition, and for notifying Processor of any errors in the foregoing after receipt of the applicable report from Processor or Member Bank. You will reject all incorrect reports or output within two (2) business days after receipt of the reports or output. Note, also, that neither Processor nor Member Bank warrant the continuing availability of any Debit Network.

#### **28. PIN-Debit Card Sales Drafts.**

**A. Procedures.** You shall deliver to the Cardholder at the time of a sale a true and completed copy of the Sales Draft evidencing a sale involving use of a PIN-Debit Card ("PIN-Debit Sales Draft"). The PIN-Debit Sales Draft must comply with the Rules and Laws. The following information must be included on the PIN-Debit Sales Draft: (i) the PIN-Debit Card account number; (ii) your DBA name; (iii) your city and state; (iv) the amount of sale; and (v) the sale date. A PIN-Debit Sales Draft shall be made available to the Cardholder at each terminal. You may not require or request the Cardholder to provide or disclose their PIN in any oral or written manner to the Merchant. You shall not impose any fee or charge for a PIN-Debit Card transaction without the prior written consent of Processor or Member Bank. If surcharging is approved by Processor, it must be a separate line item on the PIN-Debit Sales Draft and must be in compliance with all Debit Networks' rules and federal and state laws and regulations. You shall not process any sale if an authorization code is not received through the electronic terminal. When a denial to an authorization request is received, the POS transaction shall not be completed unless completed as a store and forward transaction or resubmission transaction. A sale shall not be completed if you know or should know that the sale is fraudulent or not authorized by the Cardholder.

**B. Reversal.** A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect a reversal or void, Cardholder must reenter the PIN, the magnetic stripe reader must read the card, and you must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the PIN-Debit Sales Draft at which the original sale was initiated, but it need not be initiated at the same POS terminal.

**C. Returns.** All returns shall be processed in accordance with your normal procedures except that you or Cardholder shall not attempt to reverse a previously approved POS transaction unless otherwise permitted in accordance with the Debit Network Rules. Any sale known by you to be erroneous should be canceled and re-billed in the Cardholder's presence.

**D. Balance Inquiry.** Balance inquiries may be performed only by the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder to enter the PIN and use the magnetic stripe reader.

**29. Distribution and Storage of Information.** You shall not disclose a Cardholder's account information or any other personal information to third parties other than to your agents for the purpose of completing the sale or as specifically required by law or by the Rules. You shall store in a limited access area for at least 1 year after the date of sales all transaction records, and you shall make and retain for at least 2 years the original or legible microfilm copies of both sides of all transaction records. Prior to discarding, you shall destroy or

make unreadable all material containing Cardholder account numbers. There are no voice authorizations for PIN-Debit Card transactions and no manually imprinted PIN-Debit Sales Drafts. You may not store the Cardholder's PIN in any manner.

**30. Promotional Materials.** You will adequately display promotional materials to inform the public that PIN-Debit Cards will be honored by you. All uses by you of decals, signs, printed and broadcast materials and other promotional materials must be in conformity with the requirements of the Debit Networks, Processor, and Member Bank. You will not at any time do, or cause to be done, any act or deed in any way impairing or intended to impair Processor or Member Bank's exclusive right, title and interest in and to its respective protected marks.

**31. Reversals.** You agree to pay Processor or Member Bank for any Debit Network fees, fines or charges imposed on you, Processor or Member Bank. Such reimbursement will be accomplished by the debit of the sum(s) involved from your Merchant Account. If Processor or Member Bank elects, at its discretion, to take action on reversals after the Debit Network time limits have expired, such action shall be done at additional cost. Upon request of a Debit Network, processor, Processor, or Member Bank, you will retrieve and forward to Processor or Member Bank, within the time frame required, either the original or a readable copy of the terminal journal tape or duplicate transaction receipt for the transaction in question and, if requested, will give the Debit Network such information from such transaction records as it requests by telephone. You will, on request of the Debit Network, cooperate fully with the Debit Network and the Card issuing participant in order that the participant may comply with the error resolution procedures.

**32. Your Name and Address.** All forms submitted to Processor or Member Bank must bear both your corporate and "Doing Business As" ("DBA") name.

**33. Equipment.**

A. **Use.** You shall take all necessary steps to ensure that all POS Terminals and PIN Entry Devices operated in all of your locations:

- i. are placed in an area accessible by all Cardholders;
- ii. are available for use whenever you are open for business;
- iii. will function with minimal error, meeting all applicable technical specifications and security regulations; and
- iv. will require the Cardholder to enter the Cardholder's PIN at or near the check out location when initiating a POS transaction.

