

Merchant Credit Card Processing Terms & Conditions

First American Payment Systems is a registered ISO of Fifth Third Bank, N.A., Cincinnati, OH.

THIS AGREEMENT is made by and between Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, and First American Payment Systems, L.P. (collectively "BANK") and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement.

WHEREAS, BANK is engaged in the business of financial transaction processing which includes, but is not limited to, the processing of and providing for the payment of charges created by the holders of bank cards bearing the Visa U.S.A. Inc. ("Visa") MasterCard International Incorporated ("MasterCard"), American Express Travel Related Services Company, Inc. ("American Express"), DFS Services LLC ("Discover") and PayPal ("PayPal") trademarks, as well as certain credit, debit, and other electronic payment cards, each of such cards (hereinafter referred to as a "bank card"); and

WHEREAS, Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, has entered into an agreement with First American Payment Systems, L.P. ("First American") authorizing First American to perform the processing functions, exercise the legal rights and receive the benefits under such agreement; and

WHEREAS, MERCHANT hereby warrants that it is engaged in a lawful business and is duly licensed under the laws of the state, county, and city disclosed by MERCHANT on the Merchant Application & Agreement, to conduct such business; and

WHEREAS, MERCHANT currently accepts or desires to accept bank cards for its customers' purchase of goods and services it provides or anticipates providing; and

WHEREAS, MERCHANT warrants that neither it nor any of its officers, directors, partners, managers or owners has been terminated for any reason by any bank or any processor in connection with any agreement regarding depositing or processing bank card sales or transactions.

NOW, THEREFORE, in consideration of the representations, covenants, and promises made herein, the receipt and sufficiency of which are acknowledged, BANK and MERCHANT agree as follows:

1. Agreement. Reference to this "Agreement" includes all supplements, schedules, appendices, Merchant Application & Agreement, additional location documentation, any terms and conditions, and any other documents requested by BANK. This Agreement is not in full force and effect until accepted by BANK. BANK may adjust or amend the Merchant Profile section with or without notice to MERCHANT prior to accepting the Agreement. MERCHANT acknowledges that BANK will provide transaction processing hereunder through First American or other third parties. MERCHANT agrees that First American may perform the functions of BANK hereunder and that First American may receive the benefits of and enforce the terms of this Agreement against MERCHANT and any third party as an assignee of BANK's rights hereunder, whether or not BANK is a party to such proceeding or transaction.

2. Additional Locations. MERCHANT must complete an Additional Location Form for each additional MERCHANT location. MERCHANT expressly agrees and acknowledges that each MERCHANT location shall be governed by these Merchant Processing Terms & Conditions and the Merchant Application & Agreement, including and without limitation, the rates and fees described therein, as may be amended from time to time.

3. Acceptance of Bank Cards. MERCHANT agrees to honor without discrimination all lawful and valid bank cards when properly presented as payment by customers and within MERCHANT's approved processing profile parameters, in connection with bona fide, legitimate business transactions arising out of MERCHANT's usual trade or business as disclosed in the Merchant Application & Agreement. MERCHANT agrees not to submit any bank card transactions that will violate applicable laws or rules and regulations of Visa/MasterCard, American Express, Discover and PayPal. The acceptance of all other credit cards (e.g., Diner's Club) is subject to the rules and regulations of the issuing organizations. Such rules and regulations are incorporated herein by this reference.

MERCHANT understands instant board and processing may be available in some instances. Bank shall have the absolute and unconditional right to delay boarding and processing or withhold any transaction(s) processed for a minimum of 3 days until Banks risk can be fully assessed.

MERCHANT understands and agrees that it is solely responsible for compliance with any local, state, or federal rules regarding assessment of any fee(s) for consumer's use of a credit or debit card or offering any type of Non-Cash Adjustment program. MERCHANT shall also be responsible for any compliance rules and regulations relating to Non-Cash Adjustment programs from all the various Card Brands (i.e. Visa, MasterCard, American Express, and Discover) and shall be responsible for any fines or actions taken by these entities.

BANK has the right, at its sole discretion, to cancel any type of Non-Cash Adjustment or Service Fee assessment program with or without notice to MERCHANT.

MERCHANT is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by BANK. Program Marks mean the brands, emblems, trademarks and/or logos that identify various bank cards. Additionally, MERCHANT shall not use the Program Marks other than to display decals, signage, advertising and other forms depicting the Program Marks that are provided to MERCHANT by BANK pursuant to the Merchant Program or otherwise approved in advance in writing by BANK. MERCHANT may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by MERCHANT must be approved in advance

by BANK in writing. MERCHANT shall not use the Program Marks in such a way that customers could believe that the products or services offered by MERCHANT are sponsored or guaranteed by the owners of the Program Marks. MERCHANT recognizes that it has no ownership rights in the Program Marks. MERCHANT shall not assign to any third party any of the rights to use the Program Marks. MERCHANT agrees that if this Agreement is terminated for any reason, they shall cease display and use of any and all Program Marks.

4. Completion of Bank Card Sales Draft. MERCHANT agrees to complete all bank card sales drafts (hereinafter "sales slips") or credit drafts or vouchers (hereinafter "credit slips") in accordance with prescribed rules and regulations of Visa, MasterCard, American Express, Discover and PayPal or any other applicable card issuing organization. MERCHANT agrees that in all face-to-face sales to either (i) imprint the sales slip with the embossed data from the customer's bank card and the MERCHANT's imprint plate, or (ii) generate electronically a sales slip by swiping through a POS terminal (as defined below) a customer's bank card. MERCHANT shall obtain the cardholder's signature on the sales slip and confirm that such signature matches the signature on the card. MERCHANT shall verify that the embossed cardholder number is the same cardholder number contained in the bank card's magnetic strip. MERCHANT agrees not to accept bank cards when the customer's signature does not match the signature on the signature strip or the bank card has expired. Notwithstanding MERCHANT's use of an electronic terminal or similar device through which an authorization may be obtained (a point of sale "POS" terminal), for all face-to-face sales MERCHANT must still obtain the cardholder's signature on the printed sales receipt. Failure to properly follow all terms of this Agreement may result in a delay or denial in processing, a chargeback or sales proceeds not being paid to MERCHANT's account. MERCHANT shall be solely responsible for the proper verification of the cardholder's signature and the expiration date of the bank card, which obligation shall not be discharged by receipt of an electronic approval code.

5. Point-of-Sale Devices. MERCHANT agrees to keep all imprinters and POS terminals used to process bank card transactions in good working order and will assist BANK in compliance. MERCHANT understands that BANK cannot and does not warrant the connectivity, performance of equipment, or quality of services as a result of MERCHANT's data or voice connection, or similar type service. MERCHANT agrees that BANK is not responsible for, and MERCHANT accepts full responsibility for issues that may arise when utilizing data or voice connections, or similar service, including but not limited to; failure to obtain authorizations, batching, settlement, equipment, equipment/Software installation, communications, downloads and internet connectivity. Further, MERCHANT acknowledges it will not make any claim against BANK for any losses or damages, including, but not limited to, loss of income, loss of revenue, economical loss, consequential, direct, indirect, special, exemplary, or punitive relating to the use or connectivity of any data or voice connections or similar services.

6. Bank Card Authorization. MERCHANT understands and acknowledges that all transactions must be authorized. MERCHANT also understands that transaction authorization is not a guarantee of payment from First American, nor does the transaction authorization prohibit the card holder or card issuer from initiating a chargeback.

In the event of a POS terminal failure, bank card defect, or communication error, MERCHANT agrees to obtain (i) authorization according to voice back-up procedures furnished by BANK and (ii) in the case of a face-to-face sale, an imprinted sales slip.

7. Mail Order, Telephone Order, and Electronic Commerce Sales. BANK discourages MERCHANT from accepting mail, telephone or electronic commerce orders because of the high incidence of fraud associated with such sales. MERCHANT also understands BANK does not allow transactions to be processed for items sold through online auction sites, where bidding for merchandise takes place, due to the high incident of fraud and chargebacks. MERCHANT acknowledges that BANK shall have the right to immediately terminate this Agreement without liability, if MERCHANT has not received previous written approval from BANK to accept mail, telephone or electronic commerce orders or if MERCHANT exceeds the percentage of mail, telephone or electronic commerce orders previously approved by BANK or described in the Merchant Profile section of the Merchant Application & Agreement. BANK's failure to hold funds, suspend processing or terminate this Agreement shall not constitute a waiver of such rights and such rights may be exercised at any time regardless of when BANK determines to exercise such rights. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.

8. Transaction Records. MERCHANT agrees to balance and deliver to BANK all bank card transactions on the same day they are processed.

9. Payments. All payments to MERCHANT for legitimate and authorized bank card sales shall be made by BANK through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, BANK cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, the MERCHANT agrees to assist BANK to help resolve any problems in crediting MERCHANT's account. MERCHANT agrees to provide BANK three (3) days prior written notice of any change of account and to abide by BANK's policies regarding changes to accounts. MERCHANT and not BANK or any processor shall be responsible

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for verifying that account information is correct on the Merchant Application & Agreement, voided check and all account statements. BANK is not responsible for incorrect account numbers. Unless proper notice is provided by MERCHANT to BANK, MERCHANT shall not change any of its accounts. All payments to MERCHANT for the amount of bank card sales properly submitted to BANK shall be less discount, credit chargebacks, reserve amounts, transaction fees, statement fees, and other applicable fees all of which are the responsibility of MERCHANT. Any payment made by BANK to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by BANK. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to transactions described in Sections 17, 18 and 28 of this Agreement unless and until MERCHANT provides to BANK the requested documentation. If MERCHANT fails to provide requested documentation, such payments shall be earned compensation of BANK. Fees and other charges due BANK hereunder may be deducted from amounts due MERCHANT or may be debited against any of MERCHANT's accounts at BANK's sole discretion. The discount and other fees may be collected by BANK on a daily, monthly, or other basis, as determined by BANK. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's account, or paid directly by MERCHANT through ACH or otherwise at BANK's sole discretion. MERCHANT must notify BANK in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of BANK and MERCHANT subject to or relating to this Agreement or BANK's obligations hereunder. Save and except BANK's right to funds owed BANK under this Agreement or incorrectly paid to MERCHANT, if no notice of error is received within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. Any amount inadvertently or incorrectly paid to MERCHANT may be debited from any account of MERCHANT, at the sole discretion of BANK and, in any event, remains an obligation of MERCHANT to BANK payable in full and on demand.

10. Sales Slip Storage and Retrieval. Visa, MasterCard, American Express, Discover and PayPal require BANK to obtain from MERCHANT and forward to bank card issuers, upon request, copies of sales or credit slips. MERCHANT shall set up a system satisfactory to BANK to store and maintain sales slips and MERCHANT shall deliver to BANK within 24 hours of request copies of any sales slip requested by BANK. MERCHANT shall preserve a copy of the actual paper sales slips, credit slips and, if a mail order or pre-authorized order is involved, the customer's signed authorization for the transaction, for at least three (3) years after the date MERCHANT presents the transaction data to BANK. To assist in the resolution of any dispute and in addition to and without limiting the foregoing provisions of this paragraph, MERCHANT agrees to retain for two (2) years and make available within three (3) days of a request all pertinent records pertaining to each transaction in question, including, but not limited to, itemized bills, authorization requests, and other related documents. MERCHANT shall preserve the confidentiality all information in an area limited to selected personnel and exercise best efforts to maintain these materials in a secure manner. MERCHANT's obligations under this paragraph shall survive following the close of MERCHANT's business or the termination of this Agreement. MERCHANT understands that its failure to respond timely to a retrieval request may result in a chargeback under Visa, MasterCard, American Express, Discover and PayPal rules and regulations. All chargebacks and fees shall be the responsibility of MERCHANT and paid by and charged to MERCHANT. In connection with retrieval requests or other administrative requirements associated with any MERCHANT agreement or account, BANK and/or its designated processor may charge retrieval fees and administrative charges which shall be the responsibility of MERCHANT. BANK and/or its designated processor shall determine in their sole discretion the amount of any retrieval fee and administrative charge and when such fee and charge shall be assessed. MERCHANT shall not be entitled to notice of any such fee or administrative charge or with respect to any change in the amount of any fee or administrative charge.

11. Warranties by MERCHANT. MERCHANT warrants that it shall fully comply with all federal, state, and local laws, rules, and regulations, as amended from time to time, including, but not limited to, the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

As to each bank card sale presented to BANK for payment, MERCHANT warrants that:

- The sales slip is valid in form and has been completed in accordance with current instructions, if any, furnished by BANK;
- MERCHANT has delivered MERCHANT's merchandise to the cardholder signing such sales slip or completed MERCHANT's service described on the slip in accordance with MERCHANT's underlying agreement with the cardholder;
- MERCHANT has delivered to the cardholder a true and complete copy of the sales slip or suitable receipt evidencing the transaction involving use of the bank card;
- Each sales slip represents the cardholder's indebtedness to MERCHANT for the amount shown;
- The cardholder has no defense, right of offset, or counterclaim against MERCHANT in connection with the purchase of the goods or services;
- Unless expressly authorized in writing by BANK and as permitted by Visa, MasterCard and American Express rules and regulations, MERCHANT has not and shall not make any cash advances to cardholder, either directly or by deposit to the cardholder's account;
- Neither MERCHANT nor any owner, director, officer, member, partner or employee of MERCHANT ("Affiliates") has advanced any cash to cardholder or any person in connection with the purported bank card sale;
- MERCHANT has not charged cardholder any separate or additional fee(s) or surcharge or required cardholder to pay any part of any charge imposed on MERCHANT by BANK in connection with the acceptance of a bank card transaction. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying cash,

check, or any other means other than by bank card, provided such discounted price is presented as a discount from the standard price available for all other means of payment;

- In any bank card transaction, MERCHANT warrants the customer's true identity as an authorized user of the bank card;
- In any face-to-face sale, MERCHANT warrants it has verified the existence of a signature in the bank card signature panel and compared such signature with the signature on the sales slip;
- MERCHANT warrants that bank card has not and will not be used for verification of age;
- MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange bank card account number information in the form of imprinted sales slips, mailing lists, tapes, or any other media obtained by reason of a bank card transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, to BANK, to Visa, to MasterCard, to American Express, to Discover, or to PayPal, or pursuant to a valid subpoena;
- MERCHANT warrants that it will not submit any transactions that are not in compliance with both this Agreement and any such codes or rules and hereby indemnifies and holds BANK harmless against any loss or damage BANK may suffer as a result of a breach of this or any other warranty or agreement by MERCHANT;
- MERCHANT may display the proprietary names and symbols associated with bank cards only while this Agreement is in effect, or until MERCHANT is notified by BANK or the bank card brands/organizations to cease such usage. BANK and the bank card brands/organizations shall have the right at anytime to require MERCHANT to cease such usage for any reason, whether or not this Agreement remains in effect. MERCHANT may use the proprietary names and symbols associated with bank cards only to indicate that bank cards are accepted for payment and shall not indicate, directly or indirectly, that BANK, Visa, MasterCard, American Express, Discover, PayPal, or any other bank card brand/organization endorses MERCHANT's products or services;
- MERCHANT understands that sales completed at one location may not be processed at another location;
- MERCHANT shall not, under any circumstances, present to BANK a sale which has been split into multiple bank card transactions; and
- If an authorization number is required or requested, MERCHANT warrants it shall use only the authorization number obtained through the Voice Authorization Network phone number provided by BANK. MERCHANT shall not use any number given by the cardholder or any type of number which has been obtained from any other source.
- MERCHANT is responsible for its employees' actions while in its employ.
- MERCHANT will not sell, purchase, provide, exchange or in any manner disclose Card account number, Transaction, or personal information of or about a Cardholder to anyone other than its Acquirer, to the Corporation, or in response to a valid government demand. This warranty applies to Card imprints, TIDs, carbon copies, mailing lists, tapes, database files, and all other media created or obtained as a result of a Transaction.

12. Business Changes. MERCHANT shall provide at least thirty (30) days written notice to BANK for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, address, change of Sales Profile as described in the Merchant Application & Agreement, any ownership change, or transfer or sell of substantially all of the assets of MERCHANT. At all times MERCHANT shall provide BANK with its current mailing address. BANK shall have the right to charge a fee of no less than twenty dollars (\$20.00) for returned mail items. If BANK receives a returned mail item with no forwarding address, BANK may exercise its right to suspend mailing Merchant Statements until such time as the correct address has been provided by MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, utilize the merchant account to process e-commerce transactions or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining BANK's prior written consent to the change, move, or addition. MERCHANT also agrees that prior to any changes, BANK must first accept the change and confirm such acceptance in writing. MERCHANT acknowledges that the codes of professional responsibility and the rules and regulations of professional associations may apply to the transactions covered by this Agreement. MERCHANT may, however, bring any inconsistency between this Agreement and such codes and rules to the attention of BANK and request a modification to this Agreement to eliminate such inconsistency. BANK may, in its discretion, agree to such modification to the extent it is consistent with BANK policy and in conformity with then existing Visa, MasterCard, American Express, Discover and PayPal rules, regulations and applicable laws. Until BANK agrees to such modification in writing, the terms of this Agreement shall remain in place.

MERCHANT shall be responsible for any administrative charges of BANK associated with any change.

13. Returns and Credits. MERCHANT shall properly complete a credit slip and deliver one completed copy to cardholder at the time of each return of merchandise or cancellation of sale. BANK shall charge MERCHANT the transaction fee as well as other fees applicable to all credit transactions. MERCHANT shall not, under any circumstances issue: (i) cash or MERCHANT's check for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (ii) credit MERCHANT or its Affiliates for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (iii) a credit slip to a cardholder without having completed a previous purchase transaction with the same cardholder; or (iv) a credit slip to a cardholder for any prior sale or service made or provided at a location other than the location where the credit slip is issued.

With proper disclosure at the time of the transaction where purchased goods or services are delivered to cardholder, MERCHANT may:

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- (a) Refuse to accept merchandise in return or exchange and refuse to issue a refund to a cardholder; or
- (b) Accept returned merchandise in exchange for the MERCHANT's promise to deliver goods or services of equal value available from MERCHANT at no additional cost to cardholder.

Proper disclosure shall be deemed to have been given if, at the time of the transaction and prior to obtaining the customer's signature, the following notice appears on all copies of the sales slip in legible letters at least 1/4 inch high and in close proximity to the space provided for the cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY," as applicable, or equivalent language.

14. Chargebacks. MERCHANT expressly acknowledges and agrees to any charge or debit made by BANK against any of MERCHANT's accounts as a result of the exercise of chargeback or retrieval rights by a cardholder, issuing bank, processor, or other intermediary pursuant to applicable operating regulations of Visa, MasterCard, American Express, Discover, PayPal or other card brands/organizations as the same may be in effect from time to time. MERCHANT also understands and acknowledges that BANK may debit or reduce MERCHANT's bank account whether or not cardholder has returned merchandise. Without prior notice, BANK shall have the right, at any time, to reduce MERCHANT's bank card sales proceeds received from issuing banks, debit any of MERCHANT's accounts and/or demand immediate payment from MERCHANT through ACH or otherwise for any bank card transaction which is disputed, questioned or returned to BANK by the financial institution or company which has issued the bank card (the "Card Issuer") and to chargeback such sale to MERCHANT in any of, but not limited to, the following situations:

- (a) Where goods originally purchased have been returned to MERCHANT by cardholder and cardholder requested a credit slip and such credit slip was not processed by MERCHANT;
- (b) Where the purchase had not been authorized as required;
- (c) Where sales slip covers goods or services other than those described in the Merchant Application & Agreement;
- (d) Where a cardholder contends or disputes to the Card Issuer that: (i) goods or services were not received by cardholder or by authorized user; or (ii) goods or services received by cardholder or by authorized user do not conform to what was described on the sales slip; or (iii) goods or services were defective or of unsatisfactory quality;
- (e) Where original sales slip is not received by BANK from MERCHANT when requested by BANK in accordance with paragraph 10 of this Agreement;
- (f) Where sales slip does not contain a transaction date or the face of such sales slip shows that such date or dollar amount has been altered or incorrectly entered;
- (g) Where the sales slip delivered to BANK contains the imprint or description of a bank card other than the bank card processed;
- (h) Where the sale was generated through the use of an expired bank card;
- (i) Where no signature appears on sales slip and the cardholder has represented in writing to BANK or the Card Issuer that the cardholder did not make or authorize the transaction;
- (j) Where the sales slip does not contain the embossed legend from a bank card or MERCHANT has failed to obtain proper authorization to complete the transaction or the cardholder has represented in writing to BANK or the Card Issuer that the cardholder did not make or authorize the transaction;
- (k) Where the signature on the sales slip is different from the signature appearing on the signature panel of the card or where no signature appears on the signature panel of the card;
- (l) Where a Card Issuer or BANK has information that impropriety or fraud occurred at the time of transaction, whether or not such transaction was properly authorized by the Card Issuer or the cardholder participated in or authorized the transaction, or the Card Issuer represents that there is no bank card outstanding with the account number used;
- (m) BANK reasonably determines that the transaction record is improper, fraudulent, not a bona fide transaction in MERCHANT's ordinary course of business or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, impropriety, or dishonesty on the part of card user, cardholder, MERCHANT or Affiliates;
- (n) In any situation where the sales slip was executed or credit given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT hereunder, or MERCHANT's violation of Visa, MasterCard, American Express, Discover, or PayPal rules and regulations which has resulted in a sale being charged back by the Card Issuer;
- (o) As required by bank card brand/organization rules or regulations as they currently exist or as they may be amended from time to time;
- (p) In such other circumstances where BANK determines or suspects in its sole discretion that the transaction may result in a chargeback for any reason, whether or not enumerated under this paragraph and whether or not the transaction results in a chargeback; or
- (q) If with respect to any of MERCHANT's outlets, the ratio of bank card counterfeit and fraud volume to bank card sales volume or the ratio of the number of bank card chargebacks to the number of bank card sales exceeds 1% or credits processed exceed ten percent (10%) for any given month. In such event, without limiting other rights hereunder, BANK in its sole and absolute discretion may charge back all bank card sales for all locations.

MERCHANT understands that BANK will assess MERCHANT a fee as well as administrative costs as determined by BANK for each chargeback. MERCHANT, whether consented to or not by cardholder, shall not present to BANK for processing any sales slip representing a transaction which has been previously charged back to BANK and returned to MERCHANT. MERCHANT's obligations and BANK's rights under this paragraph shall survive the termination of this Agreement.

MERCHANT shall not bill or collect from any cardholder for any purchase or payment unless a chargeback has been exercised, the MERCHANT has fully paid for such charge, First American ISV TC 01.15.21

or the MERCHANT otherwise has the right to do so.

15. Electronic Commerce. If BANK approves MERCHANT to accept bank cards via the Internet, then MERCHANT will provide secure encryption capability, such as Secure Socket Layer (SSL), to cardholders. MERCHANT agrees that it must also in addition not in lieu of other applicable procedures and rules comply with the following:

- (a) Post its privacy and security policy on its website, where such policies shall be clearly marked for consumers to see and clearly review; and
- (b) Website must include the following information displayed in the following manner:
 - (i) complete description of the products offered, (ii) return merchandise and refund policy, (iii) method for the cardholder to acknowledge their acceptance of the Terms & Conditions for return merchandise or for the refund policy; this acknowledgement should be in a format that complies with brand guidelines for proper disclosure, (iv) customer service contact, including email address and/or telephone number, (v) any applicable export or legal restrictions, (vi) delivery policy and (vii) consumer data privacy policy.

