

## Merchant Processing Agreement Terms and Conditions

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These Merchant Processing Agreement Terms and Conditions are an integral part of the Merchant Processing Agreement among People's United Merchant Services, LLC, a Delaware limited liability company, located at 8500 Governors Hill Drive, Mailedrop 1GH1Y1, Symmes Township, OH 45249-1384 (hereinafter "**Processor**"), Member Bank, and the legal entity or sole proprietorship identified on Page 1 of the Merchant Processing Agreement/Application (hereinafter "**Merchant**") having its principal office at the address specified on Page 1 of the Merchant Processing Agreement/Application. The Processor and Member Bank may jointly or individually assert or exercise any rights or remedies provided to Processor and/or Member Bank hereunder and any obligations of Merchant to Processor shall also be deemed obligations of Merchant to Member Bank. Processor and Member Bank reserve the right to allocate the duties and obligations assigned hereunder to Processor between them, as they deem appropriate in their sole discretion. "**Member Bank**" shall mean a member of VISA®, MasterCard® and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement, and Member Bank has certain obligations to Merchant pursuant to the Operating Regulations (defined below). In the event of any conflict between this Agreement and the Operating Regulations on the subject of Member Bank's obligations, the Operating Regulations shall control. This Agreement shall be deemed accepted by Member Bank as of the date the first transaction is acquired under this Agreement. As of the commencement of this Agreement, Member Bank shall be People's United Bank, National Association, a national banking organization located at 850 Main Street, Bridgeport, CT 06604. The Member Bank may delegate certain or all of its duties to an affiliate of the Member Bank at any time, without notice to Merchant. The Member Bank may be changed, and its rights and obligations assigned to another party by Processor at any time without notice to Merchant. Processor is an agent of Member Bank in connection with Visa and MasterCard transactions. Merchant acknowledges that Processor may use an independent sales organization/member service provider ("**ISO/MSP**") operating under applicable Association Operating Regulations. ISO/MSP is an independent contractor and not an agent of Processor. ISO/MSP has no authority to execute the Agreement on Processor's or Member Bank's behalf or to alter the terms hereof without Processor's prior written approval. Approval of the Application does not constitute a guarantee to process any transactions on Merchant's behalf. This Agreement is binding on Merchant as of the earlier of the date of the first electronic transaction processed under this Agreement, or the date Processor approves the Merchant Application. If Processor has approved the Merchant Application in accordance with the preceding sentence, the effective date of the Agreement will be the date that Merchant signed the Merchant Application (the "**Effective Date**").

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

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

### B. American Express Program.

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

a. Merchant hereby authorizes Processor to submit Transactions to, and receive settlement from, American Express on behalf of the Merchant. If Merchant is placed in the American Express Program, Merchant shall be responsible for complying with the provisions set forth in the Rules Summary, hereto incorporated into this Section B by reference and the Merchant Requirements (located at [www.peoplesuntdms.com/amexmerchantrequirements](http://www.peoplesuntdms.com/amexmerchantrequirements)).

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

c. Merchant may be converted from the American Express Program to a direct Card acceptance relationship with American Express if and when Merchant has either (i) greater than \$1,000,000 in Charge Volume in a rolling twelve (12) month prior or (ii) greater than \$1,000,000 in Charge Volume in any three (3) consecutive months (hereinafter "**High CV**

Merchant"). Upon conversion, (i) the Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by the Merchant for Card acceptance.

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

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

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

g. Processor may terminate the Merchant's right to accept American Express Cards if it breaches any of the provisions in this Section B or in the Rules Summary.

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

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

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

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

1. **Rules and Regulations.** Merchant acknowledges receipt and review of the Rules Summary ("**Rules Summary**") that are incorporated into this Agreement by reference. Merchant agrees to fully comply with all of the terms and conditions in the then-current Rules Summary as changed or updated by Processor from time to time at its sole discretion. Merchant agrees to participate in the Associations and Other Networks in compliance with, and subject to, the by-laws, operating regulations and/or all other rules, policies and procedures of such organizations (collectively "**Operating Regulations**"). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, and/or the Other Networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations and/or Other Networks. The Operating Regulations may prohibit Processor from providing Merchant with a copy of the Operating Regulations and such prohibition shall not alter or limit Merchant's obligation to comply with the Operating Regulations. Merchant may review the Visa and MasterCard websites for a copy of the Visa and MasterCard Operating Regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/>. Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with all provisions of the Operating Regulations, regardless of whether Merchant has possession or knowledge of those provisions. Merchant shall take all steps necessary to review and obtain all publicly available information that relates to or references the Operating Regulations including, without limitation, all information available on the Networks' internet sites, and to educate itself and its employees on all provisions thereof. Merchant acknowledges responsibility for any liability resulting from its decision not to participate in optional Association programs, including but not limited to any increased Data Incident liability resulting from its decision not to participate in an Association EMV program. In the event Merchant chooses to participate in an optional Association program, including but not limited to an EMV program, Merchant acknowledges and agrees that it shall be responsible for (i) ensuring compliance with any applicable program requirements and/or Operating Regulations applicable to such program, including but not limited to making any updates to its point of sale equipment and (ii) any cost associated with its participation in the applicable program, including any costs assessed to Merchant by Processor. In the event of a conflict between the Rules Summary and this Agreement, the Rules Summary shall prevail. For purposes of this Agreement, "**Service**" or "**Services**" shall mean any and all services described herein, and/or provided by Processor pursuant to this Agreement. Other defined terms and Services applicable to this Agreement may be contained in addenda, exhibits, schedules, or amendments (collectively, "**General Addenda**") to this Agreement, as may be modified from time to time by Processor. The parties agree that such General Addenda shall be incorporated into and made part of this Agreement.

### 2. Acceptance of Cards.

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

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check cards; (ii) "Other Card" – all Visa and MasterCard cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and Visa and MasterCard business debit cards. These acceptance options apply only to U.S. issued Cards. The Visa and MasterCard Operating Regulations require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue to accept both debit and credit card products issued by non-U.S. members.