B. **Standards.** A PIN Entry Device must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released. A PIN Entry Device must comply with the PCI DSS requirements for POS and PED equipment. Terminals must have a magnetic stripe reader capable of reading Track 2 on the PIN-Debit Cards. PINs used in conjunction with any store and forward transaction or your resubmission must be encrypted and stored within a tamper-resistant security module. If your authorization system is capable of store and forward, it must comply with the Debit Networks' rules and regulations regarding this capability. Processor or Member Bank, the Issuer and the Debit Networks shall not be liable for any losses suffered by you arising from the use of the store and forward function. A PIN must never be logged in any form as a function of software either in the clear or encrypted.

**34. Supply of Information.** You must submit all information requested by the Debit Networks, Processor or Member Bank, including but not limited to lists and mailing addresses of terminals. You shall not sell, purchase, provide, or exchange account number information in any form, including but not limited to, transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, to any third party other than to your agents for the purpose of assisting you in your business, or to the Debit Networks, Processor or Member Bank, or pursuant to a government request.

**35. Left PIN-Debit Cards.** PIN-Debit Cards that are inadvertently left at your location must be held under dual control during the time they are retained. PIN-Debit Cards inadvertently left at your location may be returned to the Cardholder by you under the following conditions: (A) the Card was inadvertently left by the Cardholder at an on-premise location, (B) the Cardholder requests the Card within 1 business day, and (C) the Cardholder provides 2 forms of current identification, at least 1 of which is a photo identification. If the Cardholder has not requested the Card within 1 business day, the Card should be destroyed by cutting it in half through the stripe.

**36. American Express Program - General Merchant Requirements**

A. **Card Acceptance.** Merchant must accept the Card as payment for goods and services (other than those goods and services prohibited) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's Establishments under the Agreement.

B. **Refund Policy.** Your American Express refund policies for purchases made on the Card must be (i) at least as favorable as your refund policy for purchases on any other payment products, (ii) must be disclosed to Cardholders at the time of purchase, and (iii) must be in compliance with applicable law.

C. **Treatment of the American Express Brand.** Except as expressly permitted by applicable law, Merchant must not:

1. indicate or imply that it prefers, directly or indirectly, any Other Payment Products over the Card;
2. try to dissuade Card Members from using the Card;
3. criticize or mischaracterize the Card or any of American Express' services or programs;
4. try to persuade or prompt Card Members to use any Other Payment Products or any other method of payment (e.g., payment by check);
5. impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check;
6. suggest or require Card Members to waive their right to dispute any Transaction;
7. engage in activities that harm the American Express business or the American Express Brand (or both);
8. promote any Other Payment Products (except Merchant's own private label card that Merchant issues for use solely at Merchant's Establishments) more actively than Merchant promote the Card; or
9. convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by applicable law): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant's customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this Section C. "Treatment of the American Express Brand".

D. **Treatment of the American Express Marks**

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the Card and display our Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from Processor) indicate that American Express endorse Merchant's goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using our Marks upon termination of the Agreement.

E. **Treatment of American Express Card Member Information**

Any and all Card Member Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Card Member Information, nor use nor store it, other than to facilitate Transactions at Merchant's Establishments in accordance with the Agreement.

F. **ARBITRATION AGREEMENT (as to Claims involving American Express).**

In the event that Merchant or Processor is not able to resolve a Claim against American Express, or a claim against Processor or any other entity that American Express has a right to join, this section explains how Claims may be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator.

**If arbitration is elected by any party, neither Merchant nor Processor nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, Processor, and American Express will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator's decisions are final and binding, and the arbitrator's final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights Merchant, Processor, or American Express would have in court may also not be available in arbitration.**

i. Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect



when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express selects the organization and Merchant selects the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in the federal judicial district where Merchant's headquarters is located or New York, NY, at Merchant's election.

ii. **Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between Merchant, Processor, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Processor or American Express and cannot be used in any other case except to enforce the award as between Merchant, Processor and American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that Merchant, Processor, and American Express do not waive the right to appeal that decision.

iii. **Previously Filed Claims/No Waiver.** Merchant, Processor, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Processor, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement that was filed against American Express prior to the Effective Date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

iv. **Arbitrator's Authority.** The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this arbitration agreement.

v. **Split Proceedings for Equitable Relief.** Merchant, Processor, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an award of reasonable attorneys' fees and costs to be paid by the party against whom enforcement is ordered.

vi. **Small Claims.** American Express will not elect arbitration for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

vii. **Governing Law/Arbitration Procedures/Entry of Judgment.** This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If Merchant's Claim is for \$10,000 or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where Merchant's headquarters or Merchant's assets are located.

viii. **Confidentiality.** The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of Merchant Processing Agreement Exhibit A – Rules Summary  
NPC MPA (GEN.1120)

any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

ix. **Costs of Arbitration Proceedings.** Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a claim in court. American Express will be responsible for any additional arbitration fees. At Merchant's written request, American Express will consider in good faith making a temporary advance of Program Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. **Additional Arbitration Awards.** If the arbitrator rules in Merchant's favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrator's award will include: (1) any money to which Merchant is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.