In any real-time electronic commerce bank card transaction, MERCHANT will cause the cardholder to enter the verification value located on the back of the card and the cardholder's street number and zip code for address verification. MERCHANT acknowledges and agrees all e-commerce transactions must be submitted utilizing e-commerce certified software acceptable to BANK. MERCHANT acknowledges that the electronic commerce indicator must be used to identify e-commerce transactions in the authorization request and clearing record. Penalties can be assessed for failure to use the correct electronic indicator. MERCHANT acknowledges and agrees they will not submit e-commerce transactions via a point-of-sale (POS) terminal. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.

16. Recurring Transactions. If MERCHANT agrees to accept a transaction from a cardholder for the purchase of goods or services which are to be delivered or performed periodically (a "Recurring Transaction"), the cardholder must complete and deliver to MERCHANT a written request for such goods or services to be charged to the cardholder's account periodically. Each of the following provisions shall apply to all recurring transactions:

- (a) The cardholder's written authorization must be retained for the duration of the recurring charges and provided promptly in response to a cardholder's request for a copy;
- (b) MERCHANT must not complete an initial or subsequent recurring transaction after receiving a cancellation notice from the cardholder, BANK, or another bank;
- (c) MERCHANT shall type or print legibly, on the "Signature Line" of the sales draft for recurring transactions, the words "Recurring Transaction";
- (d) The cardholder's written authorization must include the amount of the transaction, frequency of the charge and the duration of time for which cardholder's permission is granted; and
- (e) If the cardholder elects to renew a Recurring Transaction, the cardholder must complete and deliver to MERCHANT a new written Recurring Transaction request.

17. Improper Transactions; Forward Commitments. BANK may hold funds, suspend processing, terminate this Agreement with or without notice, or require MERCHANT to process a refund upon any determination by BANK, in its sole discretion, of improper, fraudulent, suspicious or questionable transactions, including, but not limited to, any transactions for items or services with a future delivery date or forward commitment, transactions that fail to meet the requirements of this Agreement or which vary from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement. BANK may also at its sole discretion block, reject, or deny any transaction for any reason. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to such transaction(s) unless and until MERCHANT provides to BANK the documentation sufficient for BANK to determine that the transaction(s) is verified, legitimate, and BANK's risk has been mitigated. BANK reserves the right, at its sole discretion, to adjust or amend the Merchant Profile Section of the Merchant Application & Agreement with or without notice to MERCHANT. MERCHANT acknowledges no discount or transaction fees will be refunded as a result of BANK withholding payment to MERCHANT, including but not limited to reversals, returns and/or credits.

18. Fraudulent Sales/Factoring. MERCHANT shall not present to BANK directly or indirectly, any transaction(s) (i) that results from processing credit or debit, directly or indirectly, transaction(s) not originated as a result of an act directly between cardholder and MERCHANT, (ii) that MERCHANT processes for any other person or business (iii) that results from a transaction outside MERCHANT's normal course of business as described in the Merchant Application & Agreement, (iv) that MERCHANT knows or should have known to be fraudulent, improper, illegal, or not authorized by the cardholder, or (v) that contains the account number of a bank card account issued to MERCHANT. Should MERCHANT do so, BANK may hold funds, suspend processing or terminate this Agreement with or without notice following the determination, at BANK's sole discretion, of improper, fraudulent, suspect, or other questionable transactions, including, but not limited to, transactions varying materially in character from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to such transaction(s) unless and until MERCHANT provides to BANK the documentation sufficient for BANK to determine that the transaction(s) is verified, legitimate, and BANK's risk has been mitigated. MERCHANT acknowledges no discount or transaction fees will be refunded as a result of BANK withholding payment to MERCHANT, including but not limited to reversals, returns and/or credits.

19. Exclusivity. MERCHANT agrees that it will not use the service of any corporation, entity or person other than BANK for the processing of bank card transactions.

20. Rules and Regulations. This Agreement shall be subject to the bylaws and operat-

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ing rules and regulations of Visa, MasterCard, American Express, Discover and PayPal as amended from time to time.

21. PCI DSS Compliance and Customer Information Security. BANK shall implement policies and procedures to maintain the security of cardholder data that BANK possesses, stores, processes or transmits on behalf of MERCHANT, or to the extent that BANK could impact the security of MERCHANT's cardholder data environment, in accordance with applicable Payment Card Industry Data Security Standard (PCI-DSS) requirements.

MERCHANT and Agent (as defined below) will exercise reasonable care to prevent disclosure or use of Customer Information (as defined below), other than (i) to MERCHANT's agents and contractors for the purpose of assisting MERCHANT in completing a payment transaction, (ii) to the applicable card brand or organization or governmental entities and authorities, or (iii) as specifically required by law. MERCHANT is prohibited from storing CVV2 or CV2, magnetic stripe track data and PIN data. "Customer Information" means personal information related to a customer of MERCHANT or a customer's payment instrument that is obtained by MERCHANT as a part of a transaction. Such information shall include a customer's name, address, phone number, date of birth, payment instrument account number and expiration date, PIN data, and CVV2 or CVC2 data, and any data read, scanned, or otherwise obtained from the payment instrument, whether printed thereon, or magnetically, electronically or otherwise stored thereon. MERCHANT will store all media containing allowed Customer Information, currently limited to customer name, payment instrument account number and expiration date, in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only and prior to either party discarding any material containing Customer Information, the party will destroy it in a manner rendering the account numbers unreadable. If at any time MERCHANT determines that Customer Information has been compromised MERCHANT will notify BANK immediately, and in no case later than twenty-four (24) hours after discovery of the event, and assist in providing notification to the proper parties, as we deem necessary. MERCHANT information may be shared by BANK with BANK's affiliates and with governmental entities and authorities and the card brands or organizations subject to the provisions of this Agreement and the bylaws, rules and regulations, as they exist from time to time, of the card brands and organizations, as well as applicable laws and/or regulations (the "Rules"). MERCHANT agrees to comply with all security standards and guidelines that may be published from time to time by any card brand or organization, including, without limitation, the Payment Card Industry Data Security Standards ("PCIDSS"), the Visa Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection program ("SDP"), the American Express® Data Security Operating Policy - United States ("DSOP") and the Discover/PayPal-Security Requirements (collectively, the "Security Guidelines"). All Service Providers MERCHANT uses must be recognized by Visa as CISP compliant service providers and payment applications MERCHANT uses must be recognized by VISA as compliant with the Payment Application Data Security Standards ("PA-DSS"). "Service Provider" means any party that processes, stores or transmits Customer Information on MERCHANT's behalf. MERCHANT understands that failure to comply with the Rules, including PCIDSS, CISP, SDP or other Security Guidelines, or the compromise of any customer account information, may result in assessments, fines, and/or penalties by the card brands and organizations or governmental entities or authorities, and MERCHANT agrees to indemnify and reimburse BANK immediately for any assessment, fine, or penalty imposed on BANK due to any such event or MERCHANT's breach of this paragraph and any related loss, cost or expense incurred by BANK, including but not limited to, forensic investigation costs. Furthermore, MERCHANT must comply with BANK's request to upgrade any non-compliant POS system and/or terminal within ten (10) business days of such request. BANK reserves the right of set-off to any and all credit card proceeds to be applied toward any and all balances relating to such expenses, cost and/or fees, with or without notice to MERCHANT. MERCHANT further agrees to (i) exercise reasonable due diligence to ensure that all of MERCHANT's Service Providers, payment applications, agents, business partners, contractors, and subcontractors maintain compliance with the Security Guidelines and (ii) provide BANK upon BANK's request with the assessment of MERCHANT's compliance with the Rules, Security Guidelines and PA-DSS as required by the card brands and organizations. If any card brand and organization, governmental entity or authority requires an audit of MERCHANT or any of MERCHANT's Service Providers, payment applications, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, MERCHANT agrees to cooperate with such audit and agrees to pay for all costs and expenses related to such audit, including all of BANK's costs relating to such audit, including attorneys' fees. MERCHANT's obligations and BANK's rights under this section shall survive the termination of this Agreement.

BANK may make available a PCI DSS compliance program through a third-party. Depending on the program, BANK shall have the right to charge an annual or monthly PCI fee whether or not MERCHANT participates in the program. Further, BANK may charge a non-compliance fee on a frequency to be determined by BANK for merchants who fail to provide certification of PCI compliance, and maintain an annual certificate of compliance.

MERCHANT acknowledges and agrees that MERCHANT's use of the third-party services does not guarantee MERCHANT's compliance with any of the rules or security standards established by Visa/MasterCard/American Express/Discover/PayPal and any other applicable card companies. MERCHANT further acknowledges and agrees that MERCHANT's use of the third-party services does not guarantee the security of MERCHANT's IP addresses or that MERCHANT's systems are secure from unauthorized access. MERCHANT is responsible for establishing and maintaining security policies and procedures, and for compliance with the rules and security standards of Visa/MasterCard/American Express/Discover/PayPal and any other applicable card companies, including any obligation to notify Visa/MasterCard/American Express/Discover/PayPal and any other applicable card companies and BANK of any suspected breach of MERCHANT's systems.

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 BANK Rules, the Operating Regulations, and the Laws. BANK may approve or deny the use of an Agent in BANK'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 Brand (e.g., registrations, PA-DSS, PCI, audits, etc.). If an Agent is designated a service provider under any applicable Operating Regulation, MERCHANT shall cause such Agent to cooperate with BANK 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 BANK 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 BANK), and MERCHANT hereby expressly assumes all such liability.

MERCHANT expressly authorizes BANK to access information regarding MERCHANT's PCI compliance status. Upon BANK's request, MERCHANT or MERCHANT's PCI vendor must provide information, including but not limited to, PCI compliance/validation certification, SAQ (Self-Assessment Questionnaire), and Network scan results, and any other information BANK requests with regard to MERCHANT's PCI compliance within ten (10) business days of request.

BANK at its discretion may discontinue, modify or amend the PCI DSS compliance program at any time. Upon termination of this Merchant Application and Agreement, MERCHANT's right to participate in the above referenced PCI DSS compliance program shall cease notwithstanding the prior payment of any PCI fee paid by MERCHANT.

MERCHANT expressly acknowledges and agrees that BANK shall be a third party beneficiary of any agreement entered into between MERCHANT and BANK's third party service provider and MERCHANT relating to the above-referenced PCI compliance program and BANK shall have the rights, remedies and protections afforded therein to such third party service provider.

22. Assignment. This Agreement and the rights and obligations underlying this Agreement may be assigned by Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, or First American Payment Systems, L.P., or their respective affiliates or subsidiaries. This Agreement may not be assigned by MERCHANT.

23. Term; Termination. The initial term of this Agreement shall commence upon BANK's acceptance hereof (as evidenced by BANK's performance hereunder) and continue in full force and effect for the term set forth in the Acknowledgements section of the Merchant Application & Agreement from acceptance by BANK. Thereafter, the Agreement will automatically renew for additional one-year periods unless MERCHANT gives (and BANK receives) written notice of non-renewal prior to the end of the applicable term. The written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted. Notwithstanding any other provision hereof, the Agreement may be terminated by BANK, with or without cause or reason, and with or without notice. Termination by BANK for any service results in termination of all services. In the event MERCHANT submits bank card transactions to BANK after the date of termination, the bank card transactions may (at BANK's option) be processed subject to the terms and conditions of this Agreement. If this Agreement is terminated by MERCHANT prior to the end of the term or by BANK as a result of MERCHANT's breach, BANK will be entitled to recover and MERCHANT shall pay on demand, an early termination fee as set forth in the Acknowledgements section of the Merchant Application & Agreement* for each MERCHANT location. At its sole and absolute discretion, BANK may also assess liquidated damages in connection with such termination, which shall be the average monthly fees paid by MERCHANT to BANK for the last 12 months (or the number of months this Agreement has been in effect, if less than twelve months) times the number of months remaining in the term, plus any and all additional losses (including consequential damages, costs, expenses and other liabilities) incurred by BANK in connection with such termination. MERCHANT and BANK agree that: (a) the award of liquidated damages is to provide a means of compensation for BANK in the event of a breach by MERCHANT in the form of early cancellation or non-adherence to exclusivity requirement; (b) BANK's damages would be difficult or impossible to prove; and (c) the amount of liquidated damages set forth herein is a fair and reasonable estimate of BANK's damages resulting from any breach or improper termination by MERCHANT. BANK may hold payment of any monies due MERCHANT to ensure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement. *[ARKANSAS MERCHANTS - early termination fee is up to fifty dollars (\$50.00)].

24. Authorization. MERCHANT hereby authorizes BANK in accordance with this Agreement to initiate debit/credit entries to any account as indicated herein. The authority to initiate such debit/credit entries shall remain in full force until BANK shall have been paid all fees under this Agreement and all chargebacks and other amounts shall have been paid.

25. Terminated Merchant File/MATCH/CMNF. MERCHANT may be placed on the Combined Terminated Merchant File, MATCH, or the Consortium Merchant Negative File upon violation of any terms of this Agreement or any bank card brand/organization rules or regulations. MERCHANT hereby releases, indemnifies, and holds BANK harmless for any loss or damage it may incur as a result of BANK's actions hereunder or as a consequence of MERCHANT being placed by BANK or its agents on the Combined Terminated Merchant File, MATCH, CMNF or other applicable list where such events are reported.

26. Attorneys' Fees and Collection Costs. MERCHANT shall be liable for and shall indemnify and reimburse BANK for any attorneys' fees, arbitration cost, and expenses incurred by BANK in the enforcement hereof, including but not limited to collecting any

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amounts or obligations due from MERCHANT. BANK shall assess a collection fee of not less than two hundred dollars (\$200.00) in the collections of any obligation or amounts due by MERCHANT.

27. Fee Disclosure. Discount Rate: "Discount Rate" shall mean a percentage of the total sales submitted to BANK for processing. The Visa, MasterCard, American Express, Discover and PayPal Discount Rate listed in the Merchant Application & Agreement applies to "Qualified Transactions" (American Express - "Tier 1") only. If the version of the application signed by Merchant lists a Credit Card Discount Rate (for Visa, MasterCard, American Express, Discover and PayPal) the rate shall apply to Qualified Credit Card (American Express - "Tier 1") transactions. If the Agreement lists a Check Card Discount Rate it will apply solely to Qualified Check Card transactions. If the Agreement lists a Credit/Check Discount Rate the rate would apply to Qualified Transactions for both Credit Cards and Check Cards.

Qualified transactions are those in which an authorization was obtained electronically, the transaction was settled within the appropriate time frame, and the transaction meets all other requirements imposed by the bank card brands. Other transactions are categorized as "Mid-Qualified" or "Non-Qualified" transactions. Mid-Qualified transactions include but are not limited to those transactions where the card is affiliated with a special issuer program or did not meet requirements imposed by the bank card brands. Non-Qualified transactions include but are not limited to those transactions where the authorization was obtained by calling a voice or Voice Recognition Unit (VRU) authorization number, the card is affiliated with a special issuer program, the transaction was not settled in the appropriate time frame, or the transaction did not meet the requirements imposed by the bank card brands. These "Mid-Qualified" or "Non-Qualified" transactions may be subject to increased fees and/or Discount Rate as determined by BANK.

Also, if you are a mail order telephone order or e-commerce MERCHANT, the bank card brands/organizations require additional data elements to be submitted as a part of the transaction record in order for the transactions to qualify for the lowest possible discount rate. Failure to submit the additional data elements or to meet all other requirements imposed by the bank card brands/organizations will result in the payment of a higher discount rate.

BRAND RELATED FEES:

Auth Processing Fee for VS DB (AUTH PRC DB VS) (charged on every U.S. issued check card authorization)

Auth Processing Fee for VS International Credit (AUTH PRC CR INTL VS) (charged on every international issued card authorization)

Auth Processing Fee for VS International DB (AUTH PRC DB INTL VS) (charged on every international issued check card authorization)

Primary Account Number Status Check-VS (PAN STATUS CHECK-VS) (charged on every domestic credit card holder account status check)

Primary Account Number Status Check-VS Debit (PAN STATUS CHECK-VS DB) (charged on every domestic check card holder account status check)

Primary Account Number Status Check-VS International (PAN STATUS CHECK-VS INTL) (charged on every foreign card holder account status check)

Non-Settle Fee for VS (NON STL VS TRAN) (charged on approved authorizations not settled within 10 days of authorization)

Transaction Integrity Fee for VS (TIF FOR VS TRAN) (charged on credit, check card or prepaid card transactions that do not meet CPS qualifications)

Zero Floor Limit for VS (NO AUTH VS TRAN) (charged on settled transactions that cannot be matched to previously approved authorizations)

Cross Border Fee for VS (XBRD FOR VS VOL) (charged on foreign settled transactions)

International Assessment Fee for VS (INTL FOR VS VOL) (charged on foreign settled transactions)

Fixed Acquirer Network Fees for VS (NTWK FEE FOR VS)

Base II System File Transmission Fee for VS (TRANSMISSION VS) (charged on every settled transaction)

Network Acquirer Brand Usage Fee / Safety Net for MC (BRND USG FEE/SAFETY NET MC) (charged on every authorization)

Primary Account Number Status Check-MC International (PAN STATUS CHECK-MC-INTER) (charged on every foreign card holder account status check)

Primary Account Number Status Check-MC Intraregional (PAN STATUS CHECK-MC-INTRA) (charged on every domestic card holder account status check)

Processing Integrity Fee-Preauthorization (PREAUTH-MC) (charged per authorization not cleared or reversed within thirty calendar days for pre-authorizations)

Processing Integrity Fee-Undefined Authorization (UNDEF AUTH-MC) (charged per authorization not cleared within seven calendar days for undefined authorizations)

Processing Integrity Fee-Final Authorization (FNL AUTH-MC) (charged per final authorization not cleared within seven calendar days and/or cleared within seven days but the clearing amount differs from the authorization amount)

Nominal Authorization Fee MC (NOMINAL AUTH MC) charged per nominal authorization First American ISV TC 01.15.21

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Processing Integrity Fee-Final Authorization-Minimum (FNL AUTH MIN-MC) (charged per final authorization not cleared within seven calendar days and/or cleared within seven days but the clearing amount differs from the authorization amount)

Global Acquiring Program Fee for MC (ACQ PRG MC VOL) (charged on foreign settled transactions)

Cross Border Fee for MC (XBRD FOR MC VOL) (charged on foreign settled transactions)

Network Fee for MC (NTWK FEE FOR MC)

Digital Enablement Fee for MC (DGT ENBL MC VOL) (charged on card not present transactions)

Merchant Location Fee for MC (MER LOC FEE-MC) (charged monthly)

Excessive Authorization Attempts (EXCESSIVE AUTH ATTEMPTS-MC) (charged per authorization after 20 previously issuer declined attempts on the same account number in a 24 hour period)

Acquirer Interchange Compliance Downgrade Fee-MC (INT COMP DWNGRD-MC) (charged on each downgraded transaction)

Acquirer Transaction Fee-Quantity based 3D Secure MasterCard Identity Check (3DS VOL FEE-MC) (charged on settled transactions that uses 3D Secure Identity Check)

Acquirer Transaction Fee-Amount based 3D Secure MasterCard Identity Check (3DS TRANS FEE-MC) (charged on every authorization that uses 3D Secure Identity Check)

Data Usage for DS (DAT USG DS TRAN) (charged on every settled transaction)

International Processing Fee for DS (INTL PRC DS VOL) (charged on foreign settled transactions)

International Service Fee for DS (INTL SRV DS VOL) (charged on foreign settled transactions) Access Fee for DS (ACCESS FOR DS)

Program Integrity Fee for DS (PRG INTEGRITY FEE DS) (charged on settled transactions qualifying for Mid and Base Submission Level)

Network Authorization Fee for DS (NETWORK AUTH FEE-DS) charged per authorization

Access Fee for DS (ACCESS FOR DS)

Inbound Fee for AX (INBOUND AX VOL) (charged on foreign settled transactions)

Data Quality Fee for AX (DATA QLT AX VOL) (charged on settled transactions that do not meet data quality standards)

Non-Compliance Fee for AX (NON COMP AX VOL) (charged on settled transactions that do not comply with technical specifications)

Assessment fee for AX (ASSESSMENT FEE-AX) (charged on settled transactions)

Non-Swiped Transaction Fee for AX (NONSWIPE AX VOL) (charged on non-swiped settled transactions)

Non-swiped Application-initiated Transaction Fee (NONSWIPE APP INT AX VOL) (charged on digital wallet settled transactions)

These fees further outlined above are passed along to the merchant and may include an additional surcharge to cover bank sponsorship fees, bank reconciliation costs and other expenses associated with transaction processing.

OTHER FEES: "Transaction Fee" shall mean a fee charged on each sales draft and each credit draft regardless of the total stated. "Authorization Fee" shall mean the fee charged on each transaction attempted whether approved or declined and whether or not the sale was actually charged. A "Batch Settlement Fee" will be charged on all batch settlements. "Per Item Fee" shall mean the fee charged on each specified settled transaction. A Monthly Minimum fee may be charged, and if so, applies to Visa and MasterCard transactions only. An Annual Fee of not less than ninety-five dollars (\$95.00) per year shall be charged and will be collected via ACH transfer within forty-five (45) days from the approval date of this Agreement and on the first business day of the anniversary month each year thereafter. An Access Fee for Discover (ACCESS FOR DS) will be charged on a monthly basis. An Address Verification Service Fee (AVS) will be charged on transactions for all Card Brands on which the AVS service is utilized. A "Monthly Maintenance Fee" will be charged for general account maintenance and online statement preparation. A "Network Inquiry Fee" may be charged, at the same rate as the applicable authorization or transaction fee, for any non-card specific or non-card identifiable transmission to the host.

Additional fees are charged for use of Wireless terminals. These fees include "Wireless Transaction Surcharge," "Wireless Activation/Reactivation Fee," and "Wireless Monthly Access Fee", and are outlined in the Merchant Application & Agreement, if applicable. Wireless "Monthly Access Fee" includes 1MB of wireless data per wireless SIM card. Data utilized in excess of the 1MB allowance on an individual SIM card in a given month may be charged at the rate of \$3.00 per MB. Limits on monthly maximum data may be set for individual SIMs at BANK's discretion. Using wireless service for application downloads could result in overage fees and/or SIM deactivation due to reaching the maximum data limit.

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A "Merchant Benefits Package Monthly Fee" may be charged if MERCHANT wishes to utilize this service. The services included and associated fees are outlined in the Merchant Application & Agreement, if applicable. MERCHANTS who take advantage of the Next Day Funding Program may be charged a Rate and/or Fee as outlined in the Merchant Application & Agreement.

COMPLIANCE RELATED FEES: MERCHANT agrees to comply with all security standards and guidelines that may be published from time to time by any card brand or organization, including, without limitation, the Payment Card Industry Data Security Standards ("PCIDSS"), the Visa Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection program ("SDP"), the Discover/PayPal-Security Requirements and the American Express® Data Security Operating Policy - United States ("DSOP") (collectively, the "Security Guidelines").

A "Regulatory Compliance Fee" will be charged in regards to application changes, merchant notifications and other requirements, the result of changes in rules regulations, or operating procedures, or any additional requirement imposed by any federal or state governmental agency or regulatory authority. A "PCI Fee" may be charged in association with a PCI DSS compliance program which BANK may make available through a third-party. BANK shall have the right to charge an annual PCI fee whether or not MERCHANT participates in the program. A "Non-Compliance Fee" may be charged on a frequency to be determined by BANK for merchants who fail to provide certification of PCI compliance, maintain an annual certificate of compliance, or fail to meet any additional requirements imposed by any federal or state governmental agency or regulatory authority. A "Breach Protection Fee" may be charged for coverage in the event of a data compromise in connection with the Breach Protection Program.

BREACH PROTECTION PROGRAM: The Breach Protection Program is administered by RGS Limited, LLC. and is funded by a policy purchased from the Voyager Indemnity Insurance Company. Additional information regarding the terms of the Breach Protection Program is available by going to <https://www.royalgroupservices.com/nadsrpg/>. RGS Limited LLC., Voyager Indemnity Insurance Company or BANK may modify or cancel the Breach Protection program at any time with or without notice. BANK does not warrant nor guarantee the terms and conditions of, or the features of, the Breach Protection Program. The Breach Protection Program does not eliminate the requirements for MERCHANT to become or remain PCI-DSS compliant as referenced in the **PCI-DSS Compliance and Customer Information Security** section of the Merchant Processing Terms & Conditions. To file a claim on the Breach Protection Program, please call the Claims Hotline at (844) 729-9199.

NON-RECURRING FEES: MERCHANT further understands that BANK will assess Non-Recurring Fees when applicable, as set forth in this paragraph. BANK will assess MERCHANT a fee as well as administrative costs as determined by BANK for each chargeback through ACH, including but not limited to the following: Retrieval Fee (\$10.00 per item), Chargeback Fee (\$25.00 per item), and Return Draft Fee (\$30.00 per item). Additionally, MERCHANT shall be responsible for other fees including a DDA/DBA Change Fee (\$35.00 per item) and a Voice Authorization Fee (\$0.95 per request).

MERCHANT understands that Early Termination Fees may be charged, by service, as outlined in the Merchant Application & Agreement and section 23 of the Merchant Processing Terms & Conditions, if applicable. MERCHANT understands and agrees that BANK reserves the right to assess any associated fees not previously specified in the "Fees Section" of the Merchant Application & Agreement that are billed to BANK as a result of the device(s) or software used by MERCHANT communicating with any third party host.

POS RELATED FEES: Equipment supplies provided shall consist of (i) replacement of printer receipt paper and (ii) replacement of receipt printer ribbons only. Supplies provided are intended for use with BANK processing services only and BANK reserves the right to limit quantities based upon MERCHANT transaction history.

POS Terminal replacement services shall consist of replacement or repair, at BANK's option, of MERCHANT's processing equipment (terminal, printer, pinpad or check reader.) BANK will perform this service if (i) MERCHANT has honored and paid all amounts owed to BANK including, but not limited to, all amounts owed for Chargebacks and ACH rejects, (ii) the equipment has been verified to be in working order with BANK (verification of this shall occur by MERCHANT submitting a transaction to BANK using the equipment that is being requested to be replaced). BANK, at its option, may use refurbished equipment for replacement and at BANK's sole discretion may substitute comparable equipment. BANK shall charge a shipping fee of not less than seven dollars and twenty-five cents (\$7.25) plus applicable tax for each supply request. Additional fees will apply to orders above the standard quantities established by BANK. BANK shall charge a fee not less than seventy-five dollars (\$75.00) for shipping and handling on equipment exchanges or swaps and a fee not less than one-hundred seventy-five dollars (\$175.00) for all premium equipment, including but not limited to, all wireless equipment and select check imagers. MERCHANT is required to return all defective equipment replaced by BANK to BANK. BANK may assess a restocking fee of not less than fifty dollars (\$50.00) on all returned equipment. If equipment is not returned, BANK, at its sole discretion, may assess a fee of not less than five-hundred dollars (\$500.00) for each piece of equipment not returned and a fee of not less than nine-hundred fifty dollars (\$950.00) for each piece of premium equipment not returned, including but not limited to, all wireless equipment and select check imagers. BANK reserves the right to assess a fee, to be determined by BANK, for equipment upgrades when compatible equipment is not available or when MERCHANT's existing equipment is obsolete or no longer supported by BANK.

POS Terminals may be made available for use by MERCHANT free of charge ("complimentary equipment"), at BANK's option. MERCHANT is required to return all complimentary equipment at the termination of the processing agreement with BANK. Failure to return the complimentary equipment may result in BANK assessing a fee of not less than five-hundred dollars (\$500.00) for each piece of equipment not returned and a fee of not less than nine-hundred fifty dollars (\$950.00) for each piece of premium equipment not returned, including but not limited to wireless equipment and check imagers.

In the event MERCHANT accepts a rate or fee reduction on any rate or fee set forth herein during the initial term of this Agreement, the term of this Agreement shall automatically be extended for an additional two (2) years.

BANK shall have the right to adjust charges as necessary to offset any direct or indirect cost to BANK associated with providing services hereunder including, but not limited to, costs associated with collection and administration of chargebacks, fees charged by Visa, MasterCard, American Express, Discover, or PayPal, fees charged by other providers in processing, increases in the cost of living index or changes in rules, regulations, or operating procedures of Visa, MasterCard, American Express, Discover and PayPal or other applicable bank card brand/organization, charges for changes to merchant accounts or information, adjustments in foreign exchange rates, or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increases in communication costs charged to BANK by common carriers. Such charges shall, without prior notice, become effective as of the date of change. Upon any request from MERCHANT for copies of file information, account research, or other information, BANK may charge fees for such services, including per hour fees as determined by BANK. Without limiting the foregoing, BANK shall have the absolute and unconditional right to introduce new fees and increase Discount Rates, Transaction Fees, Authorization Fees, Per Item Fees, Statement Fees, Access Fees, Monthly Minimums, DF&A and any other fees for any reason when deemed appropriate in BANK's sole discretion. Said changes will be available thirty days prior to the implementation at www.firstview.net.

ADDITIONAL SERVICES: MERCHANT should also review the Merchant Application & Agreement and Merchant Processing Terms & Conditions for fees charged for additional services utilized by MERCHANT, including but not limited to Debit, SecurChex, FirstPay.net, 1stPayMobile, 1stPayPOS Pro and FirstAdvantage Gift/Loyalty. These fees as well as the Credit service related fees outlined above are provided at www.merchantnotification.com under the FEE DISCLOSURE tab.

ACCOUNT UPDATER is a service provided by the various Card Brands and is facilitated by BANK on your behalf. Merchant understands and agrees that activation of Account Updater may be delayed due to registration with the Card Brands. BANK does not guarantee the accuracy of data or the results of data used by Merchant. Merchant shall be responsible for all fees associated with Account Updater and shall follow the rules and guidelines set forth by the Card Brands relating to Account Updater.

Merchant agrees and warrants the following:

- (a) To abide by all CARD BRAND RULES applicable to BANK's Account Updater product. MERCHANT acknowledges that BANK is the acquirer of record for processing transactions through Account Updater;
- (b) To request a BANK Account Updater update for every participating VISA account in MERCHANT's customer database at least once every 180 calendar days;
- (c) To submit inquiries only for those accounts with which the MERCHANT has an ongoing customer relationship;
- (d) To update its customer account database within five (5) business days of receiving update from BANK;
- (e) To ensure that information received from BANK is properly, completely, and accurately incorporated into MERCHANT's customer database for use in future transactions;
- (f) To correct erroneous account information within five (5) business days of receipt of error notification from BANK, Visa, or MasterCard;
- (g) Not to request authorization on accounts that have returned a response of "Closed Account";
- (h) Not to submit inquiries to BANK on behalf of any other entity.

28. Variances. If in MERCHANT's processing there is a variance from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK or if BANK determines that such variance may otherwise be detrimental to BANK, then BANK shall have no obligation to pay MERCHANT any settlement funds until MERCHANT has provided to BANK documentation sufficient for BANK to determine that the variance is verified, legitimate, and BANK's risk has been mitigated. MERCHANT further acknowledges that BANK, at its sole discretion, may hold or delay settlement of funds, suspend MERCHANT's processing, terminate this Agreement, or require MERCHANT to run a return/credit on a sale with or without notice upon the occurrence of any of the events specified above. MERCHANT shall immediately contact BANK in writing if variances occur from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK. For purposes hereof, BANK's determination shall be binding upon MERCHANT. MERCHANT hereby releases, indemnifies and holds BANK harmless for any losses or damage it may incur as a result of BANK's actions hereunder, or as a consequence of the settlement funds being held, delayed or suspended. MERCHANT also agrees to pay all bank fees associated with processing any transaction, regardless if funds are held, delayed, suspended or if MERCHANT is required to run a return/credit.

29. Credit Card/Money Laundering. MERCHANT agrees to abide by all local, state, and

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federal laws and statutes and Visa, MasterCard, American Express, Discover and PayPal regulations regarding Credit Card/Money Laundering. MERCHANT acknowledges that it may only enter transactions into the credit card system if (i) transactions are through an approved merchant account for sales which are originally generated by MERCHANT, (ii) transactions are between MERCHANT and a bona fide cardholder, and (iii) transactions are submitted from MERCHANT's own accounts. BANK reserves the right to terminate this Agreement, with or without notice, if BANK reasonably believes MERCHANT is in violation of any of the above.

30. MERCHANT Reserve Account. BANK may, in its sole discretion, request a Merchant to establish a reserve or establish a reserve from Merchant settlement funds for the following items including but not limited to; Chargebacks, potential losses, transactions that pose increased or excessive risk, or financial insecurity. Reserve may be used to offset losses, current indebtedness, or any transaction that may, in BANK's discretion, result in a loss. All Reserve account shall be held in non-interest bearing account.

31. Governmental Reporting Requirements. MERCHANT acknowledges and agrees that all information provided in the Agreement is true and correct. MERCHANT also acknowledges that BANK may be required to report certain information regarding MERCHANT including but not limited to MERCHANT's TIN, Entity Name, DBA, processing volume, principal's Social Security Number to governmental agencies such as the Internal Revenue Service (IRS). BANK shall have the absolute and unconditional right to impose a monthly fee to MERCHANT when the information provided is incorrect or does not match government agency information. MERCHANT agrees to fulfill any request from BANK for additional information which may be required or requested by any government agency. Notwithstanding the foregoing, MERCHANT understands that BANK 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. MERCHANT expressly agrees and releases BANK 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 BANK.

32. Guarantor. Any guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that BANK may require performance of any obligation of MERCHANT hereunder directly from guarantor.

33. Amendments. BANK has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than ten (10) days from date of notice.

34. Taxes. MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

35. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

36. Force Majeure. BANK is released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any acts of any other party or third party or any acts of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, software failure, program failure, network problem, sabotage, war, military operation, national emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or BANK's compliance therewith or government proration, regulation, or priority, or any other cause beyond BANK's reasonable control whether similar or dissimilar to such causes.

37. Indemnification. MERCHANT hereby releases, indemnifies and holds BANK harmless for any losses, claims, costs or damages to MERCHANT or any third party as a result of BANK's acts or omissions under this Agreement, including, as a consequence of BANK's own negligence. The indemnification provisions herein shall survive the termination of this Agreement.

38. Limitation of Damages. BANK shall not be liable for special, consequential, exemplary, or punitive damages. In no event shall BANK's cumulative liability to MERCHANT hereunder, including as a result of BANK's or any processor's own negligence, breach or error, exceed one hundred fifty dollars (\$150.00). MERCHANT acknowledges and agrees that BANK shall not be liable for losses, claims, or damages that arise as a result of acts or omissions, including, but not limited to, those constituting fraud, misrepresentation, misconduct, or negligence committed by MERCHANT or its Affiliates in connection with or relating to the execution, delivery or performance of the Merchant Application & Agreement/ Merchant Processing Terms & Conditions, whether such acts or omissions were known or unknown by BANK.

39. Waiver. The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY **WAIVE TRIAL BY JURY** IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

40. Disclaimer. BANK disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. MERCHANT acknowledges that the service may not be uninterrupted or error free.

41. Governing Law; Jurisdiction. This Agreement shall be governed by and construed

in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state courts of Tarrant County, Texas.

42. Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the illegal, invalid or unenforceable provision is modified to give effect to the original intent consistent with being valid and enforceable under applicable law.

43. Counterparts. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

44. Notices. If to BANK, all written notices under this Agreement shall be delivered to:

First American Payment Systems
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the address stated on the records of BANK. Notice to MERCHANT may be by letter, facsimile and/or the Monthly Merchant Statement.

If such transmitted notice is by MERCHANT to BANK, the original of any communication shall also be mailed to BANK on the date of the transmission and it shall not be deemed served until the mailed copy is received and confirmed by BANK.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

45. 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 indemnification, PCI DSS Compliance, and chargeback liability, shall survive the expiration or termination, for any reason, of this Agreement.

46. Visa Member Bank Disclosure. The responsibilities listed below do not supersede terms of the Merchant Application & Agreement or the Merchant Terms & Conditions and are provided to ensure MERCHANT understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should MERCHANT have any problems.

(a) Member Bank (Acquirer) Information:

Acquirer Name:	Fifth Third Bank, N.A.
Acquirer Address:	38 Fountain Square Plaza Cincinnati, OH 45263 Attn: Relationship Manager
Contact Phone:	817-317-2996
Acquirer Phone:	866-250-9764

(b) Important Member Bank (Acquirer) Responsibilities:

- (i.) A Visa Member is the only entity approved to extend acceptance of Visa products directly to a MERCHANT;
- (ii.) A Visa Member must be a principal (signer) to the Merchant Agreement;
- (iii.) The Visa Member is responsible for educating MERCHANTS on pertinent Visa Operating Regulations with which MERCHANTS must comply;
- (iv.) The Visa Member is responsible for settlement of funds to the MERCHANT;
- (v.) The Visa Member is responsible for all funds held in reserve that are derived from settlement.

(c) Important MERCHANT Responsibilities:

- (i.) Ensure compliance with cardholder data security and storage requirements;
- (ii.) Maintain fraud and chargeback below thresholds;
- (iii.) Review and understand the terms of the Merchant Agreement;
- (iv.) Comply with Visa Operating Regulations.

47. Entire Agreement Changes. This contains, and any applicable supplements contain, the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by BANK.

48. If any term, provision, covenant or condition of this Agreement is determined by any local, state or federal court or law enforcement agency to be invalid, illegal, void or unenforceable in any jurisdiction, then such provision, covenant or condition shall, as to such jurisdiction, be modified or restricted to the extent necessary to make such provision valid, binding and enforceable, or, if such provision cannot be modified or restricted, then such provision shall as to such jurisdiction, be deemed to be excised from this Agreement and any such invalidity, illegality or unenforceability with respect to such provision shall not invalidate or render unenforceable such provision in any other jurisdiction, and the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Debit Card Processing Terms & Conditions

The following Debit/EBT Processing Terms & Conditions apply only if MERCHANT has agreed to process Debit/EBT transactions.

THIS AGREEMENT is made by and between First American Payment Systems, L.P. ("BANK") and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement and shall be effective upon acceptance by BANK.

WHEREAS: BANK is engaged in the business of financial processing which includes, but is not limited to, the processing of and providing for the payment of charges created by the holders of debit network cards hereinafter referred to as "debit cards"; and

WHEREAS: Debit networks are sponsored by Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, or as amended from time to time; and

WHEREAS: BANK provides Electronic Benefits Transfer (EBT) processing capabilities which includes acceptance of EBT cards from cardholders that receive food stamp benefits and/or cash benefits from the individual states and/or United States Government; and

WHEREAS: MERCHANT hereby warrants that it is engaged in a lawful business and is duly licensed under the laws of the state, county, and city as disclosed by MERCHANT on the Merchant Application and Agreement, to conduct such business; and

WHEREAS: MERCHANT currently accepts or desires to accept debit cards and/or EBT cards for the purchase of goods and services it provides or anticipates providing; and

WHEREAS: MERCHANT warrants that neither it nor any of its officers, directors, partners, managers or owners has been terminated for any reason by any bank or any processor in connection with any agreement regarding depositing or processing of any transactions.

NOW, THEREFORE, in consideration of the representations, covenants, and promises made herein, the receipt and sufficiency of which are acknowledged, BANK and MERCHANT agree as follows:

1. Agreement. Reference to this "Agreement" includes all schedules, appendices, Merchant Application & Agreement, additional location documentation, any terms and conditions, and any other documents requested by BANK. MERCHANT acknowledges that BANK will provide transaction processing hereunder through First American or other third parties. MERCHANT agrees that First American may enforce the terms of this Agreement against MERCHANT and any third party, whether or not BANK is a party to such proceeding or transaction.

2. Additional Locations. MERCHANT must complete an Additional Location Form for each additional Merchant location. MERCHANT expressly agrees and acknowledges that each Merchant location shall be governed by these Merchant Processing Terms & Conditions and the Merchant Application & Agreement, including and without limitations the rates and fees described therein, as may be amended from time to time.

3. Acceptance of Debit Cards or EBT Cards. MERCHANT agrees to honor without discrimination all lawful and valid debit cards or EBT cards when properly presented as payment by customers in connection with bona fide, legitimate business transactions arising out of MERCHANT's usual trade or business as disclosed in the Merchant Application & Agreement. MERCHANT agrees not to submit any transactions that will violate applicable laws, rules and regulations. MERCHANT shall not honor expired, counterfeit, or revoked cards, nor honor cards presented by persons other than the proper cardholder as authorized by the entry of a Personal Identification Number (PIN).

4. Point-of-Sale Devices. MERCHANT agrees to utilize a Point of Sale ("POS") electronic terminal and PIN entry device in connection with all debit card transactions processed pursuant to this Agreement. MERCHANT agrees to keep all POS equipment used to process debit card or EBT card transactions in good working order. MERCHANT agrees to use only POS equipment and PIN entry device equipment that meets network and/or brand compliance guidelines, including, but not limited to, Triple-DES DUKPT (Derived Unique Key Per Transaction) compliance requirements. MERCHANT understands that BANK cannot and does not warrant the connectivity, performance of equipment, or quality of services as a result of any data or voice connections, or similar type service. MERCHANT agrees that BANK is not responsible for, and MERCHANT accepts full responsibility for issues that may arise when utilizing data or voice connections, or similar service, including but not limited to; failure to obtain authorizations, batching, settlement, equipment, equipment/Software installation, communications, downloads and internet connectivity. Further, MERCHANT acknowledges it will not make any claim against BANK for any losses or damages, including, but not limited to, loss of income, loss of revenue, economical loss, consequential, direct, indirect, special, exemplary, or punitive relating to the use or connectivity of any data or voice connections, or similar services.

5. Transaction Records. MERCHANT agrees to balance and deliver to BANK all Debit/EBT transactions on the same day they are processed.

6. Payments. MERCHANT understands that an authorization is not a guarantee of payment from BANK. All payments to MERCHANT for legitimate and authorized Debit/EBT transactions shall be made by BANK through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, BANK cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, MERCHANT agrees to assist BANK to help resolve any problems in crediting/debiting MERCHANT's account. MERCHANT agrees to provide BANK three (3) days prior written notice of any change of account and to abide by BANK's

policies regarding changes to accounts. MERCHANT and not BANK or any processor shall be responsible for verifying that account information is correct on the Merchant Application & Agreement, voided check and all account statements. BANK is not responsible for incorrect account numbers. Unless MERCHANT provides proper notice to BANK, MERCHANT shall not change any of its accounts.

All payments to MERCHANT for the amount of debit or EBT card transactions properly submitted to BANK may be less amounts owed by MERCHANT. Any payment made by BANK to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by BANK. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to transactions described in Sections 12, 13, 14 and 28 of this Agreement unless and until MERCHANT provides to BANK the requested documentation. If MERCHANT fails to provide requested documentation, such payments shall be earned compensation of BANK. Fees and other charges due BANK hereunder shall be deducted from amounts due MERCHANT or may be debited against any of MERCHANT's accounts at BANK's sole discretion. The network fees and other fees shall be collected by BANK on a daily, monthly, or other basis, as determined by BANK. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's account, or paid directly by MERCHANT through ACH or otherwise at BANK's sole discretion. MERCHANT must notify BANK in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of BANK and MERCHANT subject to or relating to this Agreement or BANK's obligations hereunder. Save and except BANK's right to funds owed BANK under this Agreement or incorrectly paid to MERCHANT, if no notice of error is received within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. Any amount inadvertently or incorrectly paid to MERCHANT may be debited from any account of MERCHANT, at the sole discretion of BANK and, in any event, remains an obligation of MERCHANT to BANK payable in full and on demand.

7. Sales Receipt Storage and Retrieval. To assist in the resolution of any dispute, MERCHANT agrees to retain for one (1) year and make available within three (3) days of a request all pertinent records pertaining to each transaction in question, including, but not limited to, itemized bills, batch total reports, and other related documents. MERCHANT shall preserve the confidentiality of all information in an area limited to selected personnel and exercise best efforts to maintain these materials in a secure manner. MERCHANT's obligations under this paragraph shall survive following the close of MERCHANT's business or the termination of this Agreement. MERCHANT understands that its failure to respond timely to a retrieval request may result in a chargeback. All chargebacks and fees shall be the responsibility of MERCHANT and paid by and charged to MERCHANT. In connection with retrieval requests or other administrative requirements associated with any MERCHANT agreement or account, BANK and/or its designated processor may charge retrieval fees and administrative charges, which shall be the responsibility of MERCHANT. BANK and/or its designated processor shall determine in their sole discretion the amount of any retrieval fee and administrative charge and when such fee and charge shall be assessed. MERCHANT shall not be entitled to notice of any such fee or administrative charge or with respect to any change in the amount of any fee or administrative charge.

8. Warranties by Merchant. MERCHANT warrants that it shall fully comply with all federal, state, and local laws, rules, and regulations, including, but not limited to, the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System, Debit Network Operating Rules and Regulations and the USDA's Food and Consumer Service (FCS) Regulations, all as may be amended from time to time.

As to any transaction presented to BANK for payment, MERCHANT warrants that:

- (a) The transaction is valid in form and has been completed in accordance with current instructions, if any, furnished by BANK;
- (b) MERCHANT has delivered MERCHANT's merchandise to the cardholder entering the PIN code or completed MERCHANT's service described on the sales receipt in accordance with MERCHANT's underlying agreement with the cardholder;
- (c) MERCHANT has delivered to the cardholder a true and complete copy of the sales receipt evidencing the transaction involving use of the card;
- (d) Each sales receipt represents the cardholder's payment to MERCHANT for the amount shown;
- (e) The cardholder has no defense, right of offset, or counterclaim against MERCHANT in connection with the purchase of the goods or services;
- (f) Neither MERCHANT nor any owner, director, officer, member, partner or employee of MERCHANT ("Affiliates") has advanced any cash to cardholder or any person in connection with the purported Debit/EBT transaction which is not authorized by the card issuer;
- (g) In any Debit/EBT transaction, MERCHANT warrants the customer's true identity as an authorized user of the debit card or EBT card;
- (h) MERCHANT warrants that debit card or EBT card will not be used for verification of age;
- (i) MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange debit card or EBT card account number information, personal information or any other transaction information, in any form obtained by reason of a Debit/EBT transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, or to BANK for the sole purpose of: (i) assisting MERCHANT in completing the transaction or (ii) as specifically required by law;

MERCHANT PROCESSING TERMS & CONDITIONS

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(j) MERCHANT warrants that it will not conduct any transactions that are not in compliance with both this Agreement and any applicable codes or rules and hereby indemnifies and holds BANK harmless against any loss or damage BANK may suffer as a result of a breach of this or any other warranty or agreement by MERCHANT;

(k) MERCHANT may display the proprietary names and symbols associated with debit cards or EBT cards only while this Agreement is in effect, or until MERCHANT is notified by BANK or the Debit/EBT networks to cease usage. BANK and the Debit/EBT networks shall have the right at any time to require MERCHANT to cease such usage for any reason, whether or not this Agreement remains in effect. MERCHANT may use the proprietary names and symbols associated with BANK or with Debit/EBT networks only to indicate that debit cards or EBT cards are accepted for payment and shall not indicate, directly or indirectly, Debit/EBT card networks endorse MERCHANT's products or services; and

(l) MERCHANT warrants it has not participated in assisting cardholder in entering PIN into the PIN entry device. MERCHANT also warrants that no photographic, video surveillance, or any other recording device is being used which would compromise any cardholder PIN or confidential information.

(m) MERCHANT may not reverse engineer any software of BANK found or used in connection with the operation of the POS equipment.

(n) MERCHANT will not sell, purchase, provide, exchange or in any manner disclose Card account number, Transaction, or personal information of or about a Cardholder to anyone other than its Acquirer, to the Corporation, or in response to a valid government demand. This warranty applies to Card imprints, TIDs, carbon copies, mailing lists, tapes, database files, and all other media created or obtained as a result of a Transaction.

9. Business Changes. MERCHANT shall provide at least thirty (30) days written notice to BANK for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, address, change of Visa/MasterCard Sales Profile as described in the Merchant Application & Agreement, any ownership change, or transfer or sell of substantially all of the assets of MERCHANT. At all times MERCHANT shall provide BANK with its current mailing address. BANK shall have the right to charge a fee of no less than twenty dollars (\$20.00) for returned mail items. If BANK receives a returned mail item with no forwarding address, BANK may exercise its right to suspend mailing Merchant Statements until such time as the correct address has been provided by MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, utilize the merchant account to process e-commerce transactions or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining BANK's prior written consent to the change, move, or addition. MERCHANT also agrees that prior to any changes, BANK must first accept the change and confirm such acceptance in writing. MERCHANT acknowledges that the codes of professional responsibility and the rules and regulations of professional associations may apply to the transactions covered by this Agreement. MERCHANT may, however, bring any inconsistency between this Agreement and such codes and rules to the attention of BANK and request a modification to this Agreement to eliminate such inconsistency. BANK may, in its discretion, agree to such modification to the extent it is consistent with BANK policy and in conformity with then existing Debit/EBT Network Operating Rules and Regulations and other applicable laws and regulations. Until BANK agrees to such modification in writing, the terms of this Agreement shall remain in place.

MERCHANT shall be responsible for any administrative charges of BANK associated with any change.

10. Returns. MERCHANT acknowledges no debit returns are permitted. With respect to EBT, MERCHANT shall properly complete an EBT refund and deliver a completed receipt to the cardholder at the time of each return of merchandise or cancellation of sale. BANK shall charge the MERCHANT an EBT Transaction Fee as well as other fees applicable to all transactions.

MERCHANT shall not, under any circumstances issue: (i) a credit to an EBT cardholder without having completed a previous purchase transaction with the same EBT cardholder; or (ii) a credit to an EBT cardholder for any prior sale or service made or provided at a location other than the location where the credit is issued.

With proper disclosure at the time of the transaction where purchased goods or services are delivered to cardholder, MERCHANT may:

- (a) Refuse to accept merchandise in return or exchange and refuse to issue a refund to a cardholder; or
- (b) Accept returned merchandise in exchange for the MERCHANT's promise to deliver goods or services of equal value available from MERCHANT at no additional cost to cardholder.

Proper disclosure shall be deemed to have been given if, at the time of the transaction and prior to obtaining the customer's PIN, the following notice appears on all copies of the sales slip in legible letters at least 1/4 inch high and close proximity to the space provided for the cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY," as applicable, or equivalent language.

11. Chargeback. MERCHANT expressly acknowledges and agrees to any charge or debit made by BANK against any of MERCHANT's accounts as a result of the exercise of chargeback or retrieval rights by a cardholder, issuing bank, processor, or other intermediary pursuant to applicable operating regulations of the Debit/EBT networks or other card brands as the same may be in effect from time to time. MERCHANT also understands and acknowledges that BANK may debit or reduce MERCHANT's bank account whether or not cardholder has returned merchandise. Without prior notice, BANK shall have the right, at any time, to reduce MERCHANT's Debit/EBT sales proceeds received from issuing banks, debit any of MERCHANT's accounts and/or demand immediate payment from MERCHANT through ACH or otherwise for any Debit/EBT card transaction which is disputed, questioned or returned to BANK by the financial institution or company which has issued the Debit/

EBT card (the "Card Issuer") and to chargeback such sale to MERCHANT in any of, but not limited to, the following situations:

- (a) Where goods originally purchased have been returned to MERCHANT by cardholder and cardholder requested a credit and MERCHANT did not process such credit slip;
- (b) Where sales slip covers goods or services other than those described in the Merchant Application & Agreement;
- (c) Where a cardholder contends or disputes to the Card Issuer that: (i) goods or services were not received by cardholder or by authorized user; or (ii) goods or services received by cardholder or by authorized user do not conform to what was described on the sales slip; or (iii) goods or services were defective or of unsatisfactory quality;
- (d) Where original sales receipt or batch total report is not received by BANK from MERCHANT when requested by BANK in accordance with paragraph 7 of this Agreement;
- (e) MERCHANT has failed to obtain proper authorization to complete the transaction or the cardholder has represented in writing to BANK or the Card Issuer that the cardholder did not make or authorize the transaction;
- (f) Where a Card Issuer or BANK has information that impropriety or fraud occurred at the time of transaction, whether or not such transaction was properly authorized by the Card Issuer or the cardholder participated in or authorized the transaction, or the Card Issuer represents that there is no debit card or EBT card outstanding with the account number used;
- (g) BANK reasonably determines that the transaction is improper, fraudulent, not a bona fide transaction in MERCHANT's ordinary course of business or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, impropriety, or dishonesty on the part of card user, cardholder or MERCHANT;
- (h) In any situation where the transaction was executed or credit given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT hereunder, or MERCHANT's violation of Debit/EBT network rules and regulations which has resulted in a sale being charged back by the Card Issuer;
- (i) As required by bank card brand/network acquirer rules or regulations as they currently exist or as they may be amended from time to time;
- (j) In such other circumstances where BANK determines or suspects in its sole discretion that the transaction may result in a chargeback for any reason, whether or not enumerated under this paragraph and whether or not the transaction results in a chargeback; or
- (k) If with respect to any of MERCHANT's outlets, the ratio of bank card or Debit/EBT card counterfeit and fraud volume to bank card or Debit/EBT card sales volume or the ratio of the number of bank card or Debit/EBT chargebacks to the number of bank card or Debit/EBT sales exceeds one percent (1%) or credits processed exceed ten percent (10%) for any given month. In such event, without limiting other rights hereunder, BANK in its sole and absolute discretion may charge back all Debit/EBT or bank card sales for all locations.

MERCHANT understands that BANK will assess MERCHANT a fee as well as administrative costs as determined by BANK for each chargeback.

MERCHANT, whether consented to or not by cardholder, shall not present to BANK for processing any transaction, which has been previously charged back to BANK and returned to MERCHANT. MERCHANT's obligations and BANK's rights under this paragraph shall survive the termination of this Agreement.

12. Improper Transactions; Forward Commitments. BANK may hold funds, suspend processing, terminate this Agreement with or without notice, or require MERCHANT to process a refund upon any determination by BANK, in its sole discretion, of improper, fraudulent, suspicious or questionable transactions, including, but not limited to, any transactions for items or services with a future delivery date or forward commitment, transactions that fail to meet the requirements of this Agreement or which vary from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to such transaction(s) unless and until MERCHANT provides to BANK the documentation sufficient for BANK to determine that the transaction(s) is verified, legitimate, and BANK's risk has been mitigated. MERCHANT acknowledges no Debit Transaction Fees or Debit Network Fees will be refunded as a result of BANK withholding payment to MERCHANT with respect to improper, fraudulent, suspicious or questionable transactions including, but not limited to, when a MERCHANT processes a refund, or during any period of suspension. MERCHANT may be placed on the Combined Terminated Merchant File/MATCH upon violation of any terms of this Agreement. MERCHANT hereby releases, indemnifies, and holds BANK harmless for any loss or damage it may incur as a result of BANK's actions hereunder or as a consequence of MERCHANT being placed by BANK or its agents on the Combined Terminated Merchant File/MATCH or other applicable list where such events are reported.

13. Recurring Transactions. Recurring transactions are not allowed on PIN-Debit transactions.

14. Fraudulent Sales/Factoring. MERCHANT shall not present to BANK directly or indirectly, any transaction(s) (i) that MERCHANT knows or should have known to be fraudulent, improper, illegal, or not authorized by the cardholder, (ii) that results from a transaction outside MERCHANT's normal course of business as described in the Merchant Application & Agreement, as approved by BANK (iii) that results from processing Debit/EBT, credit, directly or indirectly, of any transaction not originated as a result of an act directly between cardholder and MERCHANT, or (iv) that contains the account number of a Debit/EBT bank card account issued to MERCHANT. Should MERCHANT do so, BANK may hold funds, suspend processing or terminate this Agreement with or without notice following the determination, at BANK's sole discretion, of improper, fraudulent, suspect, or other questionable transactions, including, but not limited to, transactions varying materially in character from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement, as approved by BANK. MERCHANT acknowledges and agrees

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Debit/EBT Processing Terms & Conditions, continued

that BANK shall have no obligation to make any payment to MERCHANT with respect to such transaction(s) unless and until MERCHANT provides to BANK the documentation sufficient for BANK to determine that the transaction(s) is verified, legitimate, and BANK's risk has been mitigated. MERCHANT acknowledges no discount or transaction fees will be refunded as a result of BANK withholding payment to MERCHANT, including but not limited to reversals, returns and/or credits.

15. PCI DSS Compliance and Cardholder Information Security. MERCHANT agrees to abide by all Debit/EBT Network Operating Rules and Regulations regarding the safeguarding of cardholder information. MERCHANT agrees not to store the Card Verification Value (CVV) or Card Verification Code (CVC) (the three (3) digit code found on the back of the bank cards) and/or cardholder PIN and to implement the joint Payment Card Industry (PCI) standards in whole or in part as they relate to the Visa Cardholder Information Security Program (CISP), the MasterCard Site Data Protection (SDP) program, the Debit/EBT Operating Rules and Regulations, and any successor programs as the standard for protecting cardholder information. MERCHANT agrees to comply with the PCI, CISP SDP programs and Debit/EBT Operating Rules and Regulations. MERCHANT is responsible for demonstrating compliance, by its agents, with the requirements of CISP. All Service Providers MERCHANT uses must be recognized by Visa as CISP compliant service providers and payment applications MERCHANT uses must be recognized by VISA as compliant with the Payment Application Data Security Standards ("PA-DSS"). "Service Provider" means any party that processes, stores or transmits Customer Information on MERCHANT's behalf. MERCHANT agrees to immediately contact BANK if any cardholder information has been compromised in any manner. MERCHANT acknowledges and agrees that if any cardholder information is compromised, whether due in part to a third party software provider, VAR, vendor, or employee, MERCHANT will be liable for all fines, fees or damages which may be assessed to BANK by the Debit/EBT networks. Technical standards and information on meeting PCI, CISP and SDP can be located on the web at www.usa.visa.com and www.mastercard.com. MERCHANT bears all responsibility for ensuring that it is up to date on all new requirements using these tools and will be liable for all fines and fees assessed by BANK for non-compliance of the PCI, CISP, SDP and Debit/EBT Operating Rules and Regulations. MERCHANT's obligations and BANK's rights under this section shall survive the termination of this Agreement.

BANK may make available a PCI DSS compliance program through a third-party. Depending on the program, BANK shall have the right to charge an annual or monthly PCI fee whether or not MERCHANT participates in the program. Further, BANK may charge a non-compliance fee on a frequency to be determined by BANK for merchants who fail to provide certification of PCI compliance, and maintain an annual certificate of compliance.

MERCHANT acknowledges and agrees that MERCHANT'S use of the third-party services does not guarantee MERCHANT's compliance with any of the rules or security standards established by Visa/MasterCard/Discover/PayPal and any other applicable card companies. MERCHANT further acknowledges and agrees that MERCHANT's use of the third-party services does not guarantee the security of MERCHANT's IP addresses or that MERCHANT's systems are secure from unauthorized access. MERCHANT is responsible for establishing and maintaining security policies and procedures, and for compliance with the rules and security standards of Visa/MasterCard/Discover/PayPal and any other applicable card companies, including any obligation to notify Visa/MasterCard/Discover/PayPal and any other applicable card companies and BANK of any suspected breach of MERCHANT's systems.

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 BANK Rules, the Operating Regulations, and the Laws. BANK may approve or deny the use of an Agent in BANK'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 Brand (e.g., registrations, PA-DSS, PCI, audits, etc.). If an Agent is designated a service provider under any applicable Operating Regulation, MERCHANT shall cause such Agent to cooperate with BANK 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 BANK 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 BANK), and MERCHANT hereby expressly assumes all such liability.

MERCHANT expressly authorizes BANK to access information regarding MERCHANT's PCI compliance status. Upon BANK's request, MERCHANT or MERCHANT's PCI vendor must provide information, including but not limited to, PCI compliance/validation certification, SAQ (Self-Assessment Questionnaire), and Network scan results, and or any other information BANK requests with regard to MERCHANT's PCI compliance within ten (10) business days of request.

BANK at its discretion may discontinue, modify or amend the PCI DSS compliance program at any time. Upon termination of this Merchant Application and Agreement, MERCHANT's right to participate in the above referenced PCI DSS compliance program shall cease notwithstanding the prior payment of any PCI fee paid by MERCHANT.

MERCHANT expressly acknowledges and agrees that BANK shall be a third party beneficiary of any agreement entered into between MERCHANT and BANK's third party service provider and MERCHANT relating to the above-referenced PCI compliance program and BANK shall have the rights, remedies and protections afforded therein to such third party service provider.

16. Terminated Merchant File/MATCH. MERCHANT may be placed on the Combined Terminated Merchant File/MATCH upon violation of any terms of this Agreement or any Debit/EBT network or bank card brand rules or regulations. MERCHANT hereby releases,

indemnifies, and holds BANK harmless for any loss or damage it may incur as a result of BANK's actions hereunder or as a consequence of MERCHANT being placed by BANK or its agents on the Combined Terminated Merchant File/MATCH or other applicable list where such events are reported.

17. Limitation of Damages. BANK shall not be liable for special, consequential, exemplary, or punitive damages. In no event shall BANK's cumulative liability to MERCHANT hereunder, including as a result of BANK's or any processor's own negligence, breach or error, exceed the amount of processing fees paid by MERCHANT to BANK for the transaction in question.

18. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

19. Force Majeure. BANK is released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any acts of any other party or third party or any acts of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, software failure, program failure, network problem, sabotage, war, military operation, national emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or BANK's compliance therewith or government proration, regulation, or priority, or any other cause beyond BANK's reasonable control whether similar or dissimilar to such causes.

20. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state courts of Tarrant County, Texas.

21. Rules and Regulations. This Agreement shall be subject to the operating rules and regulations of the Debit/EBT networks as amended from time to time.

22. Assignment. This Agreement and the rights and obligations underlying this Agreement may be assigned by BANK. This Agreement may not be assigned by MERCHANT.

23. Term; Termination. The initial term of this Agreement shall commence upon BANK's acceptance hereof (as evidenced by BANK's performance hereunder) and continue in full force and effect for a term of three (3) years from acceptance by BANK. If Debit/EBT Processing services are added as an additional service to an existing BANK Credit Card Processing Agreement in good standing; your Debit/EBT approval date will reflect the approval date of the existing Credit Card Processing Agreement. Thereafter, the Agreement will automatically renew for additional one-year periods unless MERCHANT gives (and BANK receives) written notice of non-renewal, no less than thirty (30), but no more than ninety (90), days prior to the end of the applicable term. The written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted. Notwithstanding any other provision hereof, the Agreement may be terminated by BANK, with or without cause or reason, and with or without notice. Termination by BANK for any service results in termination of all services. In the event MERCHANT submits bank card transactions to BANK after the date of termination, the bank card transactions may (at BANK's option) be processed subject to the terms and conditions of this Agreement. If this Agreement is terminated by MERCHANT prior to the end of the term or by BANK as a result of MERCHANT's breach, BANK will be entitled to recover and MERCHANT shall pay on demand, an early termination fee of no less than one hundred dollars (\$100.00)* for each MERCHANT location. At its sole and absolute discretion, BANK may also assess liquidated damages in connection with such termination, which shall be the average monthly fees paid by MERCHANT to BANK for the last 12 months (or the number of months this Agreement has been in effect, if less than twelve months) times the number of months remaining in the term, plus any and all additional losses (including consequential damages, costs, expenses and other liabilities) incurred by BANK in connection with such termination. MERCHANT and BANK agree that: (a) the award of liquidated damages is to provide a means of compensation for BANK in the event of a breach by MERCHANT in the form of early cancellation or non-adherence to exclusivity requirement; (b) BANK's damages would be difficult or impossible to prove; and (c) the amount of liquidated damages set forth herein is a fair and reasonable estimate of BANK's damages resulting from any breach or improper termination by MERCHANT. BANK may hold payment of any monies due MERCHANT to ensure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement. *[ARKANSAS MERCHANTS - early termination fee is fifty dollars (\$50.00)].

24. Authorization. MERCHANT hereby authorizes BANK in accordance with this Agreement to initiate debit/credit entries to any account of MERCHANT. The authority to initiate such debit/credit entries shall remain in full force until BANK shall have been paid all fees under this Agreement and all chargebacks and other amounts shall have been paid.

25. Attorneys' Fees and Costs. MERCHANT shall be liable for and shall indemnify and reimburse BANK for any and all attorneys' fees, arbitration cost, and other costs and expenses paid or incurred by BANK in the enforcement hereof, including but not limited to, collecting any amounts or obligations due from MERCHANT.

26. Rates; Fees; Adjustments. "Debit Transaction Fee" shall mean a fee charged on each debit transaction submitted for authorization, regardless of the total stated. "EBT Transaction Fee" shall mean a fee charged on each EBT transaction submitted for

MERCHANT PROCESSING TERMS & CONDITIONS

Debit/EBT Processing Terms & Conditions, continued

authorization, regardless of the total stated. "Debit Network Fee" shall be charged on each transaction submitted for authorization, regardless of the total stated, at a rate set by the Debit/EBT network, and shall be in addition to the Debit Transaction Fee. "Debit Related Fee" shall mean a fee charged on each transaction submitted for authorization of no less than three cents (.03) per transaction for other debit related costs including, without limitation, debit sponsorship, audit, and network registration.

BANK shall have the right to adjust charges as necessary to offset any direct or indirect cost to BANK associated with providing services hereunder including, but not limited to, costs associated with collection and administration of chargebacks, fees charged by the Debit/EBT networks, all other fees charged by other providers in processing, increases in the cost of living index or changes in rules, regulations, or operating procedures of the Debit/EBT network or other applicable bank card organization or network acquirer, charges for changes to merchant accounts or information, or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increases in communication costs charged to BANK by common carriers. Such charges shall, without prior notice, become effective as of the date of charge. Upon any request from MERCHANT for copies of file information, account research, or other information, BANK may charge fees for such services, including per hour fees as determined by BANK. Without limiting the foregoing, BANK shall have the absolute and unconditional right to introduce new fees or increase Debit Transaction Fees, EBT Transaction Fees or Debit Network Fees, and any other fees for any reason when deemed appropriate in BANK's sole discretion. BANK may charge a fee not less than thirty-five dollars (\$35.00) for a change of depository bank account or a change of name by MERCHANT. BANK shall charge a fee not less than fifty dollars (\$50.00) for shipping and handling on equipment exchanges or swaps.

27. Debit Surcharge. MERCHANT must not impose a surcharge on any Debit/EBT transaction. MERCHANT will be liable for all fines, fees or damages that may be assessed to BANK by the Debit/EBT networks or any other brand or network as a result of any such surcharging by MERCHANT.

28. Variances. If in MERCHANT's processing, there is a variance from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK or if BANK determines that such variance may otherwise be detrimental to BANK then BANK shall have no obligation to pay MERCHANT any settlement funds until MERCHANT has provided to BANK documentation sufficient for BANK to determine that the variance is verified, legitimate, and BANK's risk has been mitigated. MERCHANT further acknowledges that BANK, at its sole discretion, may hold or delay settlement of funds, suspend MERCHANT's processing, terminate this Agreement, or require MERCHANT to run a return/credit on a sale without or without notice upon the occurrence of any of the events specified above. MERCHANT shall immediately contact BANK in writing if variances occur from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK. For purposes hereof, BANK's determination shall be binding upon MERCHANT. MERCHANT hereby releases, indemnifies and holds BANK harmless for any losses or damage it may incur as a result of BANK's actions hereunder, or as a consequence of the settlement funds being held, delayed or suspended. MERCHANT also agrees to pay all bank fees associated with processing any transaction, regardless if funds are held, delayed, suspended or if MERCHANT is required to run a return/credit.

29. Merchant Reserve Account. BANK may require the MERCHANT or any guarantor to establish a reserve account against current and future indebtedness, or for any transaction which might become subject to a chargeback for any reason. Any reserve will be held by BANK for a period of time as is consistent with BANK's liability. BANK, in its sole and absolute discretion, may estimate the amount of the potential losses, fees, and costs and require MERCHANT or any guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. Failure to fund the reserve may result in immediate termination of the Agreement. MERCHANT also understands and agrees that BANK may withhold and retain any and all settlement funds in order to establish a Merchant Reserve Account without notice to MERCHANT. MERCHANT understands and agrees that all reserve funds may be retained and used to offset: 1) any loss which was created prior to establishing the reserve account 2) any current fees or losses due from time to time to BANK, hereunder and 3) any transaction which might result in a loss at a future date as determined by BANK. Reserves shall be held and placed in a non-interest bearing account.

This Agreement will constitute a security agreement under the Uniform Commercial Code. MERCHANT grants to BANK a security interest in and lien upon all of the following (collectively, the "Secured Assets"): (i) all funds at any time in the designated account, (ii) the reserve account, (iii) future sales transactions, (iv) all funds, deposits, deposit accounts, moneys, securities, and other property now or hereafter in the possession of or on deposit with, or in transit to BANK or any other direct or indirect subsidiary or affiliate of BANK, whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts; and (v) all of MERCHANT's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement. MERCHANT warrants and represents that no other person or entity has a security interest in the Secured Assets. These security interests and liens will secure all of MERCHANT's obligations under this Agreement and any other agreements between MERCHANT and BANK, including but not limited to MERCHANT's obligation to pay any amounts due to BANK. With respect to such security interests and liens, BANK will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity and the right to perfect such security interests as required by the Uniform Commercial Code. In addition to the security interests in the Secured Assets, BANK shall have, a contractual right of setoff against the Secured Assets without notice to MERCHANT.

30. Governmental Reporting Requirements. MERCHANT acknowledges and agrees that all information provided in the Agreement is true and correct. MERCHANT also First American ISV TC 01.15.21

acknowledges that BANK may be required to report certain information regarding MERCHANT including but not limited to MERCHANT's TIN, Entity Name, DBA, processing volume, principal's Social Security Number to governmental agencies such as the Internal Revenue Service (IRS). MERCHANT agrees to fulfill any request from BANK for additional information which may be required or requested by any government agency. Notwithstanding the foregoing, MERCHANT understands that BANK 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. MERCHANT expressly agrees and releases BANK 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 BANK.

31. Guarantor. Any guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that BANK may require performance of any obligation of MERCHANT hereunder directly from guarantor.

32. Amendments. BANK has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than ten (10) days from date of notice.

33. Taxes. MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

34. Indemnification. MERCHANT hereby releases, indemnifies and holds BANK harmless for any losses, claims, costs or damages to MERCHANT or any third party as a result of BANK's acts or omissions under this Agreement, including, as a consequence of BANK's own negligence. The indemnification provisions herein shall survive the termination of this Agreement.

35. Counterparts. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

36. Waiver. The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY **WAIVE TRIAL BY JURY** IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

37. Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the illegal, invalid or unenforceable provision is modified to give effect to the original intent consistent with being valid and enforceable under applicable law.

38. Notices. If to BANK, all written notices under this agreement shall be delivered to:

First American Payment Systems
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the address stated on the records of BANK. Notice to MERCHANT may be by facsimile and/or the Monthly Merchant Statement.

If such transmitted notice is by MERCHANT to BANK, the original of any communication shall also be mailed to BANK on the date of the transmission and it shall not be deemed served until the mailed copy is received and confirmed by BANK.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

39. 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 indemnification, PCI DSS Compliance, and chargeback liability, shall survive the expiration or termination, for any reason, of this Agreement.



MERCHANT PROCESSING TERMS & CONDITIONS

Secur-Chex Check Services Terms & Conditions

The following Check Services Terms & Conditions apply only if MERCHANT has agreed to accept Secur-Chex® Check Services.

THIS AGREEMENT is made by and between First American Payment Systems, L.P. ("SECUR-CHEX" or "BANK") and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement and shall become effective upon approval by SECUR-CHEX. BANK may adjust or amend the Maximum Guarantee Amount with or without notice to MERCHANT prior to approving the Agreement.

WHEREAS, SECUR-CHEX is engaged in the business of providing electronic check conversion, verification and if elected, guarantee for participating MERCHANTS under the programs herein described;

WHEREAS, MERCHANT wishes to participate in this check conversion, verification and/or guarantee program under the rules and in accordance with this agreement established by SECUR-CHEX; and

NOW, THEREFORE, in consideration of the mutual obligations and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties agree to the following:

AGREEMENTS

1. Qualifying Check Requirements/Limitations to Guarantee. In order for MERCHANT to receive guaranteed payment from SECUR-CHEX for any product, MERCHANT must ensure that the check and/or the original conversion receipt meets all of the Qualifying Check Requirements included in this Agreement:

- (a) Check must have received a valid authorization code;
- (b) The check must not have been previously negotiated or voided;
- (c) The check must be drawn on or payable through a federally insured depository financial institution, be machine readable MICR-encoded with the bank routing number, account number and check serial number printed on check;
- (d) The check must be drawn on the consumer's personal, non-corporate demand deposit account. A corporate check is defined as 1) "checks or sharedrafts that contain an Auxiliary On-Us Field in the MICR line"; and 2) "checks or sharedrafts in an amount greater than \$25,000", or 3) as defined by NACHA ACH Rules;
- (e) MERCHANT shall obtain a written customer authorization (ie. original conversion receipt) in a form acceptable to SECUR-CHEX for each check transaction submitted for electronic conversion;
- (f) The date of the check and the date of the inquiry must be the same and must be the current date;
- (g) The check writer's name must be imprinted by the bank on the check;
- (h) The address must appear on the check. If there is a Guarantee Conversion – No Image relationship then it must appear on the original conversion receipt. P.O. Boxes are not acceptable for listed address. If it is not listed on the check it must be legibly handwritten on the check and original conversion receipt and match the address on the identification required;
- (i) All checks must be completely filled out by the check writer and made payable to the MERCHANT business name;
- (j) MERCHANT shall not accept any third party items or checks made payable to "cash" or "bearer" and MERCHANT shall not accept a traveler's check, money order, payroll check, counter check or sight draft;
- (k) The amount in words and figures must coincide and must match that of the inquiry amount;
- (l) The non-corporate check and the original conversion receipt must be signed by an individual whose name is imprinted on the check;
- (m) The signature on the check and/or original conversion receipt must correspond to the signature contained on the identification presented;
- (n) Check writer's work phone number must appear on the check or the original conversion receipt. If there is no work number, then the home phone number must appear or the words "no work phone" and "no home phone." The phone number may be legibly written if it is not imprinted;
- (o) MERCHANT must make an inquiry on the consumer's valid identification and receive an approval code obtained from SECUR-CHEX. The only acceptable forms of valid identification are a state issued drivers license or state issued identification card. Military and student I.D.s are not acceptable;
- (p) MERCHANT shall not submit a check for goods or services that are not concurrently provided to the customer, including, service contracts or similar transactions, or for goods or services provided to a third party;
- (q) Consumer's driver's license identification number and state of issue must appear on the front of the check or the original conversion receipt;
- (r) Checks must be accepted at the physical address shown on the Merchant Application & Agreement;
- (s) Checks must be for full amount or final payment amount of goods or services exchanged;
- (t) Any alterations on the checks must be initialed by the check writer;
- (u) MERCHANT shall not knowingly submit or convert a check on an account that SECUR-CHEX previously denied authorization;
- (v) MERCHANT is responsible for collecting all taxes at the time of sale and shall be responsible for paying all taxes collected to the appropriate authorities in a timely manner;
- (w) Checks or converted checks where only cash is exchanged, even if the check is payable to MERCHANT, will not be guaranteed;
- (x) SECUR-CHEX will not guarantee payment for checks or converted checks returned for the following reasons: i. "stop payment" checks; ii. "Customer Advises Not Authorized, Notice Not Provided, Improper Source Document, or Amount of Entry Not Accurately Obtained from Source Document"; iii. "forgery", "lost" or "stolen" checks, unless an affidavit of forgery is provided with the submission form for the claim on

- these checks; iv. "signature irregular", "counterfeit", "refer to maker" or "tax levy" checks;
- (y) MERCHANT must deliver transactions to SECUR-CHEX, the day the check was authorized; and
- (z) Any fees assessed by SECUR-CHEX, which are unpaid, will invalidate ANY guarantee coverage.

Any check or conversion items that do not meet the requirements listed above will be deemed ineligible for guarantee, even if an authorization number is obtained. In the event a claim is paid and through collection or investigation of such claim SECUR-CHEX determines that the check did not meet the Qualifying Check Requirements or that the check fails under any requirements or procedures contained in this Agreement, SECUR-CHEX may debit the MERCHANT's account without notice the amount of such claim and send notice to MERCHANT following such action. MERCHANT's violation of any of the above procedures may invalidate coverage and all funds in the MERCHANT's account may be placed on hold.

2. Guaranteed Conversion. If MERCHANT has marked the Guaranteed Conversion box on the MERCHANT Application & Agreement, then MERCHANT wishes to participate in the electronic check conversion with guarantee services provided by SECUR-CHEX. In accordance with the terms of this Agreement, SECUR-CHEX shall provide electronic check conversion services and guarantee payment to the MERCHANT for each check accepted by the MERCHANT during the term of this Agreement which meets the Qualifying Check Requirements in an amount up to, but not exceeding, the maximum guarantee amount designated herein (the "maximum guarantee amount").

If MERCHANT participates in the Guaranteed Conversion program, SECUR-CHEX may require MERCHANT, at its sole discretion, to provide the original conversion receipt for any transaction. The original receipt must meet the Qualifying Check Requirements, as described in this Agreement, and the legibly printed name and phone number for the check writer must appear on the authorization slip. If MERCHANT fails to provide original receipt within fourteen (14) days of request, SECUR-CHEX will not guarantee the converted item if dishonored for any reason. The maximum guarantee amount SECUR-CHEX will guarantee for Guaranteed Conversion is one thousand five hundred dollars (\$1,500.00).

3. Check Guarantee (Paper-Based). The following provisions apply only to MERCHANTS participating in the Check Guarantee (Paper-Based) program. All checks which meet the Qualifying Check Requirements received between the 1st and prior to the 15th of the month will be paid to the MERCHANT on the 1st of the following month or the first business day thereafter. All checks which meet the Qualifying Check Requirements received between the 16th and prior to the last day of the month will be paid to the MERCHANT on the 15th of the following month or the first business day thereafter. All checks must be deposited within three (3) business days of receipt. SECUR-CHEX reserves the right, at its sole discretion, to deny any claims for payment for checks submitted thirty (30) days after the date of the authorization or issuance. SECUR-CHEX reserves the right to investigate any check presented for payment and withhold payment pending resolution of any matters associated with determining whether or not the check meets the Qualifying Check Requirements. The maximum guarantee amount SECUR-CHEX will guarantee for Check Guarantee is one thousand five hundred dollars (\$1,500.00).

4. Check Guarantee for Corporate Checks (Paper-Based). The following provisions apply only to MERCHANTS participating in the Check Guarantee for Corporate Checks (Paper-Based) program. In addition to the Qualifying Check Requirements, all Corporate Checks must be approved with the correct and current business phone number as answered and listed in the business' name. Business checks approved in any other manner will be excluded from guarantee coverage. The valid I.D. of the person presenting the business check must be written on the check. All checks which meet the Qualifying Check Requirements received between the 1st and prior to the 15th of the month will be paid to the MERCHANT on the 1st of the following month or the first business day thereafter. All checks which meet the Qualifying Check Requirements received between the 16th and prior to the last day of the month will be paid to the MERCHANT on the 15th of the following month or the first business day thereafter. All checks must be deposited within three (3) business days of receipt. SECUR-CHEX reserves the right, at its sole discretion, to deny any claims for payment for checks submitted thirty (30) days after the date of the authorization or issuance. SECUR-CHEX reserves the right to investigate any check presented for payment and withhold payment pending resolution of any matters associated with determining whether or not the check meets the Qualifying Check Requirements. The maximum guarantee amount SECUR-CHEX will guarantee for Corporate Checks is one thousand five hundred dollars (\$1,500.00).

5. A La Carte. The following options are available under the A La Carte - Custom Features for Check Guarantee (Conversion and Paper-Based) program for an additional fee:

- (a) Bank Fee Reimbursement: Any check submitted for a claim with an itemized statement from MERCHANT's bank showing the fees charged for the unpaid item will be paid the fees charged by MERCHANT's bank in addition to the qualifying amount of the check submitted for a claim. The bank form must clearly show the fees, identify the item on which fees are paid, and state the bank name to qualify for this feature. No copies of the bank form are acceptable; it must be an original bank notice. This benefit has a maximum guarantee amount of twenty-five dollars (\$25.00) per item submitted for claims. All other Qualifying Check Requirements must be followed in order to qualify for this benefit.
- (b) No Fault Coverage: Any check or check conversion which meets the Qualifying Check Requirements submitted for a claim, will be paid, even if the item is missing one or more of the following guarantee requirements: date not current; the amount in words and figures does not agree; the check writer's home phone and work phone numbers or the words "no home phone" and "no work phone" do not appear on the check; check writer's date of birth, identification number, state of identification or approval

MERCHANT PROCESSING TERMS & CONDITIONS

Check Services Terms & Conditions, continued

code obtained do not appear on the check; or any alterations not initialed by the check writer. Only the exceptions listed apply to this benefit. All other Qualifying Check Requirements must be followed in order to qualify for this benefit.

(c) 7 Day Claims Pay: All check claims submitted that meet the Qualifying Check Requirements will be paid within seven (7) days of receipt of the MERCHANT's claims by SECUR-CHEX. All other Qualifying Check Requirements must be followed in order to qualify for this benefit.

(d) Stop Payment Coverage: Any check or check conversion which meets the Qualifying Check Requirements submitted for a claim that is marked "stop payment" will be paid like any other claim, up to ten percent (10%) of the maximum guarantee amount of guarantee. SECUR-CHEX will contact the check writer to determine if a dispute exists between MERCHANT and the check writer. In the event that the check writer confirms a dispute, then MERCHANT must assist SECUR-CHEX in validation and collection efforts, to the extent SECUR-CHEX requests such assistance. In the event MERCHANT does not assist, as requested by SECUR-CHEX, then any payment on the claim will be reversed and an ACH debit made to MERCHANT's DDA account on file with SECUR-CHEX. All other Qualifying Check Requirements must be followed in order to qualify for this benefit.

To qualify under any of the A La Carte - Customized Check Guarantee programs, MERCHANT must meet the Qualifying Check Requirements, follow all procedures and comply with the terms of this Agreement.

6. Electronic Check Conversion. If MERCHANT has chosen Electronic Check Conversion, then MERCHANT understands that SECUR-CHEX will provide check verification, electronic check conversion, and certain collection services and will not guarantee or be liable in any way for any returned checks of MERCHANT or its customers for any reason. MERCHANT also agrees and understands that SECUR-CHEX does not in any way guarantee the accuracy, timeliness or validity of the check verification process and further understands that a valid authorization code IS NOT a guarantee of payment from check writer.

7. Check Verification (Paper-Based). If MERCHANT has chosen Check Verification (Paper-Based), then MERCHANT understands that SECUR-CHEX will provide check verification only and will not guarantee or be liable in any way for any returned checks of MERCHANT or its customers for any reason. MERCHANT also agrees and understands that SECUR-CHEX does not in any way guarantee the accuracy, timeliness or validity of the check verification process and further understands that a valid authorization code IS NOT a guarantee of payment from check writer.

8. Additional Locations. MERCHANT must complete an Additional Location Form for each additional MERCHANT location. MERCHANT expressly agrees and acknowledges that each MERCHANT location shall be governed by these Merchant Processing Terms & Conditions and the Merchant Application & Agreement, including and without limitations the rates and fees described therein, which may be amended from time to time.

9. SECUR-CHEX Bank Verification Statement. Upon initial installation of new equipment or reprogramming of existing equipment, MERCHANT agrees to the following: (i) MERCHANT shall run a test transaction to ensure equipment functionality, (ii) Verify the accuracy of receipt information, and (iii) MERCHANT shall verify proper deposit into MERCHANT's DDA accounts in no less than four (4) banking days and no more than six (6) banking days from the time of the first valid customer transaction. MERCHANT shall immediately notify SECUR-CHEX in writing of any failure of the above within ten (10) banking days. Failure to notify SECUR-CHEX within said time frames shall result in SECUR-CHEX being relieved of any liability and responsibility for any equipment failure or misrouted funds.

10. Term; Termination. This Agreement shall continue in full force and effect for a term of three (3) years from acceptance by BANK/SECUR-CHEX. If SECUR-CHEX services are added as an additional service to an existing BANK Credit Card Processing Agreement in good standing, your SECUR-CHEX approval date will reflect the approval date of the existing Credit Card Processing Agreement. Thereafter, the Agreement will automatically renew for additional one-year periods unless terminated per this paragraph or other provisions of the Agreement. The initial term of this Agreement shall commence upon SECUR-CHEX's acceptance hereof (as evidenced by SECUR-CHEX's performance hereunder) and continue until either (i) terminated by MERCHANT by giving at least thirty (30) days, but no more than ninety (90) days, written notice of non-renewal to SECUR-CHEX with termination effective at the end of the applicable term or (ii) terminated by SECUR-CHEX, with or without cause or reason, and with or without notice. The written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted. Termination by SECUR-CHEX for any service may result in the termination of all services. If this Agreement is terminated by MERCHANT prior to the end of the term or by SECUR-CHEX as a result of MERCHANT's breach, SECUR-CHEX will be entitled to recover and MERCHANT shall pay on demand, an early termination fee of no less than one hundred dollars (\$100.00)* for each MERCHANT location. At its sole and absolute discretion, SECUR-CHEX may also assess liquidated damages in connection with such termination, which shall be the average monthly fees paid by MERCHANT to SECUR-CHEX for the last 12 months (or the number of months this Agreement has been in effect, if less than twelve months) times the number of months remaining in the term, plus any and all additional losses (including consequential damages, costs, expenses and other liabilities) incurred by SECUR-CHEX in connection with such termination. MERCHANT and SECUR-CHEX agree that: (a) the award of liquidated damages is to provide a means of compensation for SECUR-CHEX in the event of a breach by MERCHANT in the form of early cancellation or non-adherence to exclusivity requirement; (b) SECUR-CHEX's damages would be difficult or impossible to prove; and (c) the amount of liquidated damages set forth herein is a fair and reasonable estimate of SECUR-CHEX's damages resulting from any breach or improper termination by MERCHANT. BANK may withhold payment of any monies due MERCHANT to insure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this entire Agreement. *[ARKANSAS MERCHANTS - early termination fee is fifty dollars (\$50.00)].

11. Rules and Regulations. MERCHANT agrees to be bound by all state and federal laws. This Agreement shall also be subject to the Operating Rules of the National Automated Clearing House Association. MERCHANT agrees not to submit any check or conversion transaction that will violate applicable state and federal laws or rules of the National Automated Clearing House Association. Such rules and regulations incorporated herein by this reference and may be amended from time to time. Any violation in these laws or rules may be subject to fines by the governing body.

12. Transaction Records. If MERCHANT has chosen Electronic Check Conversion with Guarantee - Image, MERCHANT agrees to electronically capture, store, and deliver to SECUR-CHEX an image of each check, daily. MERCHANT agrees to retain the original conversion receipt for a period of two (2) years and shall make available, upon request by SECUR-CHEX, a copy of such receipt. In addition, MERCHANT agrees to balance and deliver to SECUR-CHEX all transactions on each POS terminal used, by midnight of the day SECUR-CHEX authorizes the transaction. MERCHANT acknowledges that failure to deliver transactions on the day the check was authorized, will delay funds being deposited and may result in a loss of guarantee coverage.

13. Debit/Credit Authorization. MERCHANT hereby grants authorization to SECUR-CHEX to credit and/or debit MERCHANT's account for chargebacks, fees imposed and for claim reimbursement payments pursuant to automated electronic debit or credit via the automated clearinghouse ("ACH"). MERCHANT agrees to provide a preprinted voided check for proper and accurate set up of bank and account information as well as ACH. MERCHANT will maintain sufficient funds in account to satisfy all obligations, including fees, contemplated by this Agreement. Any change in account status or information or lack of funds during any attempted ACH shall give SECUR-CHEX the right to terminate this Agreement immediately without notice to MERCHANT. MERCHANT acknowledges that SECUR-CHEX will monitor MERCHANT's daily deposit, chargeback and settlement activity. MERCHANT agrees that SECUR-CHEX has a right of offset and may take all steps necessary to collect amounts owed by MERCHANT. These steps include offsetting uncollected amounts against amounts due to MERCHANT under this, or any other BANK agreement. In addition, MERCHANT agrees that SECUR-CHEX may, upon reasonable grounds, divert the disbursement of MERCHANT's funds for any reasonable period of time required to investigate unusual or suspicious activity. SECUR-CHEX shall have no liability for any losses, claims or damages, which MERCHANT may attribute to said diversion of funds. All diverted funds shall be deposited immediately into a non-interest bearing account and will not be released until such time as suspicious transactions have been resolved to the satisfaction and at the sole discretion of SECUR-CHEX.

14. Offset and Security Interest. MERCHANT hereby grants SECUR-CHEX a right of offset against any amounts now or hereafter owing to MERCHANT under this or any other agreement with BANK or held by BANK and agrees that all such amounts may be applied to payment of any obligations now or hereafter owing by MERCHANT to SECUR-CHEX, whether due or not, and in such order as SECUR-CHEX may elect, and for this purpose SECUR-CHEX may withdraw via ACH or otherwise hold or apply any accounts, funds or amounts in its discretion. In addition to and independent of all other rights and remedies available to SECUR-CHEX, including, without limitation, the right of offset, whether created by this Agreement or otherwise, MERCHANT hereby grants to SECUR-CHEX a security interest in all accounts, funds, and amounts of any description whatever, whether now or hereafter owing to MERCHANT under this or any other agreement with BANK, and all proceeds thereof, to secure payment of any obligation now or hereafter owing from MERCHANT to SECUR-CHEX, and with respect to the security interest herein granted, SECUR-CHEX shall have all of the rights and remedies of a secured party under the Uniform Commercial Code. MERCHANT authorizes SECUR-CHEX to file such financing statement, as SECUR-CHEX may deem appropriate to perfect the security interest granted herein. MERCHANT agrees to provide additional collateral or security upon the request of SECUR-CHEX. The rights of SECUR-CHEX under this security interest shall be independent of and cumulative of any rights of offset. All of the rights of SECUR-CHEX shall survive the termination of this Agreement.

15. Schedule of Fees and Compensation of SECUR-CHEX. Attached to this Agreement under the section of the Agreement entitled "SECUR-CHEX Check Services" and incorporated herein by reference is a schedule of fees that contains a programming fee, a voice authorization fee, a transaction fee, a guarantee rate fee, a minimum per check fee, a monthly minimum fee, a statement fee, an uncollectible item fee and any other fee(s) in effect at the signing of this Agreement. Without limiting the foregoing, SECUR-CHEX shall have the absolute and unconditional right to introduce new fees or increase fees, with or without notice, for any reason when deemed appropriate in SECUR-CHEX's sole discretion. SECUR-CHEX shall have the right to adjust charges as necessary to offset any direct or indirect increase to SECUR-CHEX in the costs of providing services hereunder including, but not limited to, costs associated with collection and administration of returned checks, fees charged by other providers in processing, increases in the cost of living index or changes in rules, regulations, or operating procedures of the National Automated Clearing House Association or other applicable association/organization, charges for changes to merchant accounts or information, adjustments in foreign exchange rates, or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increases in processing costs charged to SECUR-CHEX. Such charges shall, without prior notice, become effective as of the date of charge. Without limiting the foregoing, SECUR-CHEX shall have the absolute and unconditional right to introduce new fees and increase fees for any reason when deemed appropriate in SECUR-CHEX's sole discretion. MERCHANT understands and agrees that SECUR-CHEX reserves the right to assess any associated fees not previously specified in the "SECUR-CHEX Check Services" section of the Merchant Application & Agreement that are billed to SECUR-CHEX as a result of the device(s) or software used by MERCHANT communicating with any third party host. SECUR-CHEX may charge a fee not less than thirty-five dollars (\$35.00) for a change of depository bank account or a change of name by MERCHANT. Upon any request from MERCHANT for copies of file information, account research, or other information, SECUR-CHEX may charge fees for such services, including per hour fees as determined by SECUR-CHEX.

MERCHANT PROCESSING TERMS & CONDITIONS

Check Services Terms & Conditions, continued

Any fees assessed by SECUR-CHEX, which are unpaid, will invalidate ANY guarantee coverage. Fees not collected within the month of billing will accrue interest at the maximum rate allowed by law per month, beginning on the first day of the month following the billing month until all fees and accrued interest are paid in full. Each month SECUR-CHEX shall provide the MERCHANT with an itemized statement containing accumulated conversion and guarantee charges based on MERCHANT's inquiries and the amount of such statement shall be paid by MERCHANT to SECUR-CHEX via ACH. In the event the ACH for collection of fees owed to SECUR-CHEX is rejected by the MERCHANT's bank, MERCHANT agrees to pay SECUR-CHEX a reject fee of no less than thirty dollars (\$30.00) and no more than fifty dollars (\$50.00). These fees shall be paid by MERCHANT to SECUR-CHEX via ACH. MERCHANT must notify SECUR-CHEX in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transaction, bank statements and other information indicating activity of SECUR-CHEX and MERCHANT subject to or relating to this Agreement or SECUR-CHEX's obligations hereunder. Save and except SECUR-CHEX's right to funds owed SECUR-CHEX under this Agreement or SECUR-CHEX's right to funds incorrectly paid to MERCHANT, if no notice of error is received within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. National Automated Clearing House Association fines assessed as a result of MERCHANT failing to follow procedures will be passed through to the MERCHANT.

16. MERCHANT Cooperation. MERCHANT and its employees shall cooperate with SECUR-CHEX's collection efforts, including working with local law enforcement, on checks and converted items guaranteed hereunder and further acknowledges full assignment of all rights in and to the instrument to SECUR-CHEX and its assigns. SECUR-CHEX shall have the right to pursue collection, including the filing of suit, if necessary, of any guaranteed item hereunder. In addition, the MERCHANT agrees to sign a separate assignment form on any instrument, as well as provide any documentation associated with the transaction, upon request by SECUR-CHEX. MERCHANT hereby agrees that failure to provide requested documents will result in the non-guarantee of a returned item.

17. Responsibility and Liability of MERCHANT. MERCHANT shall assume the responsibility and the risk of ascertaining the validity and comparing signatures of any identification presented to MERCHANT in connection with the making of a check in which a check conversion or guarantee authorization has been obtained by SECUR-CHEX. MERCHANT understands that SECUR-CHEX cannot and does not warrant the connectivity, performance of equipment, or quality of services as a result of any data or voice connections, or similar type service. MERCHANT agrees that SECUR-CHEX is not responsible for, and MERCHANT accepts full responsibility for issues that may arise when utilizing data or voice connections, or similar service, including but not limited to; failure to obtain authorizations, batching, settlement, equipment, equipment/Software installation, communications, downloads and internet connectivity. Further, MERCHANT acknowledges it will not make any claim against SECUR-CHEX for any losses or damages, including, but not limited to, loss of income, loss of revenue, economical loss, consequential, direct, indirect, special, exemplary, or punitive relating to the use or connectivity of any data or voice connections, or similar services.

18. Record Retention. MERCHANT understands that it is a federal violation for MERCHANT to process debit requests against a consumer bank account without the electronic check writer's expressed authority and consent. MERCHANT shall retain all records related to this authorization, including all sales and credit receipts, original conversion receipt and the authorization agreements for a period of two (2) years following the date of the transaction. MERCHANT shall produce such original records within twenty (20) days of request by SECUR-CHEX.

19. Use of MERCHANT Name. MERCHANT hereby authorizes SECUR-CHEX to utilize, in advertisements or otherwise, the name of MERCHANT as being a SECUR-CHEX user.

20. Collection Reimbursement. Checks which meet the Qualifying Check Requirements up to the maximum guarantee amount are paid an amount equal to the full face value of the check. Checks which meet the Qualifying Check Requirements over the maximum guarantee amount are paid up to the maximum guarantee amount. For collections made by SECUR-CHEX, which are in excess of the maximum guarantee amount, MERCHANT will receive a reimbursement payment equal to seventy percent (70%) of such excess collection. Collection attempts on all checks over the maximum guarantee amount will be limited to ninety (90) days from the date of submission of the claim on the check. MERCHANT agrees that SECUR-CHEX shall be entitled to all collection costs, damages and fees against the check writer or account holder that are allowed by law. If MERCHANT collects directly from the check writer on a previously paid claim, the claim amount and a collection fee will be debited from MERCHANT's account via ACH.

21. Goodwill of a Returned Item. SECUR-CHEX, in its discretion, may voluntarily reimburse MERCHANT for a specific Returned Item. SECUR-CHEX's election to reimburse a Returned Item(s) shall not act as a waiver of SECUR-CHEX's right to decline to pay any other Returned Items.

22. Attorneys' Fees and Costs. MERCHANT shall be liable for and shall indemnify and reimburse SECUR-CHEX for any and all attorneys' fees, arbitration cost, and other costs and expenses paid or incurred by SECUR-CHEX in the enforcement hereof, including but not limited to, collecting any amounts or obligations due from MERCHANT.

23. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state courts of Tarrant County, Texas.

24. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act First American ISV TC 01.15.21

and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

25. Amendment. SECUR-CHEX has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than ten (10) days from date of notice.

26. Assignment. Subject to SECUR-CHEX's right of amendment upon notice, any of the terms, provisions, representations, warranties, covenants, or conditions hereof may be amended, only by a written instrument executed by all parties hereto, or, in the case of a waiver, by the party waiving compliance. The failure of any party at any time to require performance of any provision hereof shall not constitute a waiver and in no manner affect the right to enforce the same. The rights and obligations of MERCHANT hereto may not be assigned or ownership of MERCHANT transferred without the prior written consent of SECUR-CHEX.

27. Indemnification. MERCHANT does hereby indemnify and hold harmless SECUR-CHEX from and against any claims, damages, actions, costs or expenses, including reasonable attorney's fees and costs of court for any breach by MERCHANT or any of its employees, agents, independent contractors or customers, of any provision of this Agreement, for failure to submit checks which meet or do not meet the Qualifying Check Requirements, and for third party claims resulting from or arising out of, SECUR-CHEX exercising any rights under this Agreement, or in connection with, the indemnifying party's failure to comply with the terms of this Agreement. The indemnification provisions herein shall survive the termination of this Agreement.

28. Limitations on Liability. SECUR-CHEX shall be responsible for the performance of ACH processing services as a third-party provider in accordance with the terms of this Agreement. MERCHANT agrees that SECUR-CHEX shall not be responsible for any errors, acts, omissions, negligence, failures to act, intentional conduct, delays or losses unless caused by SECUR-CHEX's gross negligence or willful misconduct. Any liability of SECUR-CHEX shall be limited to the amount of fees paid by MERCHANT to SECUR-CHEX for check conversion or check guarantee services for the previous twelve (12) months. In no event shall SECUR-CHEX be liable for punitive, special, consequential or indirect damages in connection with any service performed under this Agreement. SECUR-CHEX's limitations of liability shall survive termination of this agreement.

29. Limitation of Damages. SECUR-CHEX shall not be liable for special, consequential, exemplary, or punitive damages. In no event shall SECUR-CHEX's cumulative liability to MERCHANT hereunder, including as a result of SECUR-CHEX's or any processor's own negligence, breach or error, exceed the amount of processing fees paid by MERCHANT to SECUR-CHEX for the transaction in question.

30. Waiver. The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY **WAIVE TRIAL BY JURY** IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

31. Guarantor Any guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that SECUR-CHEX may require performance of any obligation of MERCHANT hereunder directly from guarantor.

32. Taxes. MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

33. Counterparts. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

34. Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the illegal, invalid or unenforceable provision is modified to give effect to the original intent consistent with being valid and enforceable under applicable law.

35. Notices. All written notices under this Agreement shall be delivered to:

SECUR-CHEX
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the address stated on the records of SECUR-CHEX.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

36. 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 indemnification, offset and limitation on liability, shall survive the expiration or termination, for any reason, of this Agreement.

37. Entire Agreement. This Agreement, when executed by both SECUR-CHEX and MERCHANT, shall constitute the entire agreement as between the parties, and shall supersede and cancel all prior offers and negotiations whether in writing or otherwise.



FirstPay.Net 2.0 Processing Terms & Conditions

The following FirstPay.Net™ Processing Terms & Conditions apply only if MERCHANT has agreed to utilize FirstPay.Net 2.0 Internet Services.

This Supplement is entered into by and between First American Payment Systems, L.P., whose principal place of business is 100 Throckmorton Street, Suite 1800, Fort Worth, Texas, 76102 (hereinafter referred to as "FIRSTPAY.NET" or "BANK"), and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement. For purposes of this Agreement, FIRSTPAY.NET and First American Payment Systems, L.P. shall be synonymous and reference to one includes reference to the other.

MERCHANT expressly agrees and acknowledges that the FIRSTPAY.NET Processing Terms & Conditions are a Supplement to the Merchant Credit Card Processing Terms & Conditions. The Merchant Credit Card Processing Terms & Conditions, which are incorporated herein by reference, and the Processing Terms & Conditions set forth below shall apply if MERCHANT has agreed to utilize the FIRSTPAY.NET products.

Services:

A. Total Package. If MERCHANT has marked the "Total Package" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services via the Internet. MERCHANT understands that the "Total Package" includes the "Internet Payment Gateway" as described in B. below, as well as a shopping cart and website templates.

B. Internet Payment Gateway. If MERCHANT has marked the "Internet Payment Gateway" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services via the Internet. MERCHANT understands that the "Internet Payment Gateway" consists of a payment gateway and virtual terminal for transmitting cardholder data with an e-commerce indicator via the Internet.

C. MOTO Virtual Terminal. If MERCHANT has marked the "MOTO Virtual Terminal" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to MERCHANT via telephone or in written form via mail. MERCHANT understands the "MOTO Virtual Terminal" is a secure virtual terminal. MERCHANT also understands that transactions processed utilizing this product does not contain an e-commerce indicator and that all customer orders for purchases must be obtained via the telephone or by mail.

D. Batch Upload (Offline Transactions Only). If MERCHANT has marked the "Batch Upload" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the offline acceptance of and transmission of cardholder data for its customer's purchase of goods and or services.

E. Virtual Point-of-Sale. If MERCHANT has marked the "Virtual Point-of-Sale" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to MERCHANT in person for a card-present swiped or keyed transaction.

F. 1stPayMobile. If MERCHANT has marked the "1stPayMobile" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to MERCHANT in person for a card-present swiped or keyed transaction.

G. Payment Plug-in for QuickBooks® - Download. If MERCHANT has marked the "Payment Plug-in for QuickBooks® - Download" box on the Merchant Application & Agreement, then MERCHANT agrees to utilize the software and services provided by FIRSTPAY.NET for the acceptance of and transmission of cardholder data for its customer's purchase of goods and or services when the purchase and cardholder information has been provided to a RETAIL MERCHANT for card-present swiped or keyed transactions OR to a MOTO MERCHANT for card-not-present keyed transactions.

1. Transaction Processing. FIRSTPAY.NET agrees to perform transaction-processing services for MERCHANT. This includes the acceptance and authorization of transactions forwarded from MERCHANT in a timely manner, the subsequent transmission of transactions to the processing network and the detailed reporting of those transactions via MERCHANT's web-based Merchant Menu.

2. Fees. In addition to the fees outlined in the Credit Card Processing Terms & Conditions, MERCHANT hereby authorizes FIRSTPAY.NET to initiate debit/credit entries to the bank account supplied or any other bank account number, for monthly or other applicable charges. MERCHANT understands and agrees there are additional fees associated with using the FIRSTPAY.NET products, in addition to the fees described in the Merchant Credit Card Processing Terms & Conditions – Rates; Fees; Adjustments section. MERCHANT further understands FIRSTPAY.NET shall have the right to adjust charges as necessary to offset any direct or indirect cost associated with providing ser-

vices hereunder. Such charges shall, without prior notice, become effective as of the date of change.

3. Acceptable Use Policy. MERCHANT will not engage in "Net Abuse", which can be defined as, but is not limited to: (i) sending any kind of unsolicited or unwelcome email to a substantial number of network users, anywhere on the Internet, (ii) posting a single article or substantially similar articles to an excessive number of newsgroups or mailing lists (i.e., 20 or more), (iii) repeated or deliberate posting of articles that are off-topic according to the charter of that newsgroup or mail list, (iv) posting commercial advertising in almost any conference or newsgroup, unless it is specifically permitted within that group. MERCHANT understands that FIRSTPAY.NET investigates all reported occurrences of Net Abuse, and will take action according to the circumstances and severity of the abuse. Depending on the severity of the breach of this policy, FIRSTPAY.NET may, at its sole discretion, with or without notice, suspend processing or terminate account immediately.

4. Indemnification. MERCHANT hereby releases, indemnifies, and holds FIRSTPAY.NET harmless for any losses, claims, cost or consequential damages to MERCHANT, purchaser, or any other third party as a result of FIRSTPAY.NET's acts or omissions under this Agreement, including but not limited to:

(a) Any delays in the performance of services hereunder or for any failure to perform same hereunder if such delays are due to strikes, inclement weather, acts of God, Internet disruption, network failure, or other causes beyond FIRSTPAY.NET's reasonable control. FIRSTPAY.NET will not be liable for performance of services where delayed by war, riots, embargoes, strikes, or acts of its vendors and suppliers, concealed acts of workmen or third parties (whether of FIRSTPAY.NET or others), criminal conduct, or accidents;

(b) FIRSTPAY.NET shall not be responsible or liable for unauthorized access of facilities or to MERCHANT's data or programs due to any intentional act or accident, and whether by illegal or fraudulent means or devices;

(c) Failures in software, whether known or not known;

(d) Failures in communications or connectivity;

(e) Any damage caused by or resulting in a loss from negligence, fraud, dishonesty, or willful behavior by MERCHANT's employees, customers or agents;

(f) FIRSTPAY.NET shall not be liable for the individual merit, legitimacy or authenticity of orders forwarded from MERCHANT regardless if an authorization number is issued; and

(g) FIRSTPAY.NET is not responsible for the security of data residing on the server of the MERCHANT, or a third party designated by a MERCHANT (e.g., a host).

Further MERCHANT acknowledges it will not make any claim against FIRSTPAY.NET for any losses or damages, including, but not limited to, loss of income, loss of revenue, economical loss, consequential, direct, indirect, special, exemplary, or punitive relating to the use of FIRSTPAY.NET.

5. Transaction Data. FIRSTPAY.NET shall retain full ownership of all data submitted by either MERCHANT or Purchaser through the FIRSTPAY.NET Payment Gateway (Payment Gateway refers to the electronic systems through which a MERCHANT may pass payment information to FIRSTPAY.NET) including, but not limited to name, mailing & shipping address, email address, phone number, dollar amount of purchase, type of purchase and description of purchase. Cardholder data is stored for ninety (90) days in the virtual terminal.

6. Validity. If any provision in this Agreement is invalid, such invalidity shall not affect the validity of the remaining provisions of this Agreement, and MERCHANT and FIRSTPAY.NET agree to substitute for the invalid provision a valid provision that most closely approximates the effect and intent of the invalid provision.

7. Payment Gateway Monitoring. MERCHANT understands that FIRSTPAY.NET has full authority and rights under this Agreement to deny orders, deny transactions or delay or halt processing of transactions, with or without notice, for transactions, which exceed any of the parameters set forth in the Merchant Profile Section of the Merchant Application & Agreement.

8. DISCLAIMER. FIRSTPAY.NET DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MERCHANT ACKNOWLEDGES THAT THE SERVICE MAY NOT BE UNINTERRUPTED OR ERROR FREE.

MERCHANT PROCESSING TERMS & CONDITIONS

POS System Processing Terms & Conditions

The following POS System Processing Terms & Conditions apply only if you have agreed to utilize POS system services.

SYSTEM REQUIREMENTS: Use of the POS system requires the following:

- | | |
|----------------------------------|---|
| 1) Broadband Internet Connection | Must have Broadband Internet Connection with local Wi-Fi network. (NOTE: 3G/4G cell signal is not supported). |
| 2) PIN pad | Unit will only work with BANK-supplied PIN pad. |
| 3) LAN/Ethernet port | Printer may require LAN/Ethernet port. |
| 4) PCI Compliance | To ensure PCI compliance, please follow the Additional Security/System Recommendations below. |

SECURITY: MERCHANT is responsible for and must comply with any software license agreements. BANK is not responsible for any personal use, including any misuse or illegal use of the equipment by MERCHANT.

The POS system is subject to the following conditions:

- i. MERCHANT understands that in order to expedite equipment swaps, it is likely that any hardware component sent for repair will be replaced with like or similar hardware. BANK will not transfer personal data from one tablet to another, nor will BANK load any unauthorized software on the replacement unit. BANK is not responsible for loss of data during the process of equipment replacement services.
- ii. Merchant must disable password and application locks prior to returning equipment to BANK. Failure to disable locks will result in delay of swap and may result in Merchant being assessed a non-returned equipment fee, to be determined by BANK.

ADDITIONAL SECURITY/SYSTEM RECOMMENDATIONS:

1. Encryption for wireless routers should be set to WPA2. WEP wireless encryption (defaulted in many home/office Wi-Fi routers) is prohibited by PCI as of June 30, 2010.
2. Wi-Fi passwords should be changed from the default to a minimum 13-alphanumeric character password, and should be changed in line with PCI security standards.
3. Wireless routers should be kept out of plain sight, and should be secured against easy access.
4. Wireless routers used for Point of Sale (POS) systems should be separate from other devices. Guest/customer access to the Wi-Fi network used by the POS would be a violation of PCI security standards, and should never be allowed.
5. The wireless network SSID (the name assigned to the wireless network) should not contain the business name (whole or partial) and should be changed from its default setting. SSID broadcast should be disabled if possible.
6. SNMP community strings should be changed or disabled.
7. Wi-Fi networks should support multicast in order to easily find printers and other devices. (This support is built in and turned on by default in most recent-model Net Gear, Linksys and D-Link routers.)

Please consult your wireless router user manual or your carrier for assistance with adjusting these settings.

EQUIPMENT REPAIR/REPLACEMENT SERVICES. POS Registers, PIN pads, printers, cash drawers, stands, and barcode scanners purchased from BANK are eligible for equipment replacement service for defects in manufacture up to 30 days after original shipment date. After the 30-day period, stand, cash drawer and barcode scanner are not eligible for the equipment replacement service.

Replacement services for POS Registers (equipment swaps) shall consist of replacement or repair at BANK's option. BANK will perform this service if (i) MERCHANT has honored and paid all amounts owed to BANK including, but not limited to, all amounts owed for Chargebacks and ACH rejects, (ii) the equipment was purchased from BANK, (iii) MERCHANT is currently in an active status and in good standing with BANK, and (iv) MERCHANT has disabled all password and application locks on equipment prior to return to BANK. BANK, at its option, may use refurbished equipment for replacement and at BANK's sole discretion may substitute comparable equipment. BANK shall charge a fee not less than three hundred dollars (\$300.00) for replacement of equipment (or other similar unit). MERCHANT is required to return all defective equipment replaced by BANK to BANK. If equipment is not returned, or MERCHANT fails to disable password and application locks prior to returning equipment, BANK, at its sole discretion, may assess a fee of not less than nine hundred fifty dollars (\$950.00) for each POS Register not returned. BANK reserves the right to assess a fee, to be determined by BANK, for equipment upgrades when compatible equipment is not available or when MERCHANT's existing equipment is obsolete or no longer supported by BANK.

MERCHANT PROCESSING TERMS & CONDITIONS

Gift Card/Loyalty Terms & Conditions

THIS AGREEMENT is made by and between First American Payment Systems, L.P. (First American and its gift and loyalty products including FIRSTADVANTAGE Gift and 1stPayLoyalty are referred to herein as "FIRSTADVANTAGE" or "BANK") and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement, and shall become effective upon approval by FIRSTADVANTAGE.

WHEREAS, FIRSTADVANTAGE is engaged in the business of providing electronic gift card/loyalty transaction processing services for participating MERCHANTS under the programs herein described;

WHEREAS, MERCHANT wishes to participate in this gift/loyalty program in accordance with this Agreement and under the rules established by FIRSTADVANTAGE; and

NOW, THEREFORE, in consideration of the mutual obligations and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties agree to the following:

1. Agreement. Reference to this "Agreement" includes the Merchant Application & Agreement, all schedules and appendices thereto, additional location documentation, and these terms and conditions. MERCHANT acknowledges that FIRSTADVANTAGE will provide transaction processing and tracking services hereunder either through First American or through third parties. MERCHANT agrees that FIRSTADVANTAGE may enforce the terms of this Agreement against MERCHANT and any third party as an assignee of FIRSTADVANTAGE's rights hereunder, whether or not FIRSTADVANTAGE is a party to such proceeding or transaction.

2. Services.

A. Cards. If the product or service requires it, FIRSTADVANTAGE may produce cards ("Cards") in the quantities ordered by MERCHANT from time to time for the fees set forth on the FIRSTADVANTAGE Card Reorder Form.

B. System. FIRSTADVANTAGE will maintain the system ("System") which will perform one or more of the following, including but not limited to authorization of transaction, availability of funds, tracking number of visits, point calculations, and tracking balances ("Product Services") which will allow MERCHANTS to sell and redeem electronic gift cards and loyalty products. This will include downloading System software onto the terminals designated by MERCHANT and providing Product Services. MERCHANT understands that all monetary, point and credit values assigned to each customer and collection of funds from customers are the sole responsibility of MERCHANT and that FIRSTADVANTAGE will have no responsibility or liability for any transaction between customers and MERCHANT. Additionally, FIRSTADVANTAGE will also provide access to web interfaces allowing MERCHANT and MERCHANT's customer access to their pertinent data.

3. System License.

A. License. FIRSTADVANTAGE grants to MERCHANT a non-exclusive, non-transferable, limited license to use the System in the United States for MERCHANT's own electronic gift card and loyalty program and to install the System on point-of-sale terminals approved by FIRSTADVANTAGE.

B. Restrictions. MERCHANT shall have no right to obtain source code for the System by any means. MERCHANT shall not reverse engineer, decompile, disassemble, translate, modify, alter or change the System, or any part thereof. Except as set forth in this Agreement, MERCHANT shall have no right to market, distribute, sell, deliver or otherwise transfer the System. MERCHANT shall not copy, nor allow others to copy, any part of the System. MERCHANT shall not remove from the System, or add or alter, any trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the System unless written consent is given by an Executive Officer of BANK. MERCHANT shall not permit any person to use the System in violation of the export control laws of the United States.

C. Assumption of Liability. MERCHANT assumes all liability for use of the System.

4. Additional Locations. MERCHANT must complete an Additional Location Form for each additional MERCHANT location. MERCHANT expressly agrees and acknowledges that each MERCHANT location shall be governed by these Terms & Conditions and the Merchant Application & Agreement, including and without limitations the rates and fees described therein, as may be amended from time to time with or without notice.

5. FIRSTADVANTAGE Verification Statement. Upon initial installation of new equipment or reprogramming of existing equipment, MERCHANT agrees to run a test transaction to ensure equipment functionality. MERCHANT shall immediately notify FIRSTADVANTAGE in writing of any failure of the above within ten (10) banking days. Failure to notify FIRSTADVANTAGE within said time frames shall result in FIRSTADVANTAGE being relieved of any liability and responsibility for any equipment or transaction failure.

6. Warranties by MERCHANT. MERCHANT warrants that it shall fully comply with all federal, state, and local laws and rules, and all Card Brand regulations, as amended from time to time.

As to each gift card or loyalty transaction presented to FIRSTADVANTAGE for processing, MERCHANT warrants that:

- MERCHANT understands and agrees that the FIRSTADVANTAGE Services require additional charges to be billed directly by FIRSTADVANTAGE to MERCHANT, payable pursuant to paragraph 8 listed below;
- By signing this Agreement, MERCHANT will indemnify, protect, defend and hold FIRSTADVANTAGE, affiliates and/or subsidiaries and all of its or their officers, agents and/or employees, harmless from and against any and all claims, losses, demands,

actions, expenses, damages, liability, and/or causes of action, including, without limitation attorneys' fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from any damage or loss caused by negligence, fraud, dishonesty or willful behavior by MERCHANT or any of MERCHANT's employees, customers, or agents;

(c) MERCHANT shall supply to FIRSTADVANTAGE all information and data reasonably required from time to time by FIRSTADVANTAGE to perform the Services, including the dollar value to be attributed to each card, each card transaction, the location of point-of-sale terminals and cardholder data and content as may be agreed upon by the parties from time to time and within the time necessary to perform the Services promptly;

(d) MERCHANT will be responsible for the accuracy and adequacy of all data transmitted by it or on its behalf for processing by the System;

(e) MERCHANT warrants to FIRSTADVANTAGE that MERCHANT is engaged in the lawful business shown on any agreement with FIRSTADVANTAGE which includes the sale of merchandise and/or services, and is duly licensed to conduct such business under the laws of the state, county and city in which MERCHANT is located;

(f) MERCHANT agrees not to change its type of business, without the express written consent of FIRSTADVANTAGE;

(g) MERCHANT understands and agrees that when utilizing FIRSTADVANTAGE certain Product Services must be selected. Once required selections are made those criteria will be used for the duration of the Agreement. Should merchant wish to change certain Product Services during the term of the Agreement, a reprogramming fee, to be determined by BANK, will be assessed; and

(h) MERCHANT warrants it will comply with all local, state and federal regulations regarding use of any cardholder or consumer data.

7. Term; Termination. The initial term of this Agreement shall continue in full force and effect for a term of three (3) years from acceptance by BANK/FIRSTADVANTAGE; provided, however, that if FIRSTADVANTAGE services are added as an additional service to an existing BANK Credit Card Processing Agreement in good standing, the initial term of this Agreement shall end on the same date as the end of the initial term of the existing Credit Card Processing Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year periods unless terminated per this paragraph or other provisions of this Agreement. The initial term of this AGREEMENT shall commence upon FIRSTADVANTAGE's acceptance hereof (as evidenced by FIRSTADVANTAGE's performance hereunder) and continue until either (i) terminated by MERCHANT by giving at least thirty (30) days, but no more than ninety (90) days, written notice of non-renewal to FIRSTADVANTAGE with termination effective at the end of the applicable term (the written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted), or (ii) terminated by FIRSTADVANTAGE, with or without cause or reason, and with or without notice. Termination by FIRSTADVANTAGE for any Service may result in the termination of all Services. If this Agreement is terminated by MERCHANT prior to the end of the term or by FIRSTADVANTAGE as a result of MERCHANT's breach, FIRSTADVANTAGE will be entitled to recover, and **MERCHANT shall pay on demand, an early termination fee of no less than one hundred dollars (\$100.00)* for each MERCHANT location. At its sole and absolute discretion, FIRSTADVANTAGE may also assess liquidated damages in connection with such termination, which shall be the average monthly fees paid by MERCHANT to FIRSTADVANTAGE for the 12 months (or the number of months this Agreement has been in effect, if less than twelve months) immediately preceding the month of termination times the number of months remaining in the term, plus any and all additional losses (including consequential damages, costs, expenses and other liabilities) incurred by FIRSTADVANTAGE in connection with such termination.** MERCHANT and FIRSTADVANTAGE agree that: (a) the award of liquidated damages is to provide a means of compensation for FIRSTADVANTAGE in the event of a breach by MERCHANT in the form of early cancellation or non-adherence to exclusivity requirement; (b) FIRSTADVANTAGE's damages would be difficult or impossible to prove; and (c) the amount of liquidated damages set forth herein is a fair and reasonable estimate of FIRSTADVANTAGE's damages resulting from any breach or improper termination by MERCHANT. BANK may withhold payment of any monies due MERCHANT until all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this entire Agreement. *[ARKANSAS MERCHANTS - early termination fee is fifty dollars (\$50.00)].

8. Debit/Credit Authorization. MERCHANT hereby grants authorization to FIRSTADVANTAGE to credit and/or debit MERCHANT's account for fees imposed via the automated clearing house ("ACH"). MERCHANT agrees to provide accurate bank and account information. MERCHANT will maintain sufficient funds in MERCHANT's account to satisfy all obligations, including fees, contemplated by this Agreement. Any change in MERCHANT's account status or information or lack of funds during any attempted ACH shall give FIRSTADVANTAGE the right to terminate this Agreement immediately due to MERCHANT's breach without notice to MERCHANT. MERCHANT agrees that FIRSTADVANTAGE has a right of offset and may take all steps necessary to collect amounts MERCHANT owes.

9. Offset and Security Interest. MERCHANT hereby grants FIRSTADVANTAGE a right of offset against any amounts now or hereafter owing to MERCHANT under this or any other agreement with BANK or held by BANK and agrees that all such amounts may be applied to payment of any obligations now or hereafter owing by MERCHANT to FIRSTADVANTAGE, whether due or not, and in such order as FIRSTADVANTAGE may elect, and for this purpose, FIRSTADVANTAGE may withdraw via ACH or otherwise hold

MERCHANT PROCESSING TERMS & CONDITIONS

Gift Card/Loyalty Terms & Conditions, continued

or apply any accounts, funds or amounts in its sole discretion. In addition to and independent of all other rights and remedies available to FIRSTADVANTAGE, including, without limitation, the right of offset, whether created by this Agreement or otherwise, MERCHANT hereby grants to FIRSTADVANTAGE a security interest in all accounts, funds, and amounts of any description whatever, whether now or hereafter owing to MERCHANT under this or any other agreement with BANK, and all proceeds thereof, to secure payment of any obligation now or hereafter owing from MERCHANT to FIRSTADVANTAGE, and with respect to the security interest herein granted, FIRSTADVANTAGE shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as may be amended or supplemented from time to time. MERCHANT authorizes FIRSTADVANTAGE to file such financing statements, as FIRSTADVANTAGE may deem appropriate to perfect the security interest granted herein. MERCHANT agrees to provide additional collateral or security upon the request of FIRSTADVANTAGE. The rights of FIRSTADVANTAGE under this security interest shall be independent of and cumulative of any rights of offset. All of the rights of FIRSTADVANTAGE shall survive the termination of this Agreement.

10. Schedule of Fees and Compensation of FIRSTADVANTAGE. Attached to this Agreement and incorporated herein by reference is an Application containing the Schedule of Fees, as well as any other fees described in the FIRSTADVANTAGE Terms & Conditions, that may be amended or supplemented from time to time, and that contains an account setup fee, transaction fees, location fee, pooling fee and any other fee(s) in effect during the term of this Agreement. Fees not paid by MERCHANT within the month of billing will accrue interest at the maximum rate allowed by law per month, beginning on the first day of the month following the billing month until all fees and accrued interest are paid in full. Each month FIRSTADVANTAGE shall provide MERCHANT with accumulated gift card charges based on MERCHANT's activity in the MERCHANT's FirstView statement. The amount of such statement shall be paid by MERCHANT to FIRSTADVANTAGE via ACH. In the event the ACH for collection of fees owed to FIRSTADVANTAGE is rejected by MERCHANT's bank, MERCHANT agrees to pay FIRSTADVANTAGE a reject fee of no less than thirty dollars (\$30.00). These fees shall be paid by MERCHANT to FIRSTADVANTAGE via ACH within thirty (30) days following demand therefor. MERCHANT must notify FIRSTADVANTAGE in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem first appeared. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of FIRSTADVANTAGE and MERCHANT. Save and except FIRSTADVANTAGE's right to funds owed FIRSTADVANTAGE under this Agreement or FIRSTADVANTAGE's right to recover funds incorrectly paid to MERCHANT, if no notice of error is received by FIRSTADVANTAGE within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors.

11. Use of MERCHANT Name. MERCHANT hereby authorizes FIRSTADVANTAGE to utilize, in advertisements or otherwise, the name of MERCHANT as being a FIRSTADVANTAGE user.

12. Attorneys' Fees and Costs. MERCHANT shall be liable for and shall indemnify and reimburse FIRSTADVANTAGE for any and all attorneys' fees, arbitration cost, and other costs and expenses paid or incurred by FIRSTADVANTAGE in the enforcement hereof, including but not limited to, collecting any amounts or obligations due from MERCHANT.

13. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state courts located in Fort Worth, Tarrant County, Texas, to the jurisdiction of which the parties hereby consent for such purposes.

14. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. Force Majeure. FIRSTADVANTAGE is released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any acts of any other party or third party or any acts of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, software failure, program failure, network problem, sabotage, war, military operation, national emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or FIRSTADVANTAGE's compliance therewith or government proration, regulation, or priority, or any other cause beyond FIRSTADVANTAGE's reasonable control whether similar or dissimilar to such causes.

16. Amendment. FIRSTADVANTAGE has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than ten (10) days from date of notice.

17. Assignment. Except as provided in Paragraph 16 above, any of the terms, provisions, representations, warranties, covenants, or conditions hereof may be amended only by a written instrument executed by all parties hereto, or, in the case of a waiver, by the

party waiving compliance. The failure of any party at any time to require performance of any provision hereof shall not constitute a waiver and in no manner affects the right to enforce the same. The rights and obligations of MERCHANT hereto may not be assigned or ownership of MERCHANT transferred without the prior written consent of FIRSTADVANTAGE.

18. Release. MERCHANT hereby releases and holds FIRSTADVANTAGE harmless for any losses, claims, costs or damages to MERCHANT, MERCHANT's customers or any third party, including without limitation BANK, as a result of FIRSTADVANTAGE's acts or omissions under this Agreement. The provisions of this Paragraph shall survive the termination of this Agreement.

19. Limitations on Liability. FIRSTADVANTAGE shall be responsible for the performance of Services described in this Agreement. MERCHANT agrees that FIRSTADVANTAGE shall not be responsible for any errors, acts, omissions, failures to act, delays or losses unless caused by FIRSTADVANTAGE's gross negligence or willful misconduct. Any liability of FIRSTADVANTAGE shall be limited to the amount of fees paid by MERCHANT to FIRSTADVANTAGE for gift card/loyalty Services for the previous twelve (12) months. In no event shall FIRSTADVANTAGE's cumulative liability to MERCHANT with respect to a transaction, including as a result of FIRSTADVANTAGE's or any processor's own negligence, breach or error, exceed the amount of processing fees paid by MERCHANT to FIRSTADVANTAGE for the transaction in question. The provisions of this Paragraph shall survive the termination of this Agreement.

20. Limitation of Damages. FIRSTADVANTAGE shall not be liable for special, consequential, exemplary, or punitive damages. The provisions of this Paragraph shall survive the termination of this Agreement.

21. Waiver. The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY **WAIVE TRIAL BY JURY** IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

22. Disclaimer. FIRSTADVANTAGE disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. MERCHANT acknowledges that the Service may not be uninterrupted or error free.

23. Guarantor. Any guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that FIRSTADVANTAGE may require performance of any obligation of MERCHANT hereunder directly from any guarantor.

24. Taxes. MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any Services hereunder.

25. Counterparts. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

26. Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the illegal, invalid or unenforceable provision is modified to give effect to the original intent consistent with being valid and enforceable under applicable law.

27. Notices. All written notices under this Agreement shall be delivered to:

FIRSTADVANTAGE
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the MERCHANT address stated on the records of FIRSTADVANTAGE.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

28. 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 indemnification and limitation on liability, shall survive the expiration or termination, for any reason, of this Agreement.

29. Entire Agreement. This Agreement, when executed by both FIRSTADVANTAGE and MERCHANT, shall constitute the entire agreement as between the parties with respect to the Services, and shall supersede and cancel all prior offers and negotiations whether in writing or otherwise.



MERCHANT PROCESSING TERMS & CONDITIONS

FirstFund ACH Terms & Conditions

The following FirstFund ACH Terms & Conditions apply only if MERCHANT has agreed to offer FirstFund ACH.

This FirstFund ACH Origination Agreement (“**Agreement**”) is entered into by and between the company (“**COMPANY**”) indicated on the FirstFund ACH Application and FIRST AMERICAN Payment Systems, L.P. (“**FIRST AMERICAN**”) located at 100 Throckmorton Street, Suite 1800, Fort Worth, Texas 76102.

The COMPANY has requested that FIRST AMERICAN permit the COMPANY to initiate electronic signals for paperless entries through FIRST AMERICAN to accounts maintained at financial institutions, by means of the Automated Clearing House (“**ACH**”). FIRST AMERICAN has agreed to do so pursuant to the terms of this Agreement.

Now, therefore, the COMPANY and FIRST AMERICAN agree as follows:

1. **Rules:** The COMPANY acknowledges and agrees that it will comply with, and all ACH items will comply with, the operating rules of the National Automated Clearing House Association (“**NACHA**”) the Electronic Funds Transfer Act, Regulation E and all other applicable laws, rules and regulations (all such operating rules, laws and regulations, as amended from time to time, the “**Rules**”).

2. **Security Procedures for Transmission of Entries:** The COMPANY will transmit all debit and credit entries to FIRST AMERICAN at the location, on or before the deadlines, described on Attachment 1 to the Agreement. The COMPANY will conform all entries to the format, content, and specifications contained in the Rules, in addition to the security procedures described in Attachment 2 to the Agreement. The COMPANY authorizes FIRST AMERICAN to transmit all entries received by FIRST AMERICAN in accordance with the terms of this Agreement and to credit or debit entries to the specified accounts.

3. **FIRST AMERICAN Obligations:** In accordance with the Rules, FIRST AMERICAN will process, transmit, and settle the entries received from the COMPANY which comply with the terms of the Agreement, including the security procedures.

4. **Warranties:** The COMPANY warrants, represents and agrees that the COMPANY is responsible for all warranties FIRST AMERICAN is deemed by the Rules to make with respect to entries originated by the COMPANY. Without limiting the foregoing, the COMPANY warrants and agrees that (a) each entry is accurate, is timely, has been authorized by the party whose account will be credited or debited and otherwise complies with the Rules; (b) each debit entry is for a sum which, on the settlement date with respect to it, will be owing to the COMPANY from the party whose account will be debited, is for a sum specified by such party to be paid to the COMPANY, or is a correction of previously transmitted erroneous credit entry; (c) the COMPANY has complied with all prenotification requirements of the Rules; and (d) the COMPANY will not initiate any entries that violate the laws of the United States. The COMPANY will retain the original or copy of the customer authorization record as required by the Rules for a period of not less than two (2) years after termination or revocation of such authorization and will, upon request of FIRST AMERICAN, furnish such original or copy to FIRST AMERICAN. The COMPANY shall indemnify FIRST AMERICAN against any claim, loss, liability, or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any warranty or any other provision of this Agreement, or any other agreement entered into in connection herewith.

5. **Provisional Credit:** The COMPANY acknowledges that the Rules make provisional any credit given for any entry until FIRST AMERICAN or its designated bank crediting the account specified in the entry receives final settlement. If FIRST AMERICAN or its designated bank does not receive final settlement, FIRST AMERICAN is entitled to a refund from the credited party and the initial receiver of the debit entry shall not be deemed to have completed the payment transaction.

6. **Settlement:** The COMPANY will maintain immediately available funds in an amount sufficient to cover all returns and credit entries initiated by it, as of the applicable settlement date, in a bank account eligible to receive ACH entries. The COMPANY authorizes FIRST AMERICAN or its designated bank to debit or credit its account in the amount of each entry. FIRST AMERICAN may require the COMPANY to prepay for credit entries and/or estimated debit entry returns.

7. **Cancellation or Amendment:** The COMPANY shall have no right to cancel or amend any entry/file after its receipt by FIRST AMERICAN.

8. **Rejection of Entries and Improper Transactions:** FIRST AMERICAN or its designated bank shall at its sole discretion, have the right to reject any entry which does not comply with the requirements of Section 1 (Rules) of this Agreement and may reject any entry if the COMPANY is not otherwise in compliance with the terms of the Agreement or if FIRST AMERICAN has reason to believe the entry will violate the terms of the Agreement. FIRST AMERICAN or its designated bank shall have no liability to the COMPANY by reason of the rejection of any entry or the fact that such notice is not given at an earlier time than that provided for herein. FIRST AMERICAN may hold funds, suspend processing or terminate COMPANY with or without notice, or require COMPANY to process a refund upon any determination by FIRST AMERICAN, in its sole discretion, of improper, fraudulent, suspicious or questionable transactions, including, but not limited to, any transactions that fail to meet the requirements of this Agreement or which vary from the information represented or disclosed in the COMPANY and Product Information Sections of the FirstFund ACH Application & Agreement. FIRST AMERICAN may also at its sole discretion block, reject, or deny any transaction for any reason. No fees are refundable to COMPANY with respect to improper, fraudulent, suspicious or questionable transactions including, but not limited to, when COMPANY processes a refund, or during any period of suspension.

9. **Returned Entries:** FIRST AMERICAN or its designated bank shall have no obligation to retransmit a returned entry if FIRST AMERICAN complied with the terms of this Agreement with respect to the original entry. If a customer of the COMPANY returns any transaction for any reason, then it is the COMPANY's responsibility to collect any funds that are owed. FIRST AMERICAN or its designated bank has no obligation to originate a transaction where authorization has been revoked.

10. **Periodic Statement:** The periodic statement issued by FIRST AMERICAN or its designated bank for the COMPANY's account will reflect entries credited and debited to the COMPANY's account. The COMPANY agrees to notify FIRST AMERICAN or its designated bank within a reasonable time not to exceed thirty (30) days after periodic statement is made available of any discrepancy between the COMPANY's records and the information in the periodic statement. Failure to notify FIRST AMERICAN of any discrepancy within such thirty (30) day period shall be deemed acceptance by COMPANY of the entries on such statement.

11. **Fees:** The COMPANY agrees to pay FIRST AMERICAN for services provided under this Agreement in accordance with the schedule of charges detailed on the FirstFund ACH Application. FIRST AMERICAN may change its fees or add new fees

from time to time with or without notice to the COMPANY. All fees will be collected via ACH from COMPANY's DDA account, following the end of a calendar month and a statement reflecting those fees will be made available online. In the event the ACH for collection of fees owed to FIRST AMERICAN is rejected by the COMPANY's bank for any reason, COMPANY agrees to pay FIRST AMERICAN a reject fee of no less than \$30.00. These fees shall be paid by COMPANY to FIRST AMERICAN via ACH. National Automated Clearing House Association fines assessed as a result of COMPANY failing to follow procedures will be passed through to COMPANY.

12. **Liability:** The parties agree to the following:

a. FIRST AMERICAN shall be responsible only for performing the services expressly provided for in this Agreement in a reasonable manner. FIRST AMERICAN shall not be responsible for the COMPANY's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any entry received from the COMPANY) or those of any other person, including without limitation, transmission or communications facilities, any Receiver or Receiving Depository Financial Institution (including without limitation the return of an entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed FIRST AMERICAN's agent.

b. The COMPANY agrees to indemnify FIRST AMERICAN against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of the services provided hereunder.

c. In no event shall FIRST AMERICAN be liable for any consequential, special, punitive or indirect loss or damage which the COMPANY may incur or suffer in connection with this Agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from FIRST AMERICAN's acts or omissions pursuant to this Agreement.

d. Without limiting the generality of the foregoing provisions, FIRST AMERICAN or its designated bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, the Rules, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances out of FIRST AMERICAN's or its designated bank's control. In addition, FIRST AMERICAN or its designated bank shall be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in exceeding any limitation upon intra-day net funds position established pursuant to present or future Federal Reserve guidelines or otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

e. Subject to the foregoing limitations, FIRST AMERICAN's or its designated bank's liability for loss shall be limited to monetary damages not to exceed the total amount paid by the COMPANY to FIRST AMERICAN for the affected ACH service, as performed by FIRST AMERICAN or its designated bank under this agreement for the preceding 30 calendar days.

13. **Inconsistency of Name and Account Number:** The COMPANY acknowledges that, if an entry describes the receiver inconsistently by name or account number, payment of the entry may be made on the basis of the account number even if it identifies a person different from the named receiver. The COMPANY assumes responsibility for the accuracy of all account information, names and data.

14. **Data Retention:** The COMPANY shall retain data on file adequate to permit remaking of entries for five (5) business days following the date of their transmittal to FIRST AMERICAN as provided herein and shall provide such data to FIRST AMERICAN upon its request.

15. **Termination:** This Agreement shall continue in full force and effect for a term of one (1) year. Thereafter, the Agreement will automatically renew for additional one-year periods unless terminated per this paragraph or other provisions of the Agreement. The term of the Agreement shall commence with FIRST AMERICAN acceptance hereof (as evidenced by the commencement of FIRST AMERICAN's performance hereunder), and shall continue until either (i) terminated by COMPANY by giving and FIRST AMERICAN receiving at least thirty (30) days, but no more than ninety (90) days, written notice of non-renewal to FIRST AMERICAN with termination effective at the end of the applicable term or (ii) terminated by FIRST AMERICAN, with or without cause or reason, and with or without advance notice. The written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted. Termination by FIRST AMERICAN for any other product or service provided by FIRST AMERICAN results in termination of this Agreement. In the event COMPANY submits ACH payment files to FIRST AMERICAN after the date of termination, the ACH payment files may (at FIRST AMERICAN's option) be processed subject to the terms and conditions of this Agreement. FIRST AMERICAN may hold payment of any monies due COMPANY to ensure that all obligations of COMPANY are satisfied. COMPANY remains liable for any and all unpaid amounts due under this obligation or related to this Agreement.

16. **Reserve Account:** FIRST AMERICAN may require the COMPANY or any guarantor to establish a reserve account against current and future indebtedness for any reason. Any reserve will be held by FIRST AMERICAN for a period of time as is consistent with FIRST AMERICAN's liability. FIRST AMERICAN may immediately estimate the amount of the potential losses, fees, and costs and require COMPANY or any guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. Failure to fund the reserve may result in immediate termination of the Agreement. Any reserve deposits, fees, or net revenues under this Agreement may be offset, held or reserved by FIRST AMERICAN against any obligations or liability of the COMPANY under this Agreement or any other agreement with FIRST AMERICAN.

17. **Communications:**

If to FIRST AMERICAN, all notices under this Agreement shall be delivered to:

FIRST AMERICAN Payment Systems, L.P.
100 Throckmorton Street, Suite 1800
Fort Worth, Texas 76102
Attention: General Counsel

If to COMPANY, the proper notice shall be the address stated on the records of FIRST AMERICAN. Notice to COMPANY may be by letter, facsimile, electronic communications and/or the Monthly Statement.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

18. **Non-Assignment:** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal

MERCHANT PROCESSING TERMS & CONDITIONS

FirstFund Terms & Conditions, continued

representatives, successors and assigns; provided however, that the COMPANY shall not assign its rights or obligations hereunder, nor, shall the COMPANY contract with any other entity to perform for the COMPANY or on its behalf any of the COMPANY's obligations hereunder without the prior written approval of FIRST AMERICAN.

19. Amendment: FIRST AMERICAN has the right to amend this Agreement, by notice to COMPANY. Any amendments shall become effective no earlier than 10 days from date of notice. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by any party of any condition contained in this Agreement, or of the breach of any term, provision or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or as a waiver of any other condition or of the breach of any other term, provision or covenant.

20. Governing Law; Jurisdiction: This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state, without regard to the conflicts of law principles of such state. The section headings contained herein are for purposes of convenience only, and shall not be deemed to constitute a part of this Agreement or to affect the meaning or interpretation of this Agreement in any way. This Agreement is entered into and enforceable in Tarrant County, Texas. Venue for any dispute under this Agreement shall be in Tarrant County, Texas, for any matter not controlled by paragraph 24 hereof. The COMPANY consents to the jurisdiction and venue of the Texas and Tarrant County Courts and hereby waives any defense to jurisdiction and venue, including but not limited to, any claim of forum nonconveniens or insufficient contacts with the State of Texas.

21. Survivability: All covenants other than those contained in Section 3 of the parties hereto shall survive the expiration or termination of this Agreement.

22. Names: The names of FIRST AMERICAN Payment Systems, FIRST AMERICAN, FirstFund, SecurChex, Merimac, Merimac Capital, FirstPay.Net, and other names used by FIRST AMERICAN in connection with its business are trademarks of FIRST AMERICAN and the sole and exclusive property of FIRST AMERICAN and cannot be used by the COMPANY or any person without the prior express written consent of FIRST AMERICAN, which consent can be revoked at any time.

23. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

24. Attorneys' Fees and Costs: COMPANY shall be liable for and shall indemnify and reimburse FIRST AMERICAN for any and all attorneys' fees and other costs and expenses paid or incurred by FIRST AMERICAN in the enforcement hereof, including but not limited to, collecting any amounts or obligations due from COMPANY. All outstanding amounts owed to FIRST AMERICAN will bear interest from the date the amounts were due until it is repaid at a per annum interest rate determined by FIRST AMERICAN, but not exceeding the lesser of 18% per annum or the maximum non-

usurious rate of interest permitted under applicable Texas or federal law (whichever permits the higher rate).

25. Guarantor: Any Guarantor hereby guarantees performance of all obligations of COMPANY and agrees that FIRST AMERICAN may require performance of any obligation of COMPANY hereunder directly from Guarantor.

26. Taxes: COMPANY shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

27. Business Changes: COMPANY shall provide at least thirty (30) days written notice for any of the following anticipated changes: COMPANY's business type, including any change in goods or services sold, name, entity type, address, change in the Product Information section of the FirstFund ACH Application & Agreement, any ownership change, or transfer or sell of substantially all of the assets of COMPANY. COMPANY shall not change its usual trade or business, move its trade or business to a new location, commence operating an unrelated trade or business on the same premises where COMPANY operates this stated trade or business without obtaining FIRST AMERICAN's prior written consent to the change, move or addition. COMPANY also agrees that prior to any changes, FIRST AMERICAN must first accept the change and confirm such acceptance in writing.

28. Waiver. The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY **WAIVE TRIAL BY JURY** IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

29. Counterparts: This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

30. Entire Agreement: This Agreement (including the Attachments) is the complete and exclusive statement of the agreement between FIRST AMERICAN and the COMPANY with respect to the subject matter hereof and supersedes any prior agreement(s) between FIRST AMERICAN and the COMPANY with respect to such subject matter. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation, or government policy to which FIRST AMERICAN is subject and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, or policy, and FIRST AMERICAN shall incur no liability to the COMPANY as a result of such violation or amendment.

FirstFund ACH Origination Agreement Attachment 1 and 2

ACH Processing Deadlines

Transmission of a File: Until 3:00 p.m. C.S.T. one (1) business day prior to effective date.

A **business day** is a day FIRST AMERICAN is open to the public for carrying on substantially all of its business (other than Saturday, Sunday, or listed holidays).

An **effective date** must be a business day or the record will be processed on the first business day following the effective date.

Holiday Schedule

(Non-processing Days)

New Year's Day

Martin Luther King, Jr. Day

President's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Veteran's Day

Thanksgiving Day

Day Following Thanksgiving Day

Christmas Day

COMPANY Designated Christmas Holiday (if applicable)

Security Procedures

FIRST AMERICAN shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative, and any such communication shall be deemed to have been signed by such person.

The COMPANY is solely responsible for the accurate creation, modification, and deletion of the account information maintained on the website and used for ACH money transfer. The COMPANY agrees to comply with written procedures provided by FIRST AMERICAN for the creation, maintenance, and initiation of ACH money transfers.

The COMPANY is solely responsible for access by its employees of the data files maintained on the website.

The COMPANY is responsible for operator security procedures.

MERCHANT PROCESSING TERMS & CONDITIONS

SUPPLEMENT TO MERCHANT PROCESSING TERMS & CONDITIONS

Incorporation of GoEmerchant, LLC Secure Internet Payment Service Agreement Terms and Conditions

The GoEmerchant, LLC Secure Internet Payment Service Agreement Terms and Conditions set out on the following pages constitute a supplement to the First American Payment Systems Merchant Processing Terms and Conditions, and constitute a binding agreement between the MERCHANT and GoEmerchant, LLC.

GOEMERCHANT, LLC

SECURE INTERNET PAYMENT SERVICE AGREEMENT TERMS AND CONDITIONS

This Agreement is made as of the Effective Date between GoEmerchant, LLC and the Internet MERCHANT that, personally or through an agent, accepts the Agreement as provided.

1. Definitions.

- a) "GoEmerchant, LLC Payment Server" means a system operated by or for GoEmerchant, LLC that communicates with the Software to permit access to electronic payment services offered by GoEmerchant, LLC.
- b) "Effective Date" means the date that MERCHANT accepts the terms of this Agreement in accordance with Section 12 below.
- c) "Payment Data" means data derived from Payment Messages transported by GoEmerchant, LLC for MERCHANT.
- d) "Payment Message" means a message that relates to a payment card transaction as follows:
 - (i) Type 1 Messages:
 - Successful Merchant Initiated Authorization Transaction.
 - Successful Void Transaction.
 - Successful Credit Transaction.
 - Unsuccessful Processor Did Not Respond Transaction.
 - Successful Declined by Processor Transaction.
 - Successful Failed by Processor Transaction.
 - Reversal
 - ii) Type 2 Messages:
 - Successful Settlement Request Transaction.
- e) "Processor" means a payment card processor that accepts Payment Messages from GoEmerchant, LLC and processes payment card transactions for MERCHANT.
- f) "Service" means:
 - (i) the transport to a Processor of Payment Messages received by GoEmerchant, LLC from MERCHANT (or its agent); and
 - (ii) the operation of the GoEmerchant, LLC Payment Server to manipulate, store, and provide access by MERCHANT to its Payment Data.
- g) "Software" means a software program that communicates with the GoEmerchant, LLC Payment Server and complies with applicable interface requirements established by GoEmerchant, LLC.
- h) "State Agency" means an agency or instrumentality of a state or territory of the United States.

2. Term; Non-Exclusive.

- a) Term. This Agreement shall become effective on the Effective Date and shall continue until it is terminated as provided below.
- b) Non-exclusive. Nothing in this Agreement shall prohibit MERCHANT from obtaining from other parties services that are the same as, similar to, or competitive with, the Service. Nothing in this Agreement shall prohibit GoEmerchant, LLC from furnishing the Service to others, including competitors of MERCHANT.

3. Fees.

- a) Generally. GoEmerchant, LLC receives payment for the Service, either directly from merchants or through third party service providers such as processors, acquiring banks, Internet service providers, or card service organizations. During the registration process, GoEmerchant, LLC will determine if it will receive payment directly from MERCHANT or from a service provider. If MERCHANT is to be billed by GoEmerchant, LLC directly, MERCHANT will be presented with an addendum to this Agreement describing the fees and the method of payment (the "Payment Addendum" and/or "ACH Authorization Form" herein collectively referred to as the "Payment Addendum") before the Service will be made available for use. If MERCHANT does not agree to the terms of the Payment Addendum as presented, this Agreement shall terminate.
- b) Change in Billing Party.
 - i) If GoEmerchant, LLC is to be paid for the Service by a service provider of MERCHANT, and if GoEmerchant, LLC ceases to receive payment from that service provider for any reason, GoEmerchant, LLC may charge MERCHANT the fees then applicable to the Service in accordance with the then current Payment Addendum. GoEmerchant, LLC will provide MERCHANT the then current Service Agreement and Payment Addendum at least ten (10) days in advance of the date on which such fees are to become effective. Upon receipt of the then current Service Agreement and Payment Addendum, MERCHANT may elect either:
 - (A) to accept the terms of the then current Service Agreement and Payment Addendum and continue to receive the Service; or
 - (B) terminate this Agreement as provided below. If MERCHANT fails to make either election, MERCHANT shall be deemed to have accepted the terms of the then current Service Agreement and Payment Addendum and shall continue to receive the Service or, within GoEmerchant, LLC's sole discretion, GoEmerchant, LLC may terminate this Agreement without further notice to MERCHANT.
 - ii) If GoEmerchant, LLC is to be paid for the Service by MERCHANT and MERCHANT elects to accept billing for the Service from a ser-

vice provider with which GoEmerchant, LLC has a billing relationship, MERCHANT or service provider shall notify GoEmerchant, LLC of such election in writing and GoEmerchant, LLC will cease billing MERCHANT for the Services commencing not later than the second month following the receipt of such notice.

- c) Billing Schedule: The set-up fee, first payment and any deposit for web publishing are due at the time the completed application is returned to GoEmerchant, LLC. Accounts activated on any day during the month will be billed on the 1st of the following month. Annual fees are billed on the 1st of the month in your 4th month of service and then yearly thereafter. Subsequent payments are due according to the selected fee schedule following the establishment of the web space on the Internet. Web space will be billed a minimum of one (1) month in advance depending on the selected fee schedule. Subsequent payments are due on the 1st day of each month as per the selected fee schedule. In the event that the Customer fails to pay for such services in advance, GoEmerchant, LLC shall be entitled to unilaterally terminate this Agreement and discontinue the service until payment is made. Reconnection fees and or disconnection fees may be applied accordingly at GoEmerchant, LLC's discretion. Customer shall pay in full for any and all services rendered and payments are non-refundable. This includes but is not limited to web publishing, programming, setup fees, dial up accounts, and hosting accounts. Prepaid fees are non-refundable. GoEmerchant is not responsible for any billing corrections unless notified of an error within sixty (60) days of charge.

4. Undertakings of GoEmerchant, LLC.

- a) Payment Messages. GoEmerchant, LLC will transport to MERCHANT's Processor for authorization and, if appropriate, for settlement those Payment Messages accepted by such processor. GoEmerchant, LLC will receive and transport the processor's responses to MERCHANT. GoEmerchant, LLC may, in its sole discretion, transport Type 2 Messages for which Type 1 Messages were not transported by GoEmerchant, LLC using the Service.
- b) Electronic Statement. If MERCHANT is presented with and accepts the terms of the Payment Addendum, GoEmerchant, LLC will each month present MERCHANT an electronic statement in accordance with the payment Addendum.
- c) Service Standard.
 - i) GoEmerchant, LLC shall make all commercially reasonable efforts to maintain the Service in operation twenty-four (24) hours a day, seven (7) days a week, normal maintenance periods excluded.
 - ii) GoEmerchant, LLC will provide the Service in a manner that:
 - (A) protects the confidentiality of data transmitted using the Software; and
 - (B) that will detect unauthorized modification or alteration of data that occurs during transmission.
 - iii) Except as authorized by MERCHANT, GoEmerchant, LLC shall not disclose to any third party information in GoEmerchant, LLC's possession regarding MERCHANT's Payment Messages; provided that GoEmerchant, LLC may disclose:
 - (A) such information as is necessary to verify MERCHANT's identity, resolve disputes, to permit Processor to process transactions, or comply with the requirements of law or orders of a court or other governmental body; and
 - (B) aggregate data about the Service provided that such data is not attributable to MERCHANT.
- d) Limitations. GoEmerchant, LLC's obligations described above are subject to the following limitations:
 - i) Messages that originate from the server of MERCHANT or its agent (e.g., a host) and received in the same form as sent are deemed to be authorized by MERCHANT.
 - ii) GoEmerchant, LLC is not responsible for the security of data residing on the server of the MERCHANT, or a third party designated by a Merchant (e.g., a host).
 - iii) GoEmerchant, LLC shall have no liability for any failure or delay in performing its obligations under Section 4(c) if such failure or delay results from:
 - (A) MERCHANT's act or omission;
 - (B) actions GoEmerchant, LLC takes in a reasonable good faith effort to avoid violating a law, rule or regulation of any governmental authority; or
 - (C) circumstances beyond GoEmerchant, LLC's control.
 - iv) Information regarding MERCHANT's account and transactions may be accessible using a password protected remote access system. GoEmerchant, LLC is not responsible for the use, deletion, or modification of any such information if MERCHANT is registered by a third party, is billed through a third party, or otherwise permits a third party to access such information.
- e) Compliance With Law. GoEmerchant, LLC shall at all times comply with applicable laws, rules and regulations insofar as relevant to its provision of the Service.

5. Undertakings of MERCHANT.

- a) Authorization
 - i) MERCHANT shall cause its Processor or acquiring financial institution to provide GoEmerchant, LLC the identification numbers or codes that identify MERCHANT to its Processor and acquiring financial institution.
 - ii) MERCHANT authorizes GoEmerchant, LLC to transport MERCHANT's Payment Message to MERCHANT's Processor and to cancel any Payment Message sent to MERCHANT's Processor due to an error, fraud or unauthorized transaction.

MERCHANT PROCESSING TERMS & CONDITIONS

Supplement to Merchant Processing Terms & Conditions, continued

b) Fees. If MERCHANT is presented with and accepts the terms of the Payment Addendum, MERCHANT will pay the fees specified in such addendum in accordance with the payment instructions therein.

c) Use of the Service.

i) MERCHANT shall not use the Service in any manner, or in furtherance of any activity, which constitutes a violation of any law or regulation or which may cause GoEmerchant, LLC to be subject to investigation, prosecution or legal action.

ii) If GoEmerchant, LLC or its licensee has licensed the Software to MERCHANT or its agent, MERCHANT shall use, or shall cause its agent to use, the Software in accordance with the terms of the license.

d) Limitations. MERCHANT shall have no liability for any failure or delay in performing its obligations under this Agreement if such failure or delay results from:

(i) GoEmerchant, LLC's act or omission;

(ii) actions MERCHANT takes in a reasonable good faith effort to avoid violating a law, rule or regulation of any governmental authority; or

(iii) circumstances beyond MERCHANT's control.

e) Customer Support. MERCHANT shall provide a commercially reasonable level of customer support to purchasers with respect to sales using the Service. Such support shall include appropriate notice to purchasers of:

(i) a means of contacting MERCHANT in the event the purchaser has questions regarding the nature or quality of the goods or services that MERCHANT offers for sale; and

(ii) procedures for resolving disputes. If GoEmerchant, LLC determines in good faith that MERCHANT's failure to comply with this paragraph is causing an unacceptable burden on its customer support facilities, GoEmerchant, LLC may, after consulting with MERCHANT, suspend or terminate this Agreement on thirty (30) days notice.

f) Compliance With Law. MERCHANT shall at all times comply with applicable laws, rules and regulations insofar as relevant to its use of the Service.

6. Warranty; Disclaimer of Warranty.

a) Disclaimer. GoEmerchant, LLC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MERCHANT ACKNOWLEDGES THAT THE SERVICE MAY NOT BE UNINTERRUPTED OR ERROR FREE.

b) Limitations. GoEmerchant, LLC shall have no liability to the extent that any disruption or failure of the Service results from:

(i) MERCHANT's failure to install within a reasonable period specified by GoEmerchant, LLC any updates or modifications to any software provided by GoEmerchant, LLC which is necessary to use the Service ("GoEmerchant, LLC Software");

(ii) modification of GoEmerchant, LLC Software by MERCHANT or its agent in a manner not expressly authorized by GoEmerchant, LLC;

(iii) the use, interaction, or interface of GoEmerchant, LLC Software or the Service with any software, hardware, or data that is not Compliant;

(iv) failure by software integrators to follow documented interface specifications for GoEmerchant, LLC Software, or to use and configure GoEmerchant, LLC Software for use in accordance with its related documentation; or

(v) GoEmerchant, LLC's having accepted input or provide output of data from the Service or the GoEmerchant, LLC Software in a format or using a protocol that is not compliant and is specified by a Merchant, a payment processor, or a third party other than GoEmerchant, LLC.

c) Remedy. GoEmerchant, LLC's sole obligation, and MERCHANT's sole remedy, under this Section 6 is that GoEmerchant, LLC will make commercially reasonable efforts to repair, or at its option to replace, any nonconforming software or systems with conforming software and systems, provided that GoEmerchant, LLC does not warrant that such efforts will be successful. If GoEmerchant, LLC's efforts are not successful, MERCHANT may terminate this Agreement in accordance with Section 10.

7. Limitation of Liability.

a) No Consequential Damages. The parties hereto and their vendors (and any officers, directors, employees and agents of the parties and their vendors) shall be liable only for direct, out-of-pocket damages, and shall not be liable for any consequential, incidental or indirect damages under any theory or cause of action whether in tort, contract or otherwise, regardless of whether the party has been advised of the possibility of such damages.

b) No Punitive Damages. Except for claims arising from criminal or willful misconduct, the parties agree not to seek punitive or exemplary damages.

c) Amount. The liability of GoEmerchant, LLC with respect to any claim under this Agreement shall be limited to the amounts received by GoEmerchant, LLC from MERCHANT in respect of the Service (whether directly from MERCHANT or through a service provider) during the three (3) months preceding the date GoEmerchant, LLC receives notice of the claim.

8. Indemnification.

a) Indemnification by GoEmerchant, LLC. GoEmerchant, LLC shall indemnify, defend, and hold harmless MERCHANT against all loss, damage or expense of any kind, including attorneys' fees and costs of litigation, arising from claims of a third party (including claims, assertions and investigations of a governmental agency), which claims arise in whole or part from infringement of a patent, copyright, trademark, or other intellectual property right by the Service.

b) Indemnification by MERCHANT. MERCHANT shall indemnify, defend, and hold harmless GoEmerchant, LLC against all loss, damage or expense of any kind, including attorneys' fees and costs of litigation, arising from claims of a third party (including claims, assertions and investigations of a governmental agency), which claims arise in whole or part from:

i) negligence or willful misconduct of MERCHANT or its employees or agents;

ii) distribution, display, or offering for sale of information or content that infringes a patent, copyright, trademark, or other intellectual property right or contains libelous, slanderous, or obscene material; or

iii) breach of an obligation of MERCHANT to GoEmerchant, LLC under this Agreement.

c) Procedure. In the event a party becomes aware of a claim described in Sections 8(a) or 8(b) for which it may seek indemnification (the "Indemnified Party"), the Indemnified Party shall promptly give the other party (the "Indemnifying Party") written notice of the claim and permit the Indemnifying Party to assume the defense of the claim. The Indemnified Party shall cooperate fully in defense of the claim, and the Indemnifying Party shall pay the Indemnified Party's costs and expenses as incurred. The Indemnifying Party shall have no liability under this Section 8 unless the Indemnified Party has complied with its obligations under this paragraph.

d) Prevention of Infringement. If the Service or any component of the Service becomes, or in GoEmerchant, LLC's opinion is likely to become, the subject of a claim of infringement, then MERCHANT shall permit GoEmerchant, LLC, at its option and expense, either:

(i) to procure for MERCHANT the right to continue using the Service as permitted in this Agreement; or

(ii) to replace or modify Service or the infringing component of the Service so that it becomes noninfringing.

If, after using commercially reasonable efforts, GoEmerchant, LLC is unable to cure the infringement, either party may terminate this Agreement upon notice to the other.

e) Exceptions. If MERCHANT is a State Agency that is precluded by the law of its state from entering into indemnification obligations, then the obligations under Section 8(b) and 8(c) shall apply only to the extent permitted by such state law.

9. Use of Marks. GoEmerchant, LLC Trademarks. GoEmerchant, LLC hereby grants MERCHANT a non-exclusive, royalty-free limited license to use, display and reproduce the trademarks, service marks, and logos of GoEmerchant, LLC (the "Marks") solely in connection with MERCHANT's offering and marketing of the Service to the public, provided that nothing herein constitutes a license to use any Mark as part of an Internet domain name. MERCHANT shall use the Marks in accordance with reasonable policies published by GoEmerchant, LLC from time to time.

10. Termination.

a) Termination and Suspension.

i) GoEmerchant, LLC may, in its discretion, suspend the Service on five (5) days notice and terminate this Agreement on fifteen (15) days notice for non-payment of any sum due GoEmerchant, LLC from MERCHANT (or MERCHANT's service provider) under this Agreement unless MERCHANT cures the non-payment within that period.

ii) GoEmerchant, LLC may suspend and/or terminate this Agreement without notice and without liability:

(A) upon receipt of notice from MERCHANT's processor or acquiring bank that MERCHANT is no longer entitled to send Payment Messages to MERCHANT's processor; or

(B) upon receipt of notice from MERCHANT's service provider that it has terminated or suspended its relationship with MERCHANT.

b) Termination for Breach. In addition to any other termination rights granted by this Agreement, either party may terminate this Agreement on thirty (30) days written notice for material breach by the other of any of its obligations hereunder unless such breach is cured within such thirty (30) day period.

c) Termination for Convenience.

i) MERCHANT may terminate this Agreement for any reason without liability by providing GoEmerchant, LLC at least thirty (30) days written notice of such termination. GoEmerchant, LLC may revise the termination procedures from time to time.

ii) GoEmerchant, LLC may terminate this Agreement for any reason without liability on thirty (30) days notice to MERCHANT.

iii) Terminations must be submitted in writing via GoEmerchant's fax number (866) 926-4499 or email cancellations@GoEmerchant.com. Terminations must be received thirty (30) days prior to the next billing cycle to avoid additional billing.

d) GoEmerchant, LLC reserves the right to discontinue service to any merchant due to what GoEmerchant, LLC deems to be, in its sole discretion, racist or pornographic content published by the merchant.

e) Termination in Case of Violation of Law. Either party may terminate this Agreement immediately without liability if:

(i) the terminating party is notified or otherwise determines in good faith that the other party is using or providing the Service in furtherance of any activity which violates any law, rule, or regulation; or

(ii) the terminating party, or its directors, officers, stockholders, employees or agents are made the subject of a criminal or civil action or investigation or are threatened by such action as a consequence of the other party's use or provision of the Service.

11. General Provisions.

a) Entire Agreement. This Agreement constitutes the entire agreement between MERCHANT and GoEmerchant, LLC pertaining to the subject matter hereof and supersedes in their entirety all written or oral agreements between the parties pertaining to the Service.

b) Relationship Between Parties. The parties to this Agreement are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents or other representatives of the other party hereto. Neither party shall make any representation that suggests otherwise.

c) Severability. If any provision of this Agreement is determined to be unenforceable

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for any reason, then the remaining provisions hereof shall remain unaffected and in full force and effect.

d) Modifications. Any modification, amendment, supplement, or other change to this Agreement must be in writing and signed by a duly authorized officer of GoEmerchant, LLC and a duly authorized officer of MERCHANT. Neither party's failure to object to any term or condition in any written or oral communication from the other party, whether delivered before or after the date hereof, shall constitute an acceptance thereof or a waiver of any term or condition hereof.

e) Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that either party, without the other party's consent, may assign this Agreement in connection with any merger, acquisition or similar combination or to an entity that controls or is controlled by that party. This Agreement shall apply to and bind any successor or permitted assigns of the parties hereto.

f) Dispute Resolution. Except with respect to disputes arising out of claims involving intellectual property, disputes arising out of this Agreement will be resolved by binding arbitration before a single arbitrator in accordance with the rules of the American Arbitration Association or any mutually agreed arbitral tribunal. The arbitrator shall have no authority to award punitive or exemplary damages. Each party shall bear its own costs and expenses associated with the resolution of any such dispute and shall share equally the costs of the arbitrator and administering body. Arbitration proceedings will be held in Camden County, New Jersey, provided that if MERCHANT is a State Agency, arbitration proceedings will be held in the state in which MERCHANT is located.

g) Rights And Remedies. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. Except as provided in Section f) above, if any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive. No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

h) Survival Of Provisions. Notwithstanding any other provision to the contrary herein, terms which by their nature survive termination or expiration of this Agreement shall bind the parties following any expiration or termination of this Agreement.

i) Liability Upon Expiration. Neither party shall be obligated to extend or renew this Agreement.

j) Notices. Except where this Agreement specifies "written notice" or as may otherwise be required by law, all notices by one party to the other under this Agreement shall be given by Internet electronic mail to the address specified below. Where this Agreement specifies "written notice," in addition to notice by electronic mail, the notifying party shall send a contemporaneous confirming written copy by any established receipted delivery service to:

GoEmerchant, LLC
1 Mall Drive
Suite 515
Cherry Hill, NJ 08002
Phone: 1-888-638-7867
Fax: 1-866-926-4499

With a copy to:

GoEmerchant, LLC
Attn: General Counsel
100 Throckmorton Street, Suite 1800
Fort Worth, Texas 76102
Phone: 817-317-9100
Fax: 817-317-9195

12. Domain Name. If GoEmerchant, LLC shall acquire an Internet Domain Name on behalf of the MERCHANT, then in such case the MERCHANT hereby waives any and all claims which it may have against GoEmerchant, LLC, for any loss, damage, claim or expense arising out of or in relation to the registration of such Domain Name in any on-line or off-line network directories, membership lists or registration lists, or the release of the Domain Name from such directories or lists following the termination of the provision of this service by GoEmerchant, LLC for any reason.

13. Acceptance of Use. GoEmerchant, LLC reserves the right to accept or reject merchants at its own discretion and this discretion is not limited in any manner whatsoever.

14. Confirmation of Acceptance. Use of the Service shall constitute acceptance of this Agreement.