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

### 3. Processor's Responsibilities.

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

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

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

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

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

### 4. Certain Merchant Responsibilities.

A. Merchant agrees to reacquire and pay Processor the amount of any sales transaction, and Processor shall have the right at any time to charge Merchant's Designated Account therefore, without notice, in any appropriate situation, including but not limited to those relating to such sales transaction where: (i) merchandise is returned, whether or not a credit voucher is delivered to Processor; or (ii) any sales transaction without a valid authorization response; or (iii) the sales transaction is alleged to have been drawn, accepted, or endorsed improperly or without Cardholder's authority; or (iv) the sales transaction record is illegible; or (v) the Cardholder disputes the sale, quality, or delivery of merchandise or the performance or quality of services covered by the sales transaction; or (vi) the sales transaction was drawn by, or depository credit given to, Merchant in circumstances constituting a breach of any term, condition, representation, warranty, or duty of Merchant hereunder; or (vii) the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local, or otherwise; or (viii) Processor has not received payment for any sales transaction, notwithstanding Processor's prior payment to Merchant for such sales transaction; or (ix) there is an alleged failure of Merchant to comply with the Operating Regulations, the Rules Summary, or the Laws; or (x) any other Association or Other Network action including but not limited to chargebacks, compliance cases, or otherwise; (xi) as the result of any claims, damages, or losses incurred by Processor as a result of claims asserted by Card issuers. Without limiting the foregoing, Merchant is fully liable to Processor for all transactions returned to Processor for any reason, otherwise known as "chargebacks" (or, for PIN debit Card transactions, "reversals"). Merchant will pay Processor on demand the value of all chargebacks/reversals. It is Merchant's obligation to monitor any and all chargeback-related notices and reports provided by Processor, including but not limited to reports or notices provided via Processor's online reporting tool and/or to Merchant's Designated Account. Merchant's failure to respond to a chargeback within the applicable deadline may forfeit Merchant's chargeback rights.

Merchant authorizes Processor to offset from incoming transactions or to debit the Designated Account, the Reserve Account, or any other account of Merchant the amount of all chargebacks/reversals. Merchant will fully cooperate with Processor in complying with the Rules regarding chargebacks/reversals. Any operational and/or other Services performed on behalf of Merchant, including but not limited to, responses to compliance cases, transaction stand-in, and retrieval, etc. shall in no way affect Merchant's obligations and liability in this Agreement including those in the foregoing sentences. Merchant is solely responsible for the defense of any allegation of non-compliance with the Operating Regulations made by any Association, any Card issuer, or any Other Network and Processor shall have no duty to Merchant in accordance therewith.

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

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

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

E. Merchant shall not sell, assign, transfer or encumber all or any part of its interest in the Reserve Account, if any, or any present or future rights under this Agreement, including but not limited to, Merchant's right to receive any payments or funds. Neither Processor nor Member Bank shall be obligated to honor any such purported attempt to sell, assign, transfer or encumber such interest, rights, payments or funds unless both Processor and Member Bank consent in writing. In the event Merchant breaches this paragraph [E], then, in addition to any other rights and remedies may have under this Agreement and otherwise, Member Bank Processor shall have the right, at its option, to withhold any or all funds or payments which would otherwise be payable to Merchant under this Agreement until it shall have received instructions concerning the disposition of such payments or funds, satisfactory in form and substance to Processor and signed by both Merchant and any purported assignee. Merchant shall indemnify and hold it harmless from and against any and all claims, liabilities and damages which may be asserted against Processor by any purported assignee or any other person arising out of Merchant's purported sale, assignment, transfer or encumbrance of all or any of Merchant's present or future rights under this Agreement.

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

G. Merchant agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws") and to assist Processor in complying in a complete and timely manner with all Laws and Operating Regulations applicable to any Card transaction or this Agreement. The Operating Regulations are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. **Merchant agrees that, under no circumstance, will Merchant store Cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.** Merchant will execute and deliver to Processor all instruments Processor deems necessary pursuant to Merchant's obligations hereunder. Merchant will be solely responsible for the quality, accuracy, and adequacy of all transactions and information

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supplied hereunder, and will establish and maintain adequate audit controls to monitor the quality and delivery of such data. Merchant warrants to Processor that it has implemented and will maintain secure systems for transmitting information to Processor. Merchant shall allow the auditors (third-party or internal) of Processor, any Association, or any Other Network to review the documents, files, records, procedures, systems, controls, equipment, and physical assets related to the transactions contemplated herein at any reasonable time and upon reasonable notice to Merchant. Merchant will assist such auditors as may be necessary for them to complete their audit. In addition, Merchant agrees that the cost of such audit incurred by Processor, Member Bank, any Association or Other Network shall be borne by Merchant if the audit is conducted (i) at the request of an Association or Member Bank, or in order to comply with applicable law or regulation, and/or (ii) due to facts or circumstances that indicate to Processor that Merchant may not be in compliance with the Operating Regulations, applicable law and/or this Agreement. In the event that a third-party audit is requested by an Association, Member Bank or regulatory agency, and/or required by the Operating Regulations or applicable law, Processor may, at its option, and at Merchant's sole expense, either retain a third party to perform the audit, or require that Merchant directly retain a specific third party auditor. If Processor requires that Merchant directly retain the auditor, Merchant shall arrange immediately for such audit to be performed, and will provide Processor and the Associations with a copy of any final audit report.

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

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

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

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

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

M. **Virtual Private Network ("VPN")/Secure Socket Layer ("SSL") Services.** Processor's standard VPN and SSL services establish an Internet connection between Merchant and Processor for the processing of credit card, debit card, and other electronic

payment transactions by Merchant. In the event that Merchant uses a VPN or SSL connection to Processor, Merchant acknowledges and agrees that the VPN or SSL communication interface relies on the internet, which is a public IP-based communications network that is subject to disruptions, slowdowns, and outages that cannot be predicted, controlled, or corrected by Processor, and that such occurrences could interfere with the processing of Merchant's transactions. Merchant acknowledges that Processor shall not provide monitoring, error detection, or related service level measures with respect to the VPN or SSL. Without limiting the generality of the foregoing, any service levels that may be set forth elsewhere in the Agreement shall not apply to the VPN or SSL connection or to transactions transmitted using such connection. Merchant acknowledges that certain communication equipment must be installed and supported in Merchant's data center(s) and other locations in order to support a VPN or SSL and that Merchant must use equipment that is compatible with the VPN or SSL communication equipment supported by Processor. Merchant shall be solely responsible for secure key exchange and key management (including a process for key revocation when Merchant personnel leave). Merchant shall further ensure that each terminal with a connection to the VPN or SSL shall at all times have a personal firewall installed and active. The VPN services and SSL services shall be provided in accordance with Processor's standards, which Processor may change from time to time in its sole discretion, and Merchant shall at all times comply with the standards established by Processor, Visa, MasterCard, or any Other Network with respect to the VPN and SSL.