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

#### G. **Establishment Closing**

If a Merchant closes any of its Establishments, Merchant must follow these guidelines:

1. Notify payment processing company immediately.
2. Policies must be conveyed to the Card Member prior to completion of the Charge and printed on the copy of a receipt or Charge Record the Card Member signs. See "Return and Cancellation Policies" of the Merchant Requirements for additional information.
3. 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 Charge Record and on websites and catalogs).
4. Return and cancellation policies must be clearly disclosed at the time of sale.
5. For Advance Payment Charges or Delayed Delivery Charges, delivery of the goods or services which have already charged to the Card Member is required or Credit must be issued for any portion of the Charge for the goods or services not delivered.

**SCHEDULE I**  
*Voyager Fleet Card Terms and Conditions*

If Merchant elects to accept Voyager Fleet Cards, the following terms and conditions shall apply. Capitalized terms used but not defined in these Terms and Conditions shall have the means ascribed to them in the Agreement.

**1. GENERAL.**

- A. Processor and Voyager Fleet Systems, Inc. ("VFSI") each have adopted rules and regulations relating to all aspects of acceptance and processing of Voyager Fleet Cards ("Voyager Cards"). Such rules and regulations, as amended from time to time, are incorporated into these Terms and Conditions by reference and shall be referred to as the "Voyager Rules". The current Voyager Rules are set forth in Section 5 of these Terms and Conditions.
- B. As a result of Merchant submitting transactions resulting from acceptance of Voyager Cards ("Voyager Sales") for processing to Processor, Processor will process such Voyager Sales and credit or debit Merchant's Merchant Account with the resulting proceeds. In addition, when a disputed transaction or chargeback occurs, Merchant agrees to provide all requested information to Processor and Processor agrees to forward such information to VFSI in accordance with the Voyager Rules. Processor is not responsible for the outcome of any chargeback.
- C. Merchant agrees that these Terms and Conditions are confidential and will not disclose them to any third party without the prior written consent of Processor.
- D. Merchant shall comply with the Voyager Rules as amended from time to time. Processor may amend the Voyager Rules at any time. Submission by Merchant of Voyager Sales any time after 7 days from the date of distribution of amended Voyager Rules to Merchant's address, shall be evidence that Merchant has received the amended Voyager Rules and has agreed to abide by them.

**2. PROCESSING RESTRICTIONS DUE TO THIRD PARTY PROVIDERS.**

Processor can only process Voyager Sales received by Processor, and Merchant is responsible for ensuring Voyager Sales are formatted and transmitted to Processor in accordance with the then current requirements of Processor and VFSI. Processor may increase processing fees if a third party presents Voyager Sales transactions not in accordance with the then current requirements. Merchant assumes full responsibility and liability for a Third Party Service Providers' failure to comply with the Voyager Rules. Merchant is responsible for obtaining from the Third Party Service Provider any information needed by Processor. Merchant understands that disputes involving a Third Party Service Provider must be dealt with independently from Processor. If disputes are unresolved and relate to these Terms and Conditions, Merchant shall notify Processor at the address set forth below. Merchant must pay Processor pursuant to the Agreement and these Terms and Conditions regardless of any disputes Merchant has with any Third Party Service Provider.

**3. TAX CALCULATION, PAYMENT AND INDEMNITIES.**

- A. Tax Liability. Merchant shall be liable for the reporting, calculating, remittance or payment of tax, interest and penalties associated with the use of Voyager Cards at its location(s). Processor shall not be liable for and Merchant agrees to indemnify and hold harmless Processor, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of tax associated with the use of the Voyager Card at Merchant location(s). Processor may defend on its own any such claims or demands or request Merchant to take up such defense. In either event Merchant will further indemnify Processor for reasonable attorney's fees or any other necessary expenses incurred by Processor by reason of such defense.
- B. Registration Form. For tax calculation purposes, Merchant shall be required to sign the Registration Form attached hereto and fully incorporated by this reference. Receipt of the signed

registration form must be received by Processor prior to acceptance of any Voyager Cards by Merchant.

**4. VOYAGER DISCOUNT PROGRAM AND DISCOUNT PAYMENT.**

- A. Participation in Voyager Discount Program. Merchant shall immediately notify Processor in writing if Merchant is participating in a Voyager Discount Program. Processor will begin processing the discount 60 days from the date Processor receives written notice of participation.
- B. Liability Related to Discount Program. Merchant shall be liable for the reporting, calculating, remittance or payment of the discount. Processor shall not be liable for and MERCHANT agrees to indemnify and hold harmless Processor, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of the discount. Processor may defend on its own any such claims or demands or request Merchant to take up such defense. In either event Merchant will further indemnify Processor for reasonable attorney's fees or any other necessary expenses incurred by Processor by reason of such defense.

**5. RULES**

- A. Merchant shall honor all valid Voyager Cards for purchases pursuant to the Agreement. Merchant shall check the expiration date and any printed restrictions for both electronic and manual transactions.
- B. Merchant shall obtain a valid authorization for each transaction. Merchant shall bear all risks of accepting a Voyager Card without obtaining a valid authorization. If Merchant receives a decline, the Voyager Card shall not be used to complete the Voyager Sale. There shall be a \$0.00 floor limit for all electronic transactions.
- C. For customer-activated terminals, Merchant shall pre-authorize the Voyager Card to VFSI with values indicating that the Voyager Sale is a customer-activated sale. Upon approval, Merchant shall insure that the fuel dispenser authorizes for up to \$150.00. It is the responsibility of Merchant to find a third party processor or system integrator that is certified by VFSI to process Voyager transactions.
- D. Merchant shall insure that all cashier-assisted electronic sales drafts and credit vouchers shall be completed to include POS terminal print showing the Voyager Card account name encoded in the mag-strip (if POS function is applicable), account number (if permitted by Law), sub number, expiration date of the Voyager Card, the signature of the authorized user, the transaction date and time, type of fuel sold, a description of the service rendered (if requested), odometer reading (as permitted by the electronic POS device), total Voyager Sale price, and the authorization number.
- E. Merchant shall not process manually prepared sales drafts.
- F. If there is a time-out or response message on the POS device indicating that the authorization system is unavailable, Merchant must telephone VFSI for authorization.
- G. If an electronic authorization cannot be achieved at a card-activated POS device due to technical difficulties, the Voyager cardholder shall be referred to the station attendant if during Merchant's open business hours.
- H. Merchant shall establish a fair policy for the exchange and return of merchandise. Merchant shall promptly submit credits for any returns that are to be credited to the Voyager cardholder account.
- I. Merchant shall not give any cash refunds to any Voyager cardholder in connection with a Voyager Sale.

## Schedule II EBT Transactions

Capitalized terms that are used herein but not defined herein will have the meaning as set forth in the Agreement.

The Financial Management Services ("FMS") of the U.S. Department of Treasury, and/or various of the EBT Program State(s)/Alliance(s), have entered into agreement(s) with third party processor(s) (collectively and individually, "Contractor") to manage the EBT Program(s) implemented by FMS and/or the EBT Program State(s)/Alliance(s).

Processor has entered into agreements with one or more Contractors (collectively and individually "Processor Agreement") which permit Processor to be an acquirer processor in certain of the EBT Programs.

Acquirer Services shall mean the data processing systems and procedures provided by Processor to facilitate Merchant's participation in the EBT Program(s). In the event Merchant receives any of the Acquirer Services or otherwise participates in any of the EBT Programs, Merchant agrees to the following obligations which are in addition to Merchant's obligations in the Agreement and in addition to any other obligations in the Operating Rules relating to the EBT Program(s) and/or Acquirer Service(s), as they may be amended from time to time.

Merchant will be solely responsible for obtaining a copy of the then current Operating Rules for each EBT Program in which Merchant elects to participate from the applicable Contractor, EBT Program State/Alliance, FMS or Processor, no less than 30 days prior to the commencement of Merchant's participation in each such EBT Program. Merchant agrees to abide by and fully comply with the Documentation as may be in effect from time to time, and to perform and fulfill any and all obligations and responsibilities, and discharge any and all duties and liabilities relating to Processor, Contractors or Retailers to which it may be subject in accordance with such Documentation or other rules or regulations adopted by Contractor(s), FMS or the EBT Program States/Alliances, or which may arise in any other manner or from any other source related to the Acquirer Services or the EBT Program(s).

Merchant will provide personnel, one of whom shall be a management level technical interface person, to monitor, oversee and maintain its devices participation in the EBT Program(s). This personnel will also be responsible for monitoring Merchant's compliance with Documentation, including but not limited to, each EBT Program's procedures and requirements applicable to Customer and its processor and for ensuring Merchant fulfills all of its responsibilities in connection with its participation in each EBT Program.