N. **Virtual Terminal Processor Services and Fees.** Processor's Virtual Terminal Processor Service (the "VT Services") is an enhancement to Processor's Online Reporting Services. Merchant acknowledges and understands that the VT Services allow Merchant to effectuate Card transactions within the Online Reporting Services application in accordance with Processor's standards and procedures. Merchant shall be solely responsible for all authorized or unauthorized use of the VT Services arising out of or related to Merchant's use of the VT Services including but not limited to unauthorized transactions initiated via the use of Merchant's User ID's. Merchant acknowledges that use of a software application that has connectivity to the Internet poses an increased risk, and Merchant assumes all liability for such risks. Merchant warrants and represents to Processor that it has implemented and will maintain secure systems for use of the VT Services and the transmission of information to Processor. Merchant further acknowledges and agrees that Processor's only obligation will be to make the VT Services available on Processor's system in accordance with Processor's then-current standards. Merchant acknowledges and agrees that Processor's Online Reporting Services are required for use of the VT Services and that Processor's standard terms, conditions, and fees associated with the Online Reporting Services shall be and remain in effect. For the purposes of this Agreement, the VT Services shall also be deemed an Additional Service and Merchant shall pay Processor Processor's then-current standard fees and charges for the VT Services in addition to any other fees and charges for services provided.

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

P. In no way limiting the provisions of the immediately preceding section, Merchant agrees to pay Processor all fees and assessments of any nature as imposed by Providers in connection with Merchant's use of the Optional Services. Merchant acknowledges and agrees

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

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

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

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

### **5. Fees and Other Services.**

**A.** Merchant will pay Processor fees and charges for Services, forms, and/or equipment in accordance with the pricing detailed in this Agreement, any schedules, exhibits, or addenda incorporated or referenced herein, and Processor's then-current standards. Such fees and charges will be calculated and debited from the account(s) designated by Merchant (a "Designated Account"). Fees and charges will be assessed to Merchant by Processor on a daily, monthly and/or other periodic basis with such period initially and prospectively determined in Processor's sole discretion. Processor has the right to round interchange and

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

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

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

**D.** Processor will initially provide, in accordance with this Agreement the described products and services (the "Initial Services"). Merchant acknowledges and agrees that the Initial Services shall always include Services related to Association credit card transaction processing, and that Merchant shall be solely responsible for any use of such Services, and that Processor shall have no obligation to prevent Merchant from using such Services. If at any time Merchant utilizes any Services other than the Initial Services, such use of Services shall be provided according to Processor's standard terms and conditions associated with such Services and, unless otherwise agreed to by Processor, Merchant will pay Processor its standard fees and charges for such Services in accordance with Processor's then-current standards. Merchant's use of Services other than the Initial Services ("Additional Services") shall be deemed Merchant's acceptance of the fees and charges and the terms and conditions associated with such Services. Processor may also charge Merchant for any non-specified Service it provides Merchant or expense it incurs on behalf of Merchant (also deemed an Additional Service) in conjunction with Merchant's receipt of an Additional Service, and, unless otherwise agreed to by Processor, Merchant agrees to pay the standard rate for the Additional Services in accordance with Processor's then-current standards. Merchant shall not dispute, and shall be unconditionally obligated to pay for, any Additional Service charges for any such

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Additional Service that Merchant has received. Services such as enhancement or customization of any standard services, customized reporting, or special requests will be provided at Processor's option and on an "as-quoted" basis. Merchant acknowledges and agrees that it shall be solely responsible for all telecommunication lines, equipment, and any related items deemed necessary by Processor in connection with the Initial Services and any Additional Services and for any and all fees, costs, or expenses related to the same, whether incurred by Merchant, Processor, their affiliates, and/or agents; such fees, costs and/or expenses may include, but are not limited to, those associated with, circuits and their installation, software to support Merchant's operating environment, data transmissions, equipment, and software upgrades, modems, sharing devices, controllers, protocol converters, routers, router maintenance, maintenance, other telecommunication equipment, etc. In the event Merchant uses Optional Services, Processor may collect and Merchant agrees to pay all fees and charges associated with the Optional Services including but not limited to those assessed by third parties related to the use of an Optional Service.

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

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

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

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

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

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

K. Processor, upon Merchant's request and at Processor's option, may transmit Banking Identification Number ("BIN") Files to Merchant in accordance with Processor's standards and according to Processor's then-current fees and charges. Processor makes no representations or warranties whatsoever with respect to the file, including, but not limited to, the completeness of the file. Merchant must not use BIN file information for any reason other than to identify card type categories at the point of sale. The Merchant must not disclose the BIN information to any third party without prior written consent of Processor. BIN file information is confidential and proprietary information of Visa or MasterCard, and is subject to the confidentiality provisions of the Agreement. Availability of the BIN file transmission is subject to the Operating Regulations and Processor's standards and may not be available, or may not be available at all times. Processor may cease providing the foregoing service if, in its sole discretion, it deems that the service violates or may violate the Operating Regulations. Merchant agrees that it shall complete and execute any additional documents as may be required by Visa or MasterCard at any time. Additional fees and charges may be charged by Processor associated with the provision of the services described in this paragraph and Merchant agrees to pay such fees and charges should Merchant elect to receive such services.

L. In the event that Merchant receives the services using Processor's "Unbundled" pricing methodology in connection with VISA and MasterCard Card transactions, the transaction fees denoted in the pricing section of this Agreement apply to all transactions in a given month where the Merchant's average POS sales amount (net monthly sales divided by the difference between gross monthly items less monthly returns, "Ticket") is less than or equal to \$150.00. If Merchant's average Ticket in a given month is greater than \$150.00, but less

than \$200.00, a \$0.10 per transaction surcharge shall be added to the per transaction charge. If Merchant's average Ticket in a given month is greater than \$200.00 but less than \$500.00, a \$0.25 per transaction surcharge shall be added to the per transaction charge. If Merchant's average Ticket in a given month is greater than \$500.00 but less than \$750.00, a \$0.50 per transaction surcharge shall be added to the transaction charge. If Merchant's average Ticket in a given month is greater than \$750.00, a \$0.75 per transaction surcharge to the above transaction charge shall be assessed.

M. Processor may offer one or more Vantiv Select Packages (e.g. Monthly Service Fee, Breach Assist Fee, and Gift Card Monthly Fee, along with \$0.00 gift card transaction fee or \$0.25 debit transaction fee). In the event Merchant participates in a Vantiv Select Packages, Processor shall waive certain fees as expressly stated in the Merchant Price Schedule; provided, however, Merchant must be a party to an approved equipment lease (the "Third Party Lease Agreement") with an approved third party lessor and in good standing under the Third Party Leasing Agreement. For the avoidance of doubt, Processor must provide written acknowledgment of Merchant's participation in a Vantiv Select Packages. In the event the Third Party Lease Agreement terminates for any reason, Merchant's participation in the Vantiv Select Packages shall immediately cease and Processor's then standard fees shall apply.

### 6. Term and Termination.

A. This Agreement shall be binding upon Merchant upon the earlier of Merchant's execution or Merchant's submitting a transaction to Processor. This Agreement shall only be binding upon Processor as of the earliest of (i) the date that Processor accepts this Agreement by issuing Merchant a Merchant Identification Number or (ii) Processor's processing of any transaction submitted by Merchant. The initial term of this Agreement shall be for the time period specified in the Merchant Processing Agreement/Application, or elsewhere in this Agreement ("Initial Term"). In the event no Initial Term is indicated in the Merchant Processing Agreement/Application or elsewhere in this Agreement, the Initial Term will be deemed to be thirty-six (36) months. After the expiration of the Initial Term, this Agreement shall automatically be renewed for periods equal to the Initial Term (each a "Renewal Term"), unless otherwise provided herein or unless either party gives written notice to the other party at least ninety (90) days prior to the expiration of the then-current term of a party's intention to terminate or non-renew the Agreement. In addition, this Agreement may be terminated at any time by Processor, without cause, on fifteen (15) days' notice to Merchant. Termination of this Agreement does not terminate Merchant's equipment lease, which may be non-cancelable, it only terminates Merchant's agreement with Processor with respect to Card processing and any other electronic transactions that are settled through the Member Bank as designated on Merchant's monthly statement from Processor.

B. Default Event. Merchant shall be in default under this Agreement ("Event of Default") if: (i) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Merchant, or Merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or (ii) Merchant fails to comply with the Rules Summary, the Operating Regulations, or applicable Law; or (iii) Merchant is in breach of any other terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; or (iv) in the event of irregular card sales or any other circumstances, which, in the Processor's discretion, may increase the Processor's exposure for chargebacks or other financial, reputation, or security risk(s); or (v) Processor reasonably believes that there has been a material deterioration in Merchant's financial condition; or (vi) any standby letter of credit, if and as may be required pursuant to this Agreement, will be cancelled, will not be renewed, or is not in full force and effect; or (vii) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than ten percent (10%) of either the legal or beneficial ownership of Merchant, or (viii) Processor's reasonable determination that fraud is or may be occurring, or (ix) if Merchant's business name and/or the name of Merchant's principals are listed on the MATCH (Membership Alert To Control High Risk Merchants) System and/or other security/credit alert systems, or (x) in the event that an Association identifies Merchant, it's principals, or associated parties under a program designed to monitor merchants or otherwise instructs Processor to close Merchant's account, or (xi) for any circumstances that could cause harm or loss of goodwill to the Associations and/or Other Networks systems or Merchant no longer meets the eligibility requirements of an Association or Other Network, or (xii) Merchant's volume in any month in excess of 120% of the average Annual Volume indicated on the Merchant Application, (xiii) Merchant has non-card present transactions in any month in excess of 120% of the MO/TO and Internet volume indicated on the Merchant Application, (xiv) Merchant experiences excess returns greater than 3%, (xv) Merchant does not do business as specified in the Merchant Application, (xvi) splitting tickets, (xvii) laundering tickets or (xiii) any other action constituting Merchant fraud. Upon the occurrence of an Event of Default, Processor automatically, and without notice, shall be entitled to exercise and enforce (in concert with and in addition to any other rights or remedies granted to it herein) any and all of the following rights and remedies: (a) those provided for in Section 6.C. below, (b) cease providing any or all Services to Merchant, (c) establish a Reserve Account, and/or (d) otherwise proceed to collect amounts that are due and owing from Merchant under this Agreement by means of setoff, recoupment, or any other means authorized by applicable Laws. Processor will also have the right to assess fees and recover all costs associated with the investigation of any suspected fraudulent activity or an Event of Default. Processor will not have any liability to Merchant for any losses, either direct or indirect, which Merchant may suffer as a result of any such suspension of funds disbursement or failure to pay for transactions connected with an Event of Default. If Merchant accepts or processes transactions in connection with an Event of Default, processing funds may be held and subject to a per month fraudulent transaction fee equal to 15% of the dollar volume held by Processor. In addition, if Merchant has engaged in an Improper Transaction, Merchant agrees Processor may retain all amounts in the Reserve Account as liquidated damages. The determination of the existence of an Event of Default or Improper Transaction shall be made by Processor and shall be conclusive unless Merchant contests such determination in writing to Processor within one year of the determination. In addition, upon the occurrence of an Event of Default, Processor may terminate this Agreement by giving Merchant written notice thereof. Termination of Merchant for any reason shall not relieve Merchant from any liability or obligation to Processor.

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

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

ii. pay Processor, upon demand, an amount for liquidated damages equal to (a) the average monthly fees paid by Merchant to Processor under this Agreement (excluding Card Organization interchange and assessment fees) for the three calendar months in which such revenue was the highest during the preceding twelve calendar months, or such shorter period if this Agreement has not been in effect for twelve months, multiplied by (b) the number of months remaining in the then current term of this Agreement.

iii. Notwithstanding the foregoing, the Early Deconversion Fee and liquidated damages fee will not exceed the maximum amount set forth by applicable law. Merchant acknowledges and agrees the liquidated damages are fair and reasonable because it is difficult or impossible to estimate Processor's damages resulting from any breach or improper termination. Merchant shall also reimburse Processor for any damage, loss or expense incurred by Processor, including all past due, unpaid and/or future invoices for services rendered by Processor in connection with this Agreement. Notwithstanding anything in this Agreement to the contrary, however, after termination, Merchant will remain liable for chargebacks and other adjustments and for other fees, fines, penalties, charges or losses incurred by Processor in connection with this Agreement. Merchant authorizes Processor to debit Merchant's Designated Account for, or deduct from any settlement funds otherwise owed to Merchant, the Early Deconversion Fee, plus any and all losses (including costs, expenses and liabilities) incurred by Processor in connection with termination. If Merchant's settlement funds or the balance in the Designated Account is insufficient to cover the Early Deconversion Fee and all such losses, Merchant agrees to pay Processor such amounts immediately upon receipt of invoice. All amounts due pursuant to this section shall be immediately due and payable by Merchant without notice or demand. Merchant will be responsible for all collection and legal fees and expenses Processor incurs in the collection of any delinquent amounts Merchant may owe Processor.

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

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

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

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

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

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

including but not limited to the Associations, Other Networks, a clearing house or Merchant's financial institution. All sales and credits accepted by Processor are subject to audit and verification by Processor. Merchant agrees that Processor may debit or credit Merchant's Designated Account for any inaccuracies.

B. All amounts due Processor under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant as of the date Processor originates an ACH debit transaction record to Merchant's Designated Account. Any fees not collected from Merchant by Processor when due shall bear interest at highest rate permitted by the Laws. Merchant agrees that Processor may set off any amounts due to Processor from amounts due to Merchant, including but not limited to demand deposit accounts and any other amounts due to Merchant from Processor and/or any of its affiliate(s).

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

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

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

F. This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant grants to Processor a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds, (ii) all funds at any time in the Reserve Account, regardless of the source of such funds, (iii) any amount which may be due to Merchant under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement, and (iv) the proceeds thereof (collectively, the "Secured Assets"), to secure all of Merchant's obligations under this Agreement. With respect to any Secured Assets maintained by Member Bank, Merchant authorizes Member Bank to comply with all demands made by Processor with respect to the Secured Assets without further consent or direction from Merchant, and Member Bank agrees to comply with the same. As such, Processor has control and a perfected security interest in the Secured Assets with Member Bank. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, Processor has control over and may direct the disposition of the Secured Assets, without further consent of Merchant. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Processor will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Processor written consent prior to granting a security interest of any kind in the Secured Assets to a third party. In addition to the security interest in the Secured Assets, Processor shall have a contractual right of setoff against the Secured Assets. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action by Processor or notation in the Processor's records, although Processor may enter such set off on its books and records at a later time.

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

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A. Merchant shall indemnify and hold harmless Processor, and its directors, officers, employees, affiliates, and agents from and against all proceedings, claims, demands, losses, liabilities, damages and expenses (including but not limited to, any fines, fees, assessments, audit fees, card replacement cost, or penalties levied against the Processor by an Association, any Card issuer, or any Other Network, and attorneys' and collection fees and expenses) resulting from or otherwise arising out of (i) the Services in this Agreement, (ii) any breach of any term or condition of this Agreement, (iii) any misrepresentation by Merchant herein under this Agreement, (iv) Merchant's or Merchant's employees and agents acts or omissions in connection with the services provided pursuant to this Agreement, (v) Merchant's processing activities and provision of goods and services to Cardholders, (vi) any violation of the Operating Regulations, the Rules Summary, or the Laws, (vii) any guarantees provided by Processor to any third party for the benefit of Merchant, including without limitation any lease guarantees, or (viii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of, or in any way related to Merchant's ability to use the services provided herein including but not limited to Merchant's use of an Agent or any other third party processor or system, or Merchant's ability to connect to the Internet or an external network (ix) any action or omission of any third party with which Merchant has contracted, (x) any bankruptcy proceeding, (xi) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card, (xii) any action Merchant institutes against any Association, Other Network or Card issuer following a chargeback or fine, or (xiii) any action Processor takes against the Designated Account, Reserve Account, or any other account Merchant owns, pursuant to this Agreement. Merchant will also defend, indemnify and hold harmless the institution at which Merchant maintains the Designated Account for acting in accordance with any instruction from Processor regarding any such account. This indemnification shall survive the termination of the Agreement. In the event Merchant is enrolled in the Breach Assist Program offered by Processor, the indemnification required by Merchant under this Agreement will only be reduced by amounts actually recovered by Processor in connection with the Breach Assist Program and only to the extent that such amounts are specifically related to a data breach involving solely Merchant. The limited indemnity waiver provided by the Breach Assist Program may not cover all the costs associated with a data breach and the specific terms and conditions of the Breach Assist Program are available for Merchant to review at [www.RoyalGroupServices.com/FifthThird](http://www.RoyalGroupServices.com/FifthThird) or by contacting a customer service representative at 1-800-393-1345.

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

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

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

### 9. Confidentiality.

A. Merchant acknowledges that Processor will be providing Merchant with certain confidential information, including but not limited to, this Agreement and information relating to the methods, techniques, programs, devices and operations of Processor and/or Providers and/or Associations and/or Other Networks (collectively "Confidential Information"). Merchant shall not disclose Confidential Information to any person or entity (other than to those employees and agents of Merchant who participate directly in the performance of this Agreement and need access to such information). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the Rules Summary, the Laws, and the Operating Regulations including but not limited to the Visa Cardholder Information Security Program ("CISP") found at [www.visa.com/cisp](http://www.visa.com/cisp), the MasterCard Site Data Protection Program ("SDP"), found at [www.mastercard.com/sdp](http://www.mastercard.com/sdp), and the American Express Data Security Operating Policy ("DSOP"), found at

[www.americanexpress.com/merchant/](http://www.americanexpress.com/merchant/) and any similar program requirement of the Associations, or Other Network. Notwithstanding anything to the contrary in this Agreement, Processor may use, disclose, share, and retain any information provided by Merchant and/or arising out of the Services, during the term and thereafter: (i) with Merchant's franchisor, Merchant's franchisee(s), association(s) to which Merchant belongs and/or belonged as of the commencement of this Agreement; (ii) with any affiliate of Merchant; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable laws or regulations; (vi) with Processor's affiliates, partners and agents; (vii) to Associations and Other Networks and their designees, (viii) to Providers and their designees; (vix) to any other referral source or Processor, including, without limitation, the applicable referrer, ISO/MSP, or independent sales office; (x) to perform analytic services for Merchant, Processor and/or others including but not limited to analyzing, tracking, and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving Processor's products and services; and/or (xi) to offer or provide the Services hereunder. Merchant acknowledges and agrees that Processor may make public the execution of this Agreement by Merchant and/or any of Merchant's affiliates, and/or the Services that may be or have been provided under the Agreement. Merchant agrees that Processor may include Merchant's name and logo on a list of Processor's customers, which may be made public. Merchant agrees that, upon Processor's request, Merchant will provide testimonial information related to the Services received by Merchant hereunder.

B. Merchant must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must destroy in a manner that will render the data unreadable all such media that Merchant no longer deem necessary or appropriate to store (except for sales drafts maintained in accordance with this Agreement, Laws or Operating Regulations). If Merchant uses any third parties who will have access to Cardholder data ("Merchant Provider(s)"), Merchant must notify Processor of their identity. In addition, Merchant must (i) only allow the Merchant Providers access to the Cardholder data for purposes that are authorized by the Operating Regulations, (ii) have proper security measures in place for the protection of Cardholder data, (iii) ensure that Merchant Providers have proper security measures in place for the protection of Cardholder data, (iv) comply with and assure that Merchant Providers comply with the PCI DSS, and (v) have written agreements with Merchant Providers requiring the compliance set forth herein. Merchant will immediately notify Processor of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. Merchant is responsible for demonstrating Merchant's and Merchant Providers' compliance with the PCI DSS programs, and providing reasonable access to Merchant's locations and ensuring Merchant Providers provide reasonable access to their locations to verify Merchant's and their ability to prevent future security violations. Any fees, fines or penalties from non-compliance will be passed through to Merchant. Merchant agrees to indemnify Processor against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information. In addition, in the event of a suspected or confirmed loss or theft of information, Merchant agrees, at Merchant's cost, to provide all information requested by Processor, an Association, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation, including without limitation, any forensic investigation. Any information provided in response to such investigation will (as between Merchant and Processor) be considered Processor's confidential information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether Merchant processes transactions via Internet, mail, phone, face-to-face or any other method.

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

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

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

11. The word "Obligations" is used in its most comprehensive sense and includes, without limitation, all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) of Merchant to Processor, either created by

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Merchant alone or together with another or others, primary or secondary, secured or unsecured, absolute or contingent, liquidated or unliquidated, direct or indirect, whether evidenced by note, draft, agreements of guaranty or otherwise, whether now existing or hereinafter arising, and any and all renewals of, extensions of or substitutes therefor. The word "Obligations" shall include, but not be limited to, all obligations of payment, obligations of indemnification, and indebtedness owed by Merchant to Processor arising from or related to the transactions or services contemplated in this Agreement.

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

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

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

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

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

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

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

**18. Notices.**

A. All notices, requests, demands and other communications to be delivered by Merchant hereunder—unless otherwise specified—shall be in writing and shall be delivered to Processor via certified mail, postage prepaid or reputable overnight courier to Processor at the following address: People's United Merchant Services, LLC, Attention: General Manager, 8500 Governors Hill Drive, Symmes Township, OH 45249-1384; copy to General Counsel. Notices so delivered shall be deemed given upon Processor's actual receipt thereof.

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

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

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

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

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

**23. Assignment.** This Agreement may be assigned by Processor, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, transferees and assignees. If Merchant assigns this Agreement without Processor's consent, the Agreement will be binding on the assignee. If Merchant sells its business, and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners. Merchant shall not assign transfer or encumber its present or future payment rights under this Agreement or connected with a Reserve Account, if any; nor shall Processor be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless Processor consents in writing.

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

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

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

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

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

**29. Governing Law and Arbitration.** This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. Subject to and without waiver of the Arbitration provision in this Section, Merchant irrevocably agrees to all of the following: (i) that any legal suit, action or proceeding arising out of, in any way relating to this Agreement, or pertaining in any way to the relationship between Merchant and Processor shall be exclusively instituted in a state or federal court of appropriate subject matter jurisdiction in Hamilton County, Ohio; and (ii) a waiver of any objection which Merchant



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may have now or hereafter to the venue of any such suit, action or proceeding; and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Notwithstanding the foregoing, nothing contained herein shall prevent Processor from bringing any action or exercising any rights under this Agreement within any other state or country. Merchant irrevocably agrees that service of process may be made, and personal jurisdiction over Merchant obtained, by serving a copy of the Summons and Complaint upon Merchant at its address set forth in this Agreement in accordance with the applicable laws of the State of Ohio. In the event that Merchant has a claim against Member Bank in connection with the services provided under this Agreement, Merchant shall proceed against Processor (subject to the limitations and restrictions herein), and not against Member Bank, unless otherwise specifically required by the Rules. The parties agree that any dispute, controversy or claim between the parties of whatever type or manner, including, without limitation, any claim arising out of or relating to this Agreement, that is not resolved in the ordinary course of business shall be submitted to binding arbitration in lieu of litigation or other court or administrative proceeding by either party. ANY ARBITRATION UNDER THIS AGREEMENT WILL BE ONLY BE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND MERCHANT IS WAIVING ITS RIGHTS TO HAVE ITS CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST PROCESSOR AND MEMBER BANK. The Federal Arbitration Act shall govern the interpretation and enforcement of this section and all arbitration proceedings which take place pursuant to this section. Any arbitration will be filed and take place in Cincinnati, Ohio and in accordance with and pursuant to the Commercial Arbitration Rules of the American Arbitration Association before a panel of three (3) arbitrators unless the amount of damages claimed by the filing party is \$50,000.00 or less, in which event the arbitration shall be before one (1) arbitrator. The arbitrator(s) shall be experienced in the subject matter of this Agreement or the dispute and shall not have been previously an employee, agent, consultant or counsel to either party. The arbitrators shall render their award in writing, sign the award, and state in writing the reasons supporting the award. Each party shall pay an equal share of the costs, fees and expenses of both the arbitration and the arbitrators. A party shall be entitled to the recovery of attorney's fees, costs and expenses as may be determined by the arbitrators. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under this section and the commencement of any arbitration proceeding tolls such statute of limitations. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or equitable relief without regard to this section.

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

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

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

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

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

imposed by the Other Network(s), whether billed directly to Merchant by such Other Network(s) or through Processor or its affiliates or agents. Processor may allocate any such fees, fines, assessments or penalties in such manner as it deems advisable in its sole discretion. Merchant attests that all POS terminals are operating with unique keys as mandated by Other Networks.

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

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

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

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

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

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

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

**42. This Processor and Merchant 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 require Processor and Merchant 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.**

**EQUIPMENT PROGRAM** If, upon the Effective Date of this Agreement or thereafter, Merchant elects to purchase or rent equipment ("Equipment") from Processor, then the following terms and condition shall apply to such Equipment purchase or rental (the "Equipment Program") as a supplement to and in addition to any other terms and conditions contained herein.

**43. Provision of Equipment.**

A. Processor agrees to provide Merchant with the Equipment listed on the Initial Equipment Order Information and Pricing section, and Merchant acknowledges receipt of the same. Additional Equipment may be provided by Processor upon Merchant's request and at Processor's option. Additional Equipment or supplies will be provided at Processor's then-current standard price plus shipping and handling charges.

B. **Purchase.** In the event Merchant purchases equipment from Processor, the Equipment shall become the sole property of Merchant. Merchant shall thereafter be responsible for all maintenance and repairs in connection with the purchased equipment. Further, Processor makes no representations or warranties as to the condition of the

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equipment, including without limitation any express or implied warranties of merchantability or fitness for a particular purpose. Merchant agrees to accept the equipment "AS IS" in its current state and condition. Merchant agrees it shall have no claim or right of action against Processor in connection with the Equipment and hereby releases Processor from any and all liability for lost profits, lost business or any actual, incidental, special, consequential or punitive damages suffered by Merchant in connection with the Equipment.

C. **Rental Term.** Unless otherwise indicated via the applicable purchase code "S", "L", or "O" in the Initial Equipment Order Information and Pricing section, the separate rental term for each individual piece of Equipment provided to Merchant ("Rental Equipment") shall commence on the date the order for such piece of Rental Equipment shipment is initiated and shall continue thereafter on a month-to-month basis. Rental Equipment is, and shall at all times remain, the sole and exclusive property of Processor (or Processor's delegates or assigns), and Merchant has no right, title or interest therein except as expressly set forth herein. Equipment provided to Merchant via the "SP", Special Program, code shall also be a rental commencing on the date the order for such Rental Equipment is initiated and shall continue thereafter on a month-to-month basis, provided, however, that such rental is provided at a promotional price as a specific inducement for Merchant to enter into this Agreement. Either Merchant or Processor may terminate the rental term for a piece of Rental Equipment by providing thirty (30) days advance written notice to the other party. Upon the effective date of such termination notice, Processor may, at its option, debit Merchant for the fair market value of the respective Rental Equipment. In the event that Merchant returns such Rental Equipment to Processor within ten (10) days following the effective date of such termination, Processor will refund to Merchant the debited amount for such Rental Equipment less any amounts resulting from a diminution in value caused by any damage to Equipment, as may be determined by Processor, including but not limited to any expenses incurred by Processor to repair such Equipment. All Rental Equipment shall be returned to Processor at Merchant's expense. To return the Rental Equipment, Merchant shall call 800-617-1723, and will be provided a call tag number and address to forward the Rental Equipment.

D. **Equipment Swap Program.** The equipment swap program is available only for stand-alone PIN Pads and check readers, and for terminals supported by Processor and integrated with PIN Pads or check readers. In the event that Merchant chooses to "swap" certain equipment in its possession for equipment of the same brand and model provided and programmed by Processor or by Processor's designated equipment provider (the "Equipment Provider"), the following terms and conditions shall apply. Processor or its Equipment Provider shall provide Merchant with programmed terminal(s) (the "Processor Equipment"). Immediately upon its receipt of the Processor Equipment, Merchant will mail Equipment Provider a corresponding number of used equipment of the same brand and model, in good working condition ("Merchant Equipment"). Merchant shall mail the Merchant Equipment to Equipment Provider in accordance with the instructions provided to Merchant by Processor or Equipment Provider. Upon Equipment Provider's receipt of the Merchant Equipment, the Merchant Equipment shall become the property of Equipment Provider. If Equipment Provider does not actually receive the Merchant Equipment from Merchant within 30 days of the date on which Equipment Provider shipped the Processor Equipment to Merchant, Bank shall charge Merchant its standard purchase price for the Merchant Equipment. Upon i) Equipment Provider's receipt of the Merchant Equipment and ii) Processor's receipt of the fees set forth in this Section, and in consideration thereof, the Processor Equipment shall become the property of Merchant.

E. **Equipment Re-injection Services.** The equipment reprogramming services are available only for stand-alone PIN Pads and check readers, and for terminals supported by Processor and integrated with PIN Pads or check readers. In the event that Merchant chooses to use existing equipment in its possession, Merchant shall mail such equipment in good working condition ("Merchant Equipment"), to Processor's designated equipment provider (the "Equipment Provider"), in order to allow Equipment Provider to re-inject the Merchant Equipment. Merchant shall mail the Merchant Equipment via insured shipment to the address designated by Processor or Equipment Provider. Upon Equipment Provider's receipt of the Merchant Equipment, Equipment Provider will re-inject the Merchant Equipment, and will return the equipment to Merchant.

F. Processor will initially ship or otherwise send Equipment to Merchant, in accordance with Processor's standard delivery practice, to the locations recorded by Processor. Processor reserves the right to charge Merchant shipping and handling fees for any delivery of the Equipment or any subsequent deliveries (e.g., subsequent Equipment, replacement Equipment, etc.). Merchant shall pay any such charges upon demand.

G. Processor will provide initial instructions with the first shipment of Equipment as to the proper use and operation of the Equipment. Merchant agrees that only those employees who have received and reviewed the operating instructions or who have themselves received operating instructions training from Processor will be permitted to operate the Equipment. Merchant agrees not to remove any Equipment from its original place of installation without the prior written consent of Processor. Merchant will not make, or permit its employees to make any alterations, attachments, additions, or modifications to the Equipment. Merchant shall only use the Equipment to directly perform its duties and obligations as expressly stated in the Agreement, including but not limited to the Rules Summary, and shall not use the Equipment for credit inquiry, account verification or any other purpose.

H. If servicing the Equipment, Processor will do so during regular business hours. Processor will have the right during reasonable business hours to enter upon Merchant's premises for the purpose of servicing Equipment and confirming the existence, condition and proper maintenance of the Equipment. Merchant agrees to surrender the Equipment to Processor's authorized representative upon demand by Processor.

I. **Malfunctioning Equipment shall be shipped to Processor.** Merchant shall call 800-617-1723 to obtain the then-current shipping address. Processor shall, in its sole discretion, either repair such Equipment at its expense or send Merchant comparable Equipment selected by Processor to replace such malfunctioning Equipment. Notwithstanding the foregoing, for Equipment that Processor does not provide maintenance, all Equipment related expenses, whether for maintenance or replacement or otherwise, shall be the sole responsibility of Merchant. Merchant agrees to promptly notify Processor at Processor's designated terminal help desk telephone number of any malfunction or other incident resulting in the loss of use of Equipment. Merchant shall be solely responsible for all maintenance and repairs in connection with any and all Equipment owned by Merchant.

J. In consideration for Processor renting Equipment to Merchant and optionally servicing such Equipment, Merchant shall pay Processor the fees specified for the use of such Equipment. Merchant agrees that Processor may change the fees at any time and without notice. Merchant agrees that it shall review all reports and/or invoices prepared by Processor or its agents and made available to Merchant. Merchant expressly agrees that Merchant's failure to reject any report or invoice in writing within five (5) business days of its receipt shall constitute Merchant's acceptance of the same.

44. **Indemnification.** Merchant agrees that it, and not Processor, is solely responsible for compliance with the applicable state, federal, or other laws, ordinances, regulations, and rules pertaining to the use, possession, and operation of the Equipment, including but not limited to accepting transactions and printing receipts. Merchant hereby assumes liability for, and hereby agrees to indemnify, protect, save and keep harmless Processor, its successors, and its assigns, from and against any and all liabilities, obligations, losses, damages, expenses, penalties, and disbursements (including reasonable attorney's and collection fees, and expenses) of any kind and nature arising from or pertaining to the use, failure, defect, possession or operation of the Equipment including but not limited to liabilities resulting from a breach of any law, regulation or ordinance of any Federal, State or Local Governmental Agency.

**GIFT CARD PROGRAM If, upon the Effective Date of this Agreement or thereafter, Merchant elects to receive GIFT CARD PROGRAM processing services (the "Gift Card Services"), then the following terms and condition shall apply to such Gift Card Services as a supplement to and in addition to any other terms and conditions contained herein.**

45. **Compliance with Laws.** Merchant agrees that it, and not Processor, is solely responsible for compliance with the all applicable state, federal, or other laws, ordinances, regulations, and rules regarding all aspects of certain prepaid private label gift cards ("Gift Cards") and the related gift card program and services related thereto ("Gift Card Services"). Merchant's responsibility shall include, but shall not be limited to, issuance, transactions, acceptance, unused funds, and the preparation and content of the Gift Cards and of the cardholder agreements and disclosures. Merchant shall periodically certify to Processor certification, in a written form satisfactory to Processor, Merchant's compliance with any such laws, ordinances, regulations and rules. Should Merchant fail to provide such certification, Processor may, in addition to all other remedies available under this Agreement and pursuant to law, suspend all Gift Card Services until such certification is provided to Processor. If Processor provides sample cards, card content, agreements, disclosures, or any other materials in connection with Merchant's Gift Cards, Merchant acknowledges that its use of such cards, card content, agreements, disclosures, or other materials shall be Merchant's sole responsibility and at Merchant's own risk. Processor makes no warranty or representation whatsoever including but not limited to any representation or warranty as to the completeness, the legal effect, or the enforceability of such provided samples. Processor's provision of such samples shall not relieve Merchant of any of its responsibilities contained in this Section.

46. **Merchant Gift Card Responsibilities.** Merchant assumes all responsibility for funding all amounts associated with the Gift Cards, including the aggregate amount of the then current open to buy limits of all Gift Cards at the end of each business day. Merchant agrees that it is solely responsible for its and all Gift Card cardholders' participation in, and for any liability arising from, the Gift Card Services. Merchant is responsible for the accuracy and security of all Gift Cards and Gift Card transactions. Merchant (and not Processor) shall be liable for any and all losses arising out of or related to fraudulent Gift Cards or Gift Card transactions.

47. **Cardholder Authorization Limits.** Merchant shall be responsible for establishing, maintaining and notifying Processor, in accordance with all cardholder agreements, laws and regulations, and this Agreement, of cardholder authorization limits, and of all other terms and conditions applicable to the use of Gift Cards in the formats designated by Processor.

48. **Gift Card Affiliates.** Processor has the systems, computers and communications to issue and maintain certain Gift Cards on behalf of Merchant and on behalf of certain affiliates and/or franchisees of Merchant which are eligible to participate in the Gift Card Services and which actually participate therein pursuant to an agreement with Processor (collectively referred to herein as "Gift Card Affiliates") and to authorize Gift Card transactions at Merchant's locations and/or at Gift Card Affiliates' locations on behalf of Merchant and/or Gift Card Affiliates(s), all in accordance with Processor's standards and procedures. Upon Merchant's request, Processor may, at its option, provide the Gift Card Services to the Gift Card Affiliates, and in such event, Merchant agrees that it will ensure that the Gift Card Affiliates are in compliance with this Agreement at all times, and Merchant hereby agrees to guarantee full and unconditional responsibility for the performance of any and all obligations of each of the Gift Card Affiliates in accordance with this Agreement and/or any agreement between such Gift Card Affiliate and Processor, and any modifications or amendments thereto. Merchant agrees that it, and not Processor, shall be fully responsible for resolving any issues arising out of the Gift Card Services between Merchant and any Gift Card Affiliate. Merchant shall cause each Gift Card Affiliate to execute Processor's then-current standard addendum for Gift Card Services should Processor request.

49. **Trademarks.** Merchant is responsible for all content appearing on the Gift Cards. Merchant warrants and represents that it has all rights and/or permissions necessary to use any and all content on the Gift Cards, including but not limited to the rights and/or permissions to use all trademarks and copyright works used on the Gift Cards, and that such use does not violate the rights of any third parties or any other agreements that Merchant may have entered. Merchant agrees that Processor may use Merchant's name, logo, trademarks, etc. in materials related to the Gift Card Services and to advertise or otherwise promote Processor's services so long as Merchant, its parent, or any of its affiliates continues to receive Gift Card Services from Processor. Merchant agrees to indemnify and hold Processor harmless from any and all claims against Processor and any resulting liabilities, costs and expenses arising out of the content of the Gift Cards. Merchant will immediately notify Processor upon learning of any claims that the content of the Gift Cards infringes any rights of third parties and/or any demands that use of the Gift Cards cease due to their content. This section shall survive termination of this Agreement.