Processor will make available to Merchant activity files of its EBT Program transactions in a Processor format, unless similar information is provided by Processor through other services provided to Merchant.

Processor will not provide: (i) routing of activity files received from Contractor(s) to Merchant; or (ii) any other files or reports not specifically

described above. Merchant shall be responsible for, and agrees to pay Processor, all telecommunications fees, assessments and related expenses in connection with Processor establishing and maintaining a link with each Contractor in order to provide Acquirer Service to Merchant. Processor may allocate such fees, assessments and related expenses in such manner as it deems advisable in its sole discretion.

Merchant agrees to allow the auditors of Processor, Contractor(s), FMS or the EBT Program State(s)/Alliance(s), to review the files held and procedures followed, and inspect the facilities used, by Merchant in connection with the Acquirer Services or the EBT Program(s). Processor may be required to perform on-site inspections of Merchant's premises and Merchant agrees to be responsible for Processor's out-of-pocket expenses and its standard fees for the time spent by Processor's personnel (which will be assessed at Processor's then current Standard Hourly Rate) in conducting such on-site inspections.

Merchant agrees to immediately notify Processor and the applicable Contractor in writing of any changes in the goods and services for which EBT Program cards are accepted as payment from participants in the applicable EBT Program.

Merchant authorizes Processor to provide Contractor(s), FMS and/or the EBT Program State/Alliance with such information about Merchant, as requested or required according to the Processor Agreement(s), the Retailer Agreement(s), the Operating Rules or the other Documentation, or as may be required to participate in the EBT Program(s).

### **Reports and Settlement**

Merchant agrees to take all steps necessary to settle with Processor for EBT Program transactions involving Merchant's terminals in accordance with Processor's standards and Documentation; and Merchant shall be responsible for making any necessary reconciliation or adjustments in accordance with the Documentation. Processor will provide Merchant standard Processor reports for the services provided to Merchant. Merchant shall always maintain an open checking account at a financial institution which Processor or its agent can access through the Federal Reserve's Automated Clearing House ("ACH") system. Merchant authorizes Processor and its agents to debit and/or credit the account to settle any and all amounts due under the Agreement and any Addenda including, but not limited to, processing fees and transaction settlement. Unless otherwise agreed to in writing by Processor, Merchant shall be treated as one settlement endpoint with respect to all transactions processed by Processor using Acquirer Services. Merchant shall always maintain the account with sufficient cleared funds to meet its obligations under this Agreement. In the event Merchant desires to change the account or the financial institution where the account is located, Merchant shall give Processor at least 30 days prior written notice of any such change.

**Schedule III  
Wireless Terminals**

**If Merchant elects to use wireless terminals and receive wireless services from the carriers noted below, the following terms and conditions shall apply:**

Capitalized terms that are used herein but not defined herein will have the meaning as set forth in the Agreement.

1. If Merchant (the "End User") has a wireless terminal that uses the **GPRS Services** of **AT&T** ("Wireless Service Carrier" or "Underlying Carrier"), the following terms and conditions apply.
  - (a) END USER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS SERVICE CARRIER AND END USER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN TRANSACTION NETWORK SERVICES, INC. AND UNDERLYING CARRIER. END USER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO END USER. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, END USER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY END USER FOR THE SERVICES DURING THE TWO (2)-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE.
  - (b) END USER SHALL INDEMNIFY AND HOLD HARMLESS THE UNDERLYING WIRELESS SERVICE CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE NUMBER EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.
  - (c) END USER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.
  - (d) END USER UNDERSTANDS THAT TRANSACTION NETWORK SERVICES, INC. AND THE UNDERLYING CARRIER CANNOT GUARANTY THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES.
2. If Merchant (the "End User") has a wireless terminal that uses the **CDMA Services** of **Verizon** or **Sprint** ("Wireless Service Carrier" or "Underlying Carrier"), the following terms and conditions apply.
  - (a) END USER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS SERVICE CARRIER AND END USER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN TRANSACTION NETWORK SERVICES, INC. AND UNDERLYING CARRIER. END USER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO END USER. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, END USER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY END USER FOR THE SERVICES DURING THE TWO (2)-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE.
  - (b) END USER SHALL INDEMNIFY AND HOLD HARMLESS THE UNDERLYING WIRELESS SERVICE CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE NUMBER EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.
  - (c) END USER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.
  - (d) END USER UNDERSTANDS THAT TRANSACTION NETWORK SERVICES, INC. AND THE UNDERLYING CARRIER CANNOT GUARANTY THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES.