threadedpayments

Merchant Card Processing
Terms and Conditions

This agreement contains a limitation of liability and an arbitration clause.

Thank you for selecting Thread to support your payment processing needs. These terms and conditions, along with the attached Addenda, if any, and your Merchant Application, will govern the legal relationship under which the Bank and Processor will provide the payment processing services described herein to you.

1. Definitions

1.1. "**Acquirer**" means Processor and/or Bank. Either Processor or Bank shall have the authority to exercise rights belonging to the "Acquirer" hereunder.

1.2. "**Addendum**" (and the plural, "**Addenda**") means each Addendum attached hereto, if any, or any other Addendum otherwise executed or agreed to between the parties.

1.3. "**Affiliate**" means an entity of which a party is the majority owner, which is the majority owner of a party, or which is majority owned by the same entity as a party. For purposes of this Agreement, the term Affiliate shall also mean the Independent Sales Organization ("**ISO**"), referral partner, or independent software vendor ("ISV") referring Merchant to Processor.

1.4. "**Agreement**" means these terms and conditions, along with any Addenda and the Merchant Application, as any of the same may be amended from time to time pursuant to these terms.

1.5. "**American Express**" means American Express Travel Related Services Company, Inc. or its successors or assigns.

1.6. "**Applicable Law**" means all applicable federal, state, and local laws, statutes, ordinances, case law, regulations, and regulatory guidance.

1.7. "**Bank**" means Thread Bank or its successors and/or assigns.

1.8. "**Card**" means an account, or evidence of an account, authorized and established between a Cardholder and a Payment Network, or representatives or members of a Payment Network, that Merchant accepts from Cardholders as payment for a good or service.

1.9. "**Card Information**" means all information related to a Cardholder or Card obtained by Merchant in connection with a Transaction, including, without

limitation, customer names, addresses, zip codes, card numbers, expiration dates, security codes, PIN numbers, credit limits, or account balances.

1.10. "**Cardholder**" means the person or entity to whom a Card is issued or who is authorized to use a Card.

1.11. "**Chargeback**" means the reversal of any Transaction pursuant to the Operating Rules for whatever reason.

1.12. "**Data Compromise Event**" means any event that results, or could result, directly or indirectly, in the unauthorized access or disclosure of Transaction information or Card Information.

1.13. "**Discover**" means Discover Financial Services, LLC or its successors or assigns.

1.14. "**Guarantor**" means each individual or entity who signed on the Guarantor signature line of the Merchant Application.

1.15. "**Mastercard**" means Mastercard International Incorporated or its successors or assigns.

1.16. "**Merchant**" or "**you**" means the legal entity identified in the Merchant Application.

1.17. "**Merchant Application**" means the application, including all schedules, exhibits, attachments, and addenda thereto, that Merchant completed and signed (including by electronic signature or otherwise electronically indicating acceptance of the terms) and which is subsequently accepted by Processor and Bank, whether evidenced by their execution of this Agreement or by the processing of presented Transactions.

1.18. "**Operating Rules**" means all rules, bylaws, programs, and regulations of the Payment Networks, as the same are amended from time to time. Operating Rules for Visa, Mastercard, and American Express are presently available online at usa.visa.com, www.mastercard.us, and https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf, respectively.

1.19. "**Payment Network**" means each of Visa, Mastercard, American Express, Discover, and any card network issuing credit or debit cards, and, for purposes of this Agreement, further includes the Payment Card Industry Security Standards Council.

1.20. "**PCI DSS**" means the Payment Card Industry Data Security Standards.

1.21. "**Processing Fees**" means the fees and charges set forth on the fee schedule that is part of the Merchant Application and this Agreement or any Addenda thereto, as modified or amended from time to time, whether by the Payment Networks or by Bank or Processor pursuant to this Agreement, including, without limitation, by messages included on any processing statement or merchant portal.

1.22. "**Processor**" means the Threaded Payments, or such other payment processors as Thread Bank may contract with to facilitate the authorization, processing, and settling of Transactions, as well as any successors and assigns of such payment processor(s).

1.23. "**Reserve Fund**" means funds placed in a non-segregated and non-interest bearing account established by the Acquirer in accordance with this Agreement to ensure payment of all obligations or anticipated obligations hereunder, including, without limitation, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks.

1.24. "**Security Standards**" means all rules, regulations, or standards adopted or required by the Payment Networks relating to data security and the protection of Card Information, including, without limitation, PCI DSS, Visa's Cardholder Information Security Program and Payment Application Best Practices, Mastercard's Site Data Protection Program and POS Terminal Security Program, American Express's Data Security Operating Policy, Discover's Information Security & Compliance Program, and any successor rules, regulations or standards, in each case, as any of the same may be amended from time to time.

1.25. "**Services**" means those services provided by Processor and/or Bank, whether directly or through its and/or their agents, Affiliates, designated representatives, or third-party vendors, necessary and required to facilitate the authorization, processing, and settling of Transactions.

1.26. "**Settlement Account**" means the account maintained by Merchant at a bank or depository institution acceptable to Processor and Bank for credits and debits related to Transactions, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks.

1.27. "**Transaction**" means any interaction between a Cardholder and a Merchant in which a Cardholder uses a Card to purchase Merchant's goods or services and which results in activity on the Cardholder's account.

1.28. "**Visa**" means Visa Inc. or its successors or assigns.

2. Services

2.1. Subject to Applicable Law and the Operating Rules, Processor and/or Bank, whether directly or through its and/or their agents, Affiliates, designated representatives, or third-party vendors, will provide the Services to Merchant pursuant to the terms of this Agreement. Merchant agrees to abide by, and to use the Services in strict compliance with, Applicable Law, the Security Standards, and the Operating Rules.

2.2. Upon request, Processor and/or Bank may elect to provide Automated Clearing House ("**ACH**") processing services to Merchant at the rates specified in the Merchant Application and under the terms set forth in this Agreement. To the extent Merchant uses such ACH processing services, it agrees to abide by the National Automated Clearing House Association ("**NACHA**") rules and regulations, as the same may be amended from time to time.

3. Merchant Representations and Responsibilities

3.1. At the time of signing the Merchant Application, and each time Merchant submits a Transaction, Merchant agrees, represents, and warrants that:

3.1.1. The person signing the Merchant Application has full legal power and authority to enter into this Agreement;

3.1.2. Each statement made by Merchant on the Merchant Application is and, except as has been disclosed in writing to Processor, remains true;

3.1.3. The Transaction is legal and genuine and arises from a bona fide sale of goods or services by Merchant; except as otherwise permitted by the Operating Rules, the goods have been shipped or delivered and/or the services performed; and the Transaction represents a valid obligation for the amount submitted and does not involve the use of the Card for any other purpose;

3.1.4. The Transaction is not one that Merchant knows or should have known to be fraudulent, unauthorized, the product of collusion between the

Cardholder and the Merchant, or that is otherwise unlawful or impermissible under this Agreement, Applicable Law or the Operating Rules.

3.1.5. All information and data provided by Merchant in connection with the Transaction is true, correct, and accurate;

3.1.6. Merchant has taken reasonable steps to ensure the validity of the Card and the identity of the Cardholder;

3.1.7. The Transaction is not subject to liens, encumbrances, disputes, set-off, or counterclaim;

3.1.8. The Transaction has not been previously submitted for processing (except as the same may be permitted under the Operating Rules);

3.1.9. Merchant has not disbursed or advanced any cash to the Cardholder in connection with the Transaction (except as the same may be permitted under the Operating Rules);

3.1.10. The Transaction is not a refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible;

3.1.11. The Transaction does not arise from the dishonor of a Cardholder's personal check;

3.1.12. Merchant has the legal right to sell the goods and services purchased by Cardholder via the Transaction;

3.1.13. Merchant has made no representation or agreement for the issuance of refunds except as stated in Merchant's refund policy; and

3.1.14. Any Transaction submitted to Processor to credit a Cardholder's account represents a refund for a Transaction previously submitted to Processor.

Processor and/or Bank reserve the right to refuse to process any Transaction if there is reason to believe that it has been submitted in violation of this subsection.

3.2. Subject to Applicable Law, Merchant agrees to accept all categories of Visa and Mastercard Cards unless Merchant has notified Processor on the Merchant Application of its election to limit such acceptance. Any limitations on acceptance must comply with Applicable Law and the Operating Rules.

Furthermore, Merchant shall not engage in any practice that discriminates against or discourages the use of any Card in favor of another Card.

3.3. Except to the extent permitted by both Applicable Law and the Operating Rules and as authorized in writing by Processor, Merchant shall not (i) apply an additional charge for accepting Cards as an alternative to other payment methods (referred to at times as a "surcharge"); or (ii) set minimum or maximum transaction amounts.

3.4. Merchant must prominently display and disclose to Cardholders at all times (i) the name of the Merchant; and (iii) Merchant's physical address.

3.5. Merchant shall maintain a written refund policy and shall disclose such policy to Processor and all its customers (including customers making purchases online by displaying such policy on the website), which policy and disclosure shall be consistent with Applicable Law and the Operating Rules. The amount of any refund shall not exceed the original Transaction except to the extent a Merchant agrees to reimburse a Cardholder for return shipping.

3.6. Subject to Applicable Law, the Operating Rules, and the Security Standards, Merchant agrees to preserve receipts, credit vouchers, or other written evidence related to Transactions for not less than two (2) years following such Transaction and to provide such records to Processor and/or Bank upon request.

4. Term; Termination

4.1. This Agreement shall go into effect for a three (3) year term (the "**Initial Term**") commencing on the date this Agreement is accepted by Processor and Bank, whether by signature or by the processing of presented Transactions. Thereafter, and to the extent authorized by Applicable Law, the Agreement will renew automatically for successive three (3) year periods (the "**Renewal Term**") unless either party provides written notice of non-renewal to the other at least thirty (30) days prior to the expiration of the applicable term. If Merchant presents and Processor and Bank elects to process Transactions beyond the conclusion of the Initial Term or any Renewal Term, then the terms of this Agreement will continue to govern such processing activity.

4.2. In addition to any other termination rights, Processor or Bank may terminate this Agreement or any Addendum immediately, or may suspend Services or decline to process particular Transactions, with or without notice, if (a)

Merchant fails to strictly comply with any term of this Agreement; (b) Processor or Bank, in their sole discretion, determines that Merchant or any affiliated entity or individual is violating the Operating Rules or Applicable Law or is engaging in fraudulent or deceptive conduct or other conduct creating a risk of harm or loss to Processor, Bank, its and/or their Affiliates, or the Payment Networks; (c) Merchant, any guarantor, or any affiliated entity or individual becomes involved in voluntary or involuntary bankruptcy or insolvency proceedings; (d) Processor or the Bank deems Merchant to be financially insecure; (e) Merchant materially alters its business; (f) there is a material change in Merchant's processing activity, either from historical processing activity or the activity projected in the Merchant Application; (g) Processor or Bank receive direction from any Payment Network to terminate this Agreement; or (h) Processor or Bank, in their discretion, determine that circumstances otherwise warrant immediate termination or suspension. Furthermore, Processor or Bank may terminate this Agreement at any time upon thirty (30) days' written notice.

4.3. In addition to any other termination rights, Merchant may terminate this Agreement if Processor or Bank has failed to perform a material obligation in this Agreement and such failure has not been cured for thirty (30) days after Merchant notifies Processor or Bank in writing of such failure.

4.4. Except as expressly provided elsewhere in this Agreement, if this Agreement is terminated prior to the expiration of the then-current term, Merchant shall pay Processor and Bank a liquidated damages amount (the "**Early Termination Fee**"). The Early Termination Fee is an amount equal to the product of (a) the average monthly amount of fees and charges paid to Processor and Bank pursuant to this Agreement (excluding any fees or charges of the Payment Networks or other third parties passed through to Merchant pursuant to this Agreement) over the six-month period immediately preceding the termination, Merchant's discontinuance of the use of the Services, or Merchant's breach of Section 5, whichever is earliest; *multiplied by* (b) the number of months remaining in the then-current term. Merchant acknowledges and agrees that the Early Termination Fee is not a penalty, but rather is a reasonable estimate of the damages caused by such early termination, which amount would otherwise be difficult to calculate with precision. The Early Termination Fee is in addition to, and not in lieu of, any

other damages or sums to which Processor or Bank may be entitled unrelated to the early termination of this Agreement.

4.5. All Merchant obligations with respect to Transactions processed under this Agreement shall survive any termination, including, without limitation, the obligation to pay refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks.

5. Exclusivity

During the Initial Term or any Renewal Term, Merchant shall not receive services, or enter into an agreement to receive services, from any other entity similar to those Services that Merchant has elected to receive from Acquirer without Acquirer's express written approval and consent.

6. Procedures for Transactions

6.1. As soon as reasonably practical after receipt of information regarding Transactions Merchant believes to be authorized by a Cardholder, Merchant shall submit such information to Processor and Bank for processing. Merchant understands that failure to submit such Transactions on a timely basis may (a) result in increased fees associated with the Transaction(s) (such as higher interchange fees), and Merchant agrees to pay any such fees if assessed; and/or (b) compromise Merchant's ability to be paid for the Transaction(s).

6.2. Merchant shall not submit for processing: (a) any Transaction that does not involve Merchant, or that does not originate from an interaction between Merchant and a Cardholder intending to make a purchase from Merchant; (b) any Transaction for which Merchant does not receive an authorization code from Processor; or (c) any Transaction that results in a transaction outside of Merchant's normal course of business as reflected on the Merchant Application. Processor and/or Bank reserve the right to refuse to process any Transaction if there is reason to believe that it has been submitted in violation of this subsection.

6.3. Without limiting Acquirer's remaining rights hereunder, Acquirer may impose a cap, either per transaction or on an aggregate basis, on the dollar amount of the Transactions it will process for Merchant that aligns with the Merchant's sales volume, as indicated on the Merchant Application. Acquirer may decline

to process Transactions in excess of such volume or may direct settlement to any Transactions in excess of such volume into a Reserve Fund.

7. Settlement

7.1. To the extent that Merchant receives direct settlement of Transactions from either American Express or Discover, then Merchant acknowledges that Bank plays no role with respect to such Transactions and that Bank is not responsible for, and shall have no liability with respect to, such Transactions.

7.2. Except as elsewhere provided herein, after receiving funds for approved Transactions from any Payment Network, Bank will provisionally fund Merchant's Settlement Account, minus (a) refunds, Chargebacks, Processing Fees, indemnified losses (including, without limitation, assessments), and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks; and (b) any amounts authorized to be retained under Sections 21 or 22 of this Agreement. Failure to subtract such amounts does not relieve Merchant of liability or responsibility for the same, and Merchant agrees to pay all such amounts to Processor and/or Bank immediately upon receipt of invoice and without deduction or offset.

7.3. Merchant must maintain a Settlement Account at a bank or depository institution acceptable to Processor and Bank for credits and debits related to Transactions, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks. Merchant authorizes Acquirer to initiate debit and credit entries to the Settlement Account through the ACH settlement process and agrees that Acquirer may debit the Settlement Account for any amounts owed hereunder or to which Acquirer may otherwise be entitled for any reason. Such authorization shall remain in place until the later of termination of this Agreement or Merchant's satisfaction of all obligations to Processor and/or Bank hereunder. Merchant may change the Settlement Account only as provided in Section 20 of this Agreement. Merchant shall maintain sufficient funds in the Settlement Account to prevent the occurrence of insufficient funds, and shall be solely liable for all fees, costs, and overdrafts associated with the Settlement Account.

7.4. Merchant acknowledges and agrees that neither Processor nor Bank shall have any liability or responsibility for delays in the transmission of funds or the failure of Merchant to receive funds where that delay or failure is in any way

attributable to Merchant or any third party, including third-party banks, depository institutions, or the Payment Networks.

7.5. Acquirer reserves the right to refuse to process any Transaction if Acquirer, in its sole discretion, believes that the Transaction may be uncollectible from the Cardholder, is likely to result in a Chargeback, or was presented in violation of the terms of this Agreement, Applicable Law, or the Operating Rules.

7.6. Merchant acknowledges that all payments and credits provided to Merchant are provisional and subject to investigation, suspension, revocation, Chargebacks, or other adjustments in accordance with this Agreement and the Operating Rules.

7.7. Merchant acknowledges that interchange and other fees, charges, and assessments imposed by the Payment Networks are determined by the Payment Networks. Processor and Bank cannot guarantee any interchange rate and have no obligation to minimize or secure the lowest interchange rate, fees, charges, or assessments for any Transaction. Merchant assumes full liability for the difference between any applied interchange rate and the interchange rate projected or assumed by Processor at the time of any Transaction.

7.8. The debit network used to process debit Transactions will depend upon a number of factors, including Acquirer's business considerations and the availability of a particular network, and may not be the lowest cost network available.

8. Marks and Intellectual Property

8.1. Merchant shall display and use the names, logos, trademarks, service marks, and other similar identifiers (the "**Identifiers**") and advertising and promotional materials of the Payment Networks only in accordance with the Operating Rules and any use or display guidelines of the Payment Networks, and cease displaying and using the Identifiers and the advertising and promotional materials in accordance with the Operating Rules or at the Payment Networks' request. Further, from time to time, Processor may provide Merchant with materials that include Processor's Identifiers. Merchant shall only use such materials as expressly permitted by Processor in writing, and shall return to Processor such materials upon the earlier of termination of this Agreement for any reason or upon Processor's request at

any time. Merchant shall use such Identifiers only in the manner as set forth in such materials, and shall not alter, modify, relocate, remove, or individually use or display such Identifiers. From time to time, the Payment Networks or Processor may request that Merchant provide samples of its use or display of their and/or its Identifiers, which Merchant shall promptly provide in response thereto. Any goodwill associated with the use or display of any Identifier by Merchant shall inure to the benefit of such Identifier's owner.

8.2. Merchant shall not alter, modify, or create any derivatives of any Identifier (or use any results thereof) at any time for any purpose. In addition, Merchant shall not use any Identifier in a manner that would result in the disparagement of, damage to, dilution (including quality or strength) of, tarnishment of, adverse reflection of, injury to, or otherwise adverse effect on, in any way, the Identifier, the goodwill associated with it or its use, or the reputation or goodwill of or associated with the Identifier or its owner. Merchant shall not at any time represent, directly or by implication, that its goods or services are endorsed, sponsored, or guaranteed by Processor, Bank, or any Payment Network, including by the use or display of any of its Identifiers.

8.3. Acquirer owns and shall continue to own, or shall own, all computer programs, know-how, confidential information, and other technology and proprietary information and materials, and intellectual property rights (including Identifiers, patents, copyrights, trade secrets, and any other intellectual or industry property or proprietary rights) in, to, or related to the Services, including any refinements, modifications, derivative works of, improvements, or enhancements of any of the foregoing (whether or not made by or at the request of the Merchant), and any of its other technology and proprietary information and materials, and intellectual property rights. Except as provided herein, this Agreement provides no other rights (including any ownership) in or to any technology and proprietary information or materials or intellectual property rights of any person or entity, including the Acquirer or the Payment Networks.

9. Data Security

9.1. Merchant acknowledges that it is its responsibility to abide, and agrees to abide, by all Security Standards, including PCI DSS, and to provide proof of compliance to Processor, Bank, or any Payment Networks as required or upon request, including, without limitation, by attestation or an examination

of Merchant's systems to validate such compliance. The costs of any such attestation or examination shall be Merchant's sole responsibility.

9.2. Without in any way limiting the obligations imposed by the preceding paragraph, Merchant will secure and keep confidential Cardholder information and Card Information in strict compliance with the Security Standards and Applicable Law, and will not use, disclose, or distribute such information for any purpose prohibited by the Security Standards or Applicable Law.

9.3. To the extent Merchant uses any third party to process, store, receive, transmit, or otherwise have access to Card Information, Merchant assumes full responsibility and liability for such third-party's compliance with this Agreement, the Security Standards, and Applicable Law. Neither Processor nor Bank shall have any liability for the acts or omissions of such third parties, which shall be the sole responsibility and liability of Merchant. Merchant further agrees to notify Processor of the identity of all such third parties and to ensure that such third parties are properly registered, if required to be so, with the Payment Networks. Processor and/or Bank further reserve the right to require any such third parties to undergo testing, approval, and certification by Processor and/or Bank, and to terminate any such third parties' access to or ability to integrate with Processor and/or Bank's systems at any time.

9.4. If Merchant discovers or at any time has reason to suspect that a Data Compromise Event has occurred, Merchant must immediately notify Acquirer and fully cooperate, at its expense, with all forensic examinations and remediation and mitigation procedures requested by any Payment Network, Processor, or Bank. Furthermore, if Merchant is undergoing a forensic investigation at the time it signs the Merchant Application, it must fully cooperate with the investigation until completed. The costs of such examinations, processes, and any notification of Cardholders pursuant to Applicable Law or the Operating Rules shall be the exclusive responsibility of Merchant.

9.5. Merchant acknowledges that failure to comply with the Security Standards or the occurrence of any Data Compromise Event on its systems or those of any third party referenced in Section 9.3 may result in liability assessments (sometimes referred to as "penalties" or "fines") by the Payment Networks, legal liability, and expenses (including consultant, examiner, and attorney

fees). Without limiting Merchant's liabilities under any other provision hereof, Merchant agrees to fully indemnify Processor and Bank, along with each of their officers, directors, employees, and agents, and to hold them harmless from any such costs, liability assessments, legal liabilities, and expenses, as well as the costs and fees associated with any claims or demands made by Cardholders, card issuers, Payment Networks, governmental agencies, or any third parties associated with Merchant's actual or alleged failure to comply with the Security Standards or the occurrence of any Data Compromise Event.

9.6. In the event Merchant operates a website capable of accepting Cards, then, in addition to all other obligations specified herein, Merchant agrees to maintain, display, and abide by a Cardholder data privacy policy.

9.7. Nothing in this Section 9 shall limit Merchant's responsibility for paying Processing Fees related to PCI compliance or non-compliance as the same may be specified on the Merchant Application and modified or amended from time to time.

10. Authorized Users

10.1. To the extent Merchant is granted electronic access to any systems or portals of Processor, Merchant shall be responsible for (i) ensuring that only authorized users of such systems or portals access the same; (ii) keeping all logins, user names, and passwords confidential; and (iii) promptly notifying Processor of any unauthorized access of such logins, user names, or passwords; and (iv) all actions taken by anyone using such access, logins, user names, or passwords, even if such actions were not authorized by Merchant.

10.2. Merchant is responsible for the acts and omissions of its employees, consultants, contractors, agents, officers, and directors, including any unauthorized access to or use of the Services.

11. Pricing and Payment

11.1. Merchant agrees to pay Processing Fees in the amounts specified in the fee schedule attached to the Merchant Application or as otherwise set forth herein, all as the same may be amended from time to time pursuant to this Agreement.

11.2. Merchant is responsible for payment of refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its

and/or their Affiliates, or the Payment Networks related to or associated with its use of the Services, its Transactions, and/or its processing activity. Acquirer at any time, with or without notice, may collect such amounts (i) pursuant to Section 7 of this Agreement; (ii) by demanding immediate payment; (iii) by debiting the Settlement Account or the Reserve Fund; or (iv) by subtracting such amounts from future settlements.

11.3. The Processing Fees appearing on the Merchant Application are based upon assumptions regarding Merchant's anticipated volume, average transaction size, and method of doing business. If these assumptions prove materially inaccurate, Processor or Bank may adjust your Processing Fees without prior notice. Any such adjustments shall be in addition to, and not in lieu of, any other remedies available to Processor or Bank hereunder

11.4. Processing Fees may be amended at any time by Processor and/or Bank, with or without notice, as a result of amendments or changes made by the Payment Networks or parties other than Processor or Bank, including to reflect changes to Acquirer's cost basis associated with any Processing Fees.

11.5. In addition, Processor or Bank may amend, revise, change, or supplement the Processing Fees by giving Merchant thirty (30) days' notice of any such amendment, revision, change, or supplementation; provided, however, that Merchant may terminate this Agreement, without penalty or any obligation to pay the Early Termination Fee specified in Section 4.4, in response to such amendment, revision, change, or supplementation (not attributable to the Payment Networks or other third parties) by providing Processor with written notice between the date of receiving notice of the amendment, revision, change, or supplementation and the effective date of such amendment, revision, change, or supplementation.

11.6. Merchant shall be solely responsible for all communication expenses associated with its processing activity.

11.7. If Merchant does not pay any refunds, Chargebacks, Processing Fees, indemnified losses, or other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks when due, such amounts will accrue interest at the lesser of 1.5% per month or the highest amount permitted by applicable law.

12. Taxes

Merchant shall be solely responsible for the calculation, collection, and remittance of any sales tax imposed by any government authority in connection with the provision of Merchant's goods or services. Unless Merchant is otherwise exempt (and can prove such exemption to Processor and/or Bank's satisfaction), Merchant agrees to pay all taxes imposed on the services, equipment, or other property provided to Merchant pursuant to this Agreement.

13. Chargebacks

13.1. Merchant has full liability and responsibility for, and must immediately pay, all Chargebacks and any and all fees, charges, and liability assessments related to Chargeback(s) associated with its Transactions.

13.2. If Merchant has reason to dispute or respond to a Chargeback, then Merchant must do so by the date provided on the applicable Chargeback notice. Processor and Bank have no independent obligation to investigate or attempt to obtain a reversal or adjustment of any Chargeback.

13.3. If Processor or Bank, in its sole discretion, determine that Merchant is experiencing excessive Chargebacks, then Processor or Bank may (i) with notice, increase the Processing Fees; (ii) without notice, establish or increase the Reserve Fund; (iii) without notice, suspend the Services; or (iv) without notice, terminate this Agreement. Merchant acknowledges that excessive Chargebacks (as the same may be defined from time to time by the Payment Networks) may result in mandatory remediation programs or liability assessments (sometimes referred to as "penalties" or "fines") by the Payment Networks, legal liability, and expenses (including consultant, examiner, and attorney fees). Without limiting Merchant's liabilities under any other provision hereof, Merchant agrees to fully indemnify Processor and Bank, along with each of their officers, directors, employees, and agents, and to hold them harmless from any such costs, liability assessments, legal liabilities, and expenses, as well as the costs and fees associated with any claims or demands made by Cardholders, card issuers, Payment Networks, governmental agencies, or any third parties associated with Merchant's excessive Chargebacks.

13.4. Merchant shall not impose as a condition of Card acceptance any requirement that a Cardholder waive a right to dispute a transaction.

14. Indemnification

Merchant shall indemnify, defend, and hold Processor and Bank, along with their respective agents, officers, directors, employees, and Affiliates, harmless from and against any and all claims, demands, damages, judgments, liability assessments, fines, penalties, costs, and expenses (including reasonable attorneys' fees) suffered or incurred by any of them arising out of or relating to: (i) Merchant's acts or omissions, or those of its employees, consultants, contractors, agents, officers, and directors, whether or not those acts or omissions were authorized by Merchant; (ii) Merchant's Transactions or use of the Services (including, without limitation, for refunds, Chargebacks, or liability assessments imposed by the Payment Networks); (iii) Merchant's breach of this Agreement or violation of Applicable Law or Operating Rules; (iv) the state or configuration of Merchant's equipment, including, without limitation, Merchant's failure to maintain all point of sale equipment, download equipment, and point of sale software updates or to use EMV enabled equipment supported by Processor and/or Bank.; (v) Merchant's use of third-party services or service providers, including gateways, value added resellers, and independent software vendors; (vi) any proceeding, litigation, or arbitration commenced by a third party arising out of or relating to any actual or alleged act or omission by Merchant; and/or (vii) any demands, investigations, or subpoenas (or similar process) received related to Merchant or its Transactions, whether initiated by regulators, law enforcement, civil litigants, or lienholders under the Uniform Commercial Code. Processor and Bank shall have the right to select and retain counsel of their choosing to represent them in connection with any of the foregoing events, and nothing in this Section shall entitle Merchant to select counsel or assume the defense of any such matter.

15. Obligation to Report Statement Discrepancies

15.1. Merchant shall be solely responsible for reviewing statements from Bank (including statements provided online) and for reporting to Bank in writing, within thirty (30) days of receipt of any statement from Bank, any problems or irregularities appearing on such statements—including, without limitation, underpayments, overpayments, or other discrepancies of any items, fees, charges, or liability assessments reflected on such statements or related to the period covered by such statement, including, without limitation, discrepancies between the volume and/or value of transactions that Merchant actually processed during the period indicated by the statement. Statements provided online shall be deemed received the first day they are available online.

15.2. MERCHANT ACKNOWLEDGES AND AGREES THAT PROCESSOR AND BANK SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE TO MERCHANT, AND SHALL HAVE NO OBLIGATION TO REIMBURSE MERCHANT, FOR ANY UNDERPAYMENT TO MERCHANT OR OTHER DISCREPANCY THAT IS NOT REPORTED TO BANK IN WRITING WITHIN THIRTY (30) DAYS OF MERCHANT'S RECEIPT OF THE APPLICABLE STATEMENT.

15.3. Merchant acknowledges and agrees that it shall reimburse Processor and/or Bank upon demand for any misdirected deposits, duplicate deposits, inadvertent overpayments into, or inadvertent undercharges (including, without limitation, related to downgraded transactions and currency conversion) to any of Merchant's bank accounts. In addition, Processor or Bank may deduct such amounts by ACH debit or other means from Merchant's Settlement Account or the Reserve Fund. Furthermore, Processor and Bank shall have rights of set-off and recoupment.

16. Limitation of Liability and Disclaimer of Warranties

16.1. UNDER NO CIRCUMSTANCES SHALL THE AGGREGATE FINANCIAL RESPONSIBILITY OF PROCESSOR, BANK, AND ITS AND/OR THEIR AFFILIATES FOR ANY BREACH, FAILURE OF PERFORMANCE, ACT, OR OMISSION UNDER THIS AGREEMENT EXCEED THE FEES OR CHARGES PAID TO PROCESSOR BY MERCHANT FOR THE TRANSACTION OR ACTIVITY THAT IS OR WAS THE SUBJECT OF THE ALLEGED BREACH, FAILURE OF PERFORMANCE, ACT, OR OMISSION.

16.2. IN ANY EVENT, PROCESSOR, BANK, AND ITS AND/OR THEIR AFFILIATES' LIABILITY SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES AND CHARGES PAID TO PROCESSOR PURSUANT TO THIS AGREEMENT IN THE THREE (3) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM OF LIABILITY.

16.3. FOR PURPOSES OF THIS SECTION 16, FEES OR CHARGES OF THE PAYMENT NETWORKS OR OTHER THIRD PARTIES PASSED THROUGH TO CUSTOMER PURSUANT TO THIS AGREEMENT

SHALL NOT BE INCLUDED IN THE CALCULATION OF FEES AND CHARGES PAID TO PROCESSOR.

16.4. IN NO EVENT SHALL PROCESSOR OR BANK, OR THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOST PROFITS, LOSS OF REVENUE, OR CLAIMS BY MERCHANT OR ANY THIRD PARTY RELATIVE TO THE TRANSACTIONS OR ACTIVITIES HEREUNDER, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, NEITHER PROCESSOR NOR BANK SHALL BE LIABLE FOR (A) THE DECLINE OF A TRANSACTION, EVEN IF SUCH DECLINE WAS WRONGFUL; (B) ANY LOSS CAUSED BY A TRANSACTION DOWNGRADE, REGARDLESS OF THE CAUSE; OR (C) THE FAILURE TO PROCESS, AUTHORIZE, OR CAPTURE A TRANSACTION.

16.5. PROCESSOR AND BANK MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES, TECHNOLOGY OR PROPRIETARY INFORMATION AND MATERIALS, OR THE IDENTIFIERS OR ASSOCIATED RIGHTS, PROVIDED HEREUNDER AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, USAGE, OR TRADE.

16.6. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROCESSOR AND BANK DO NOT GUARANTEE OR WARRANT THAT (A) THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THAT ANY SOFTWARE WILL BE VIRUS-, DEFECT-, OR ERROR-FREE; OR (C) THAT DATA, REPORTS, OR ANALYSES WILL BE FREE FROM ALL BUGS AND ERRORS.

16.7. PROCESSOR OR BANK MAY OFFER CERTAIN PRODUCTS AND SERVICES TO MERCHANT OTHER THAN SERVICES, INCLUDING BETA RELEASES OF SUCH PRODUCTS AND SERVICES. IF MERCHANT ELECTS TO USE SUCH PRODUCTS AND SERVICES, IT ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 16 SHALL APPLY EQUALLY TO SUCH PRODUCTS AND SERVICES.

17. Underwriting, Monitoring, and Auditing Rights

17.1. Merchant, on behalf of itself and its principals and beneficial owners, acknowledges and agrees that Processor or Bank may request and obtain external reports, including credit reports from credit reporting agencies, in connection with the consideration of the Merchant Application or at any time thereafter. Merchant further acknowledges that its Merchant Application may be rejected by Processor or Bank and that neither Processor nor Bank shall have any liability associated with such rejection.

17.2. Merchant agrees to promptly furnish Processor or Bank with documents reasonably necessary to evaluate its financial condition and business practices upon request. Furthermore, with notice and during Merchant's normal business hours, representatives of Processor or Bank may visit Merchant's business premises to examine Merchant's operations, activities, and/or books and records to the extent necessary to evaluate Merchant's compliance with this Agreement.

17.3. Merchant agrees to provide Processor advance written notice of any actual or anticipated (i) material change in Merchant's products or services, business practices, or the manner in which Merchant accepts Cards; (ii) change to Merchant's legal name, trade name, or mailing address; or (iii) changes to anticipated Transaction amounts or volume.

18. Reporting

Merchant acknowledges that, under the Operating Rules of the Payment Networks, certain merchant activity and terminations of merchant processing agreements may result in Acquirer reporting merchants and their principals to the Payment Networks for inclusion on a terminated merchant file (*e.g.*, the "MATCH" list). Merchant, on behalf of itself and its principals, hereby consents to such reporting and waives any claim related to the same, even in instances where Merchant or its principals believe that reporting to have been improper or in error.

19. Relationship of the Parties

Merchant designates Acquirer as its agent to receive payments for Transactions processed pursuant to this Agreement. Neither Processor nor Bank, however, shall be considered a partner or fiduciary to Merchant, and nothing in this Agreement or the rendition of Services related to this Agreement shall be deemed to create a joint venture, partnership, or fiduciary relationship between or among the parties. Rather, the relationship among the parties to this Agreement is an arm's length commercial relationship.

20. Updates to Settlement Account

If Merchant intends to change its Settlement Account, it must give no fewer than thirty (30) days' prior written notice to Bank and execute any forms required by Bank in connection with the change. Failure to provide the notice or the applicable executed forms required in this Section may result in the inability of Acquirer to settle Transaction proceeds to Merchant, and may result in the misdirection or loss of the same. Merchant shall bear sole responsibility for any such loss and shall have no right of recovery against Processor or Bank associated with such misdirection or loss. In addition, if Merchant fails, whether during the Term of this Agreement or thereafter, to inform Bank or any updates or changes to its Settlement Account, then Acquirer may deduct from any maintained funds fees and costs reasonably associated with the maintenance of such funds on a monthly basis.

21. Reserve Account and Security Interest

21.1. Processor and/or Bank may at any time, whether at the inception of this Agreement or thereafter (including at the time of termination of this Agreement), require the establishment of a Reserve Fund to satisfy Merchant's current or anticipated obligations hereunder, including, without limitation, its obligations with respect to refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks. Further, at any time during the term of this Agreement or at its termination, Processor and/or Bank may increase the amount of the Reserve Fund. All decisions relating to whether to establish, set the amount of, or increase the Reserve Fund will be in the sole discretion of Processor and/or Bank.

21.2. The Reserve Fund may be funded by (i) debiting the amount of Transactions that would otherwise be payable to Merchant under this Agreement; (ii) demanding funds from Merchant; or (iii) debiting the Settlement Account.

If Processor and/or Bank make a demand for funds pursuant to this Section 21.2, Merchant shall transfer the amount of funds demanded within eight (8) business hours of receipt of such demand.

21.3. The Reserve Fund may be used at any time to satisfy Merchant's obligations to Processor and/or Bank under this Agreement, including, without limitation, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Processor, Bank, its and/or their Affiliates, or the Payment Networks.

21.4. Processor and/or Bank may continue to hold the Reserve Fund until the one-year anniversary of the later of termination of this Agreement or the last processing activity that occurs on Merchant's account (including any Transaction or Chargeback) or for such longer time as Processor and/or Bank reasonably determine is necessary to satisfy Merchant's current or anticipated obligations under this Agreement, the Operating Rules, or Applicable Law.

21.5. Until the expiration of the period referenced in the preceding subsection, Merchant shall have no ownership interest in or right to the Reserve Fund. Rather, the Reserve Fund shall be the exclusive property of Processor and/or Bank. Furthermore, Merchant shall have no right to receive interest on any funds maintained in the Reserve Fund, which shall be the exclusive property of Processor and/or Bank.

21.6. Without in any way limiting the foregoing, and merely as an additional form of security, Merchant hereby further grants Processor and Bank a security interest in (a) the Reserve Fund and all funds therein; (b) the proceeds associated with any Transaction; and (c) any other assets and funds belonging to Merchant within the possession, custody, or control of Bank, regardless of whether related to Transactions. Either Processor or Bank may enforce its or their security interest(s) with respect to any obligations owed to either Processor or Bank, whether liquidated, unliquidated, fixed, contingent, matured or unmatured, without notice or demand. The security interest(s) granted under this Agreement will continue after termination of this Agreement until Merchant satisfies all its obligations to Processor and Bank. Merchant further agrees to execute and deliver to Processor and/or Bank such instruments and documents as Processor and/or Bank may reasonably request to confirm and perfect the security interest(s) granted by this Agreement.

22. Holdback Rights

In addition to any of the other rights granted to the Processor and Bank hereunder, in the event that Processor and/or Bank, at any time during the term of this Agreement, determine in its or their commercially reasonable discretion that it may be prudent or necessary to do so as a result of any unusual, suspicious, or risk-exposing activity (including, without limitation, money laundering, invalid sales transactions, counterfeit transactions, altered or duplicate transactions, activity related to a suspected Data Compromise Event or other breach of Security Standards, or excessive Chargebacks), then Bank or Processor on behalf of Bank may, without notice, hold funds otherwise payable to you for such period as Processor and/or Bank, in its or their commercially reasonable discretion, deem necessary, to provide security against liability for such activity, plus other costs or liabilities reasonably anticipated to be due to Processor and/or Bank related to the same. To the extent (i) the investigation conducted by Processor and/or Bank with respect to the unusual, suspicious, or risk-exposing activity determines that such activity is reasonably likely to result in amounts being due from you to Processor and/or Bank, and (ii) Processor and/or Bank require the establishment, replenishment, or increase of a Reserve Fund in connection therewith, then the funds held pursuant to this Section 22 may be used to fund such Reserve Fund.

23. Products and Equipment

23.1. Processor and Bank make no representations or warranties regarding the compatibility of third-party products and services with their respective systems. To the extent that you use any third-party gateway or similar software, services, and/or hardware to connect to Processor and/or Bank's systems, you understand that a separate agreement may be required with the third-party provider in order to obtain such software, services, or hardware, and additional fees may be charged by the third-party provider in addition to the fees charged by Processor and/or Bank.

23.2. Merchant shall be responsible for any fines, penalties, claims, demands, or new or increased fees (including interchange) that result from Merchant's (a) use of value added reseller, independent software vendor, gateway, point of sale systems, or any other software, hardware, or service not provided by Processor or Bank; (b) failure to maintain the most current version of software that has been certified by Processor and/or Bank as being

compatible with the their respective systems; or (c) misuse of software that has been certified as compatible with the Processor and/or Bank's systems.

23.3. To the extent that Merchant elects to purchase, lease, or use processing equipment from Processor, Bank, or its and/or their Affiliates, Merchant agrees to pay Processor the stated purchase price or lease amounts, along with all applicable taxes and shipping costs, and agrees that Processor and/or Bank may, without limitation, deduct such sums from the Transaction proceeds settled to Merchant's Settlement Account.

23.4. Equipment provided by Processor or any of its Affiliates may only be used for purposes of this Agreement and the receipt of Services pursuant to this Agreement.

24. Confidentiality and Use of Data

24.1. Merchant shall use Card Information solely to receive Services under this Agreement. Under no circumstances shall Merchant sell Card Information or use it for any purpose other than as expressly contemplated by this Agreement.

24.2. Except in response to a validly served subpoena, Merchant will not provide Card Information to anyone except Processor, Bank, Payment Networks, or Merchant's agents that have been approved by Processor and are properly registered with Payment Networks for purposes of assisting Merchant in completing Transactions. Should Merchant receive a subpoena that encompasses Card Information, Merchant will notify processor in writing of its receipt of such a subpoena as soon as practicable.

24.3. Merchant agrees to keep confidential and not to disclose: (a) the terms and conditions of this Agreement; (b) the Processing Fees; (c) Card Information; or (d) any other non-public information regarding any aspect of either Processor's or Bank's business made available to Merchant under the auspices of this Agreement ("**Acquirer Confidential Information**"). Acquirer Confidential Information shall include, but shall not be limited to, information regarding pricing techniques, fees, equipment, services, processes, procedures, marketing or business development plans, technical information, personnel information, and trade secrets.

24.4. Should Merchant receive any Acquirer Confidential Information belonging to Processor or Bank, Merchant agrees to protect such confidential

information equally to its own confidential information and to take no less than reasonable care to prevent its misuse or disclosure. Merchant agrees to return to Processor or Bank, as applicable, any confidential information respectively belonging to those entities either upon the termination of this Agreement for any reason, or upon earlier request from either Processor or Bank.

24.5. Merchant must keep confidential its merchant identification ("**MID**"), which is assigned to facilitate the provisions of Services to Merchant under this Agreement. As a security measure, Merchant may be requested to identify itself by its MID when contacting Processor. Any person correctly identifying Merchant's MID shall be presumed by Processor to have authority to make changes to Merchant's account. Merchant shall be solely liable for any damages it sustains as a result of the disclosure of Merchant's MID to any unauthorized persons.

24.6. To the extent permitted by Applicable Law and the Operating Rules, Merchant authorizes Processor and Bank to disclose information regarding Merchant to any third party who has asked for such information, and whom Processor or Bank determines has a legitimate business need to know such information to facilitate the purpose of this Agreement. Merchant authorizes Processor and Bank to disclose Card Information, Transaction information, and Merchant information to the Payment Networks. Merchant further authorizes Processor and Bank to provide information about Merchant in response to requests for such information from any government body or regulatory authority.

24.7. Notwithstanding anything else in this Agreement, and without otherwise limiting Processor and/or Bank's use of such information, all Card Information, information related to Transactions or Cardholders, and information related to Merchant, may be used by the Payment Networks, Processor, Bank, and their respective Affiliates and designees: (i) to provide Services; (ii) for administrative and monitoring purposes; (iii) to enhance or improve Processor and/or Bank's products or services; (iv) in the course of any sale or reorganization of Processor and/or Bank's business; (v) to comply with Applicable Laws; and (vi) for disclosure to credit reporting agencies and other financial institutions.

25. Amendments and Waiver

25.1. Processor or Bank may amend, revise, change, or supplement this Agreement by giving Merchant thirty (30) days' notice of any such amendment, revision, change, or supplementation; provided, however, that Merchant may terminate this Agreement, without penalty or any obligation to pay the Early Termination Fee specified in Section 4.4, in response to such amendment, revision, change, or supplementation (not attributable to changes to the Operating Rules or Applicable Law) by providing Processor with written notice between the date of receiving notice of the amendment, revision, change, or supplementation and the effective date of such amendment, revision, change, or supplementation. Any amendment, revision, change, or supplementation attributable to changes to the Operating Rules or Applicable Law may be made on less than thirty (30) days' notice and shall not be grounds for termination of this Agreement.

25.2. Neither Processor nor Bank will be deemed to have waived any provision of this Agreement by failing to promptly enforce the same, and no waiver of any provision of this Agreement on one occasion shall constitute a waiver of any other provision of this Agreement or the same provision on any other occasion.

26. Notices; Electronic Notice

All notices under this Agreement to either Bank or Processor must be in writing and delivered via hand delivery or via a carrier that provides a tracking number and/or other proof of delivery. Notices to the Bank or the Processor must be sent to the addresses respectively designated on the Merchant Application for those entities, and will be deemed effective upon receipt. Bank and/or Processor may provide Merchant with effective notice under this Agreement, including, without limitation, of any amendment to this Agreement or to Processing Fees, by any of the following means: (a) via mail at the address designated in the Merchant Application (or such other address as Merchant may provide), including by statement messages appearing on any processing statement; (b) electronically, through the Merchant portal, through electronically available processing statement(s), or through any other means of electronic communication maintained by Bank or Processor which Merchant may access; or (c) electronically, via any email address designated by Merchant. Merchant expressly consents to receive documents and notices electronically and agrees to maintain access to the Internet for so long as this Agreement is in effect.

27. Choice of Law and Venue; Time and Procedure for Assertion of Claims

26.1. All disputes or controversies of any nature whatsoever (whether in contract, tort, or otherwise) arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation, or enforceability of the choice of law and venue provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Tennessee.

26.2. Without in any way limiting Section 29 (Arbitration), with respect to any action arising out of, relating to, or in connection with this Agreement, Merchant and all individuals executing this Agreement in any capacity hereby consent to the exclusive jurisdiction of, and venue in, the federal and state courts located in Nashville, Tennessee or Davidson County, Tennessee.

26.3. Each party agrees to provide the other prompt notice of any claim, controversy, or dispute arising under or related to this Agreement, and both parties agree to engage in good faith discussions to resolve the matter. If that fails to resolve the matter promptly, upon either party's election, the parties will participate in non-binding mediation before a mutually agreed mediator. Any controversy, claim, or dispute that is not resolved through the procedures set forth above within sixty (60) days following the initial notice (or such longer period as the parties may agree) will be resolved pursuant to arbitration pursuant to Section 29 of this Agreement.

26.4. Neither party may bring a claim more than one (1) year after the underlying cause of action first accrues.

27. Attorneys' Fees

Merchant agrees to reimburse Processor and/or Bank for all attorneys' fees or other costs incurred by both or either of Processor or Bank in enforcing any provision of this Agreement against Merchant, or in obtaining any sums due under this Agreement from Merchant, regardless of whether Processor and/or Bank incur those fees in connection with a court proceeding, private dispute resolution, or outside a formal dispute resolution proceeding.

28. Arbitration

28.1. ANY DISPUTE OR CLAIM ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT OR THE RELATIONSHIPS WHICH RESULT FROM THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT. ARBITRATION DOES NOT PROCEED BEFORE A JURY AND MAY INVOLVE MORE LIMITED DISCOVERY THAN A COURT PROCEEDING. ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. Notwithstanding the foregoing, nothing in this Section prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief. Furthermore, this Section 29, and the obligation to arbitrate, will not apply to claims for misuse or infringement of a party's intellectual property or confidential information.

28.2. The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of the arbitration provisions of this Section. Arbitration will be administered by JAMS (www.jamsadr.com). For claims greater than $250,000, the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply. For claims equal to or less than $250,000, the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply. Unless the arbitrator(s) determine that justice or fairness require otherwise: (i) any arbitration will proceed in Rogersville, Tennessee (although, for the convenience of the Merchant or guarantor (as applicable), any party or its counsel may participate telephonically); (ii) the arbitrator(s) will oversee limited discovery, taking into account the amount in controversy and the parties' desire to keep proceedings cost-effective and efficient; and (iii) the claimant(s) and respondent(s) will bear the cost of arbitration, including the cost of any filing fee, equally, subject to the discretion of the arbitrator(s) to alternatively allocate costs pursuant to the applicable rules in any final award; provided, however, that for claims equal to or less than $25,000, Merchant and guarantor (if applicable) shall not be responsible to pay any case initiation or similar fee greater than that of the filing fee in the Superior Court

of Davidson County, Tennessee at the time arbitration is filed unless the arbitrator(s) determine that such claims are frivolous. The arbitrator(s) shall have no authority to award non-monetary or equitable relief or to award damages that are inconsistent with the limitations and exclusions set forth in this Agreement, nor will he, she, or they have authority to award sanctions of any type. The arbitrator(s) shall not issue a reasoned opinion for any award unless such award is greater than $250,000. Any decision rendered in such arbitration proceedings shall be final and binding on each of the parties to the arbitration and judgment may be entered thereon in any court of competent jurisdiction. The parties will maintain the confidential nature of the arbitration proceeding except as may be necessary to enforce any award or to comply with applicable law. If any part of this Section 29 is found invalid or unenforceable, the other parts of this Section 29 shall still apply.

28.3. MERCHANT AND GUARANTOR (IF APPLICABLE) ACKNOWLEDGE AND AGREE THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED ON AN INDIVIDUAL BASIS AND SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTIES. MERCHANT AND GUARANTOR (IF APPLICABLE) FURTHER AGREE TO WAIVE, AND HEREBY WAIVE, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR TO LITIGATE OR ARBITRATE ON A CLASS-WIDE BASIS.

29. Continuing Guaranty

As a key inducement for Processor and Bank to enter into this Agreement, the Guarantor(s) agree to be bound by all the terms and provisions of this Agreement the same as Merchant. Guarantor understands that this Agreement may be renewed, extended, or modified from time to time (including with regard to fees and to Merchant's payment obligations) without notice to Guarantor, even if the modifications and/or extensions increase Guarantor(s)' obligations hereunder. Guarantor(s), individually and severally, also unconditionally and personally guarantee the Merchant's full performance of its obligations under this Agreement. Guarantor(s) understand and agree that the Processor or Bank may proceed directly against Guarantor(s) without first exhausting remedies available against Merchant. Moreover, in the event Guarantor(s) is or are natural person(s), this guaranty is continuing and shall survive the death of Guarantor(s) and be binding on Guarantor(s)' heirs and estate, without any diminution of the rights of Processor or Bank with respect to the

guaranty. To the fullest extent permitted by law, Guarantor(s) waive all rights and defenses available to Guarantor(s) respecting the Bank or Processor's enforcement of this guaranty. Without limiting any of the foregoing, each Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because: (i) the Agreement cannot be enforced against the Merchant; (ii) either Processor or Bank makes or agrees to changes or modifications to the Agreement; (iii) Processor or Bank releases any other Guarantor or the Merchant from any obligation under the Agreement; (iv) a law regulation or order of any public authority affects the rights of either Processor or Bank under the Agreement; or (v) anything else happens that may affect the rights of either Processor or Bank against the Merchant or any other Guarantor. Each Guarantor further agrees that: (vi) Processor and Bank each may delay enforcing any of its rights under this guaranty without losing such rights; (vii) Processor and Bank each can demand payment from such Guarantor without first seeking payment from the Merchant or any other Guarantor; and (viii) such Guarantor will pay all court costs, attorney's fees, and collection costs incurred by either Processor or Bank in connection with the enforcement of any terms of the Agreement or this guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court.

30. Remedies Cumulative

The rights and remedies conferred upon Processor and/or Bank under this Agreement are not intended to be exclusive of each other or of any other rights or remedies belonging to Processor and/or Bank under this Agreement, at law, or in equity. Rather, all such rights and remedies are cumulative.

31. Assignment; Successor Responsibility

The Bank may assign this Agreement without Merchant's consent. Processor may assign this Agreement to another transaction processor approved by Bank. Merchant may not assign this Agreement without the express written consent of Bank and Processor, nor shall it assign any right to payments to which it may be entitled under this Agreement. For purposes of this Agreement, it shall be deemed an assignment by Merchant of this Agreement to effectuate any sale or transfer of the equity interests of Merchant's business such that the equity holders listed in the Merchant Application collectively hold less than 50% of the equity interests after such sale or transfer. This Agreement will be binding on each party's successor(s) and/or permitted assigns.

32. No Third-Party Beneficiaries

The Payment Networks and Affiliates of Processor and/or Bank will be third-party beneficiaries to this Agreement, meaning that, while they have no obligations under this Agreement, they will have the right, within their discretion, to enforce of the terms of this Agreement (including, without limitation, with respect to the Operating Rules) directly against Merchant. Except as specified in the preceding sentence, there are no third-party beneficiaries to this Agreement, which is solely for the benefit of Merchant, Processor, and Bank.

33. Force Majeure

Processor and/or Bank shall not be liable for any delay or inability to perform caused by acts of God, natural disasters, wars, acts of terrorism, civil disturbances, pandemics, governmental actions, strikes, telecommunications failures, equipment failures, network failures, or other causes beyond Processor and/or Bank's reasonable control.

34. Entire Agreement; Severability

This Agreement constitutes the complete and final agreement between the parties and supersedes all prior oral or written agreements. Except as elsewhere provided herein, this Agreement may be modified only in a writing signed by all parties hereto. If any provision of this Agreement is deemed unlawful or unenforceable, then it shall be reformed only insofar as necessary to make it lawful and enforceable, or if it cannot be so reformed, it will be severed from this Agreement without any effect on the remaining terms of the Agreement, which shall continue in full force and effect.

35. Survival

Termination of this Agreement shall not terminate the obligations and rights of the parties that, by their nature or their terms, are intended to survive or be perpetual of irrevocable. Such provisions, including, without limitation, Sections 2, 3.6, 4.4, 4.5, 7.4, 7.6, 8 through 10, 11.2, 11.7, 12 through 16, 18 through 31, and 33 through 36, and 38.4 shall survive the expiration or termination of this Agreement.

36. Electronic Signature

This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together constitute one and the same Agreement. A signature or other indication of acceptance received electronically or via facsimile shall be legally binding for all purposes and equally effective as a wet ink signature.

37. Special Provisions Related to American Express

In addition to the remaining terms of this Agreement, Merchant agrees to the following terms in connection with its acceptance of American Express Cards:

37.1. Merchant acknowledges that any request to accept American Express Cards is subject to approval by American Express. If approved, Merchant authorizes Processor to submit American Express Card Transactions to, and receive settlement from, American Express.

37.2. Merchant agrees to have a refund policy for purchases on American Express Cards that is at least as favorable as its refund policy for purchases on any other Cards.

37.3. Merchant may opt out of accepting American Express Cards at any time without penalty and without directly or indirectly affecting its rights to accept other Cards.

37.4. Upon termination of this Agreement or its ability to accept American Express Cards hereunder, Merchant agrees to remove American Express Identifiers from Merchant's website and wherever else they are displayed.

37.5. Merchant agrees that American Express may use information obtained in the Merchant Application to screen and/or monitor Merchant in connection with American Express Card marketing and administrative purposes.

37.6. Merchant agrees that American Express may use Transaction data, Merchant data, and Card Information to perform its responsibilities in connection with the American Express OptBlue® Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes, and important transactional or relationship communications from American Express.

37.7. Merchant acknowledges and agrees that it may be converted from American Express Card acceptance pursuant to this Agreement to a direct American Express Card acceptance relationship with American Express if and when it becomes a "High CV Merchant," *i.e.*, a merchant with either (i) greater than $1 million in American Express Card Transaction volume (including volume from all Merchant locations) in a rolling twelve (12) month period or (ii) greater than $100,000 in American Express Card Transaction

volume (including all volume from all merchant locations) in any three (3) consecutive months. Upon such conversion, Merchant acknowledges and agrees that (i) merchant will be bound by American Express's then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant for American Express Card acceptance.

37.8. Notwithstanding the terms contained in Sections 27 through 29 of this Agreement, in the event of a dispute involving American Express, the following dispute resolution terms will apply. For purposes of this Section 38.8, the terms "American Express," "You," and "Claim" shall have the meanings reflected below. "We" for purposes of this Section 38.8 shall mean Acquirer.

37.8.1. In the event that you or we are not able to resolve a Claim, this Section 38.8 explains how Claims may be resolved through arbitration. You or we or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any party to resolve a Claim, the parties understand and agree that neither you nor we nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, you, we, and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under the OptBlue Addendum. Arbitrators' decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights you, we, or American Express would have in court may also not be available in arbitration.

37.8.2. *Initiation of Arbitration.* Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved under this Section 38.8 and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with the OptBlue Addendum. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express or we, on one hand, selects the organization and you, on the other hand, select the other within 30 days thereafter or if an arbitrator is appointed under

Section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in New York, NY.

37.8.3. *Limitations on Arbitration.* If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between you, us, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by you, us or American Express and cannot be used in any other case except to enforce the award as between you, us, and American Express. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against American Express. If any portion of these Limitations on Arbitration set forth in this Section 38.8.3 is found invalid or unenforceable, then the entire Section 38.8 (other than this sentence) will not apply, except that you, we, and American Express do not waive the right to appeal that decision.

37.8.4. *Previously Filed Claims/No Waiver.* You, we, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. You, we, or American Express may choose to delay enforcing or to not exercise rights under this Section 38.8, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this Section 38.8 applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the effective date of the Agreement to the extent that such claims are not already subject to arbitration under a prior agreement between Merchant and American Express.

37.8.5. Arbitrator's Authority. The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under the OptBlue Addendum. The arbitrator has no power

or authority to alter the Agreement or any of its separate provisions, including this Section 38.8.

37.8.6. *Split Proceedings for Equitable Relief*. You, we, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This Section 38.8 shall be enforced by any court of competent jurisdiction.

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

37.8.8. *Governing Law/Arbitration Procedures/Entry of Judgment*. This Section 38.8 is made under a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If your Claim is for $10,000 or less, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

37.8.9. *Confidentiality*. The arbitration proceeding and all information submitted, relating to, or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a

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

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

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

37.8.12. *Definitions*. For purposes of this Section 38.8 only,

37.8.13. American Express includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the previously listed;

37.8.14. You includes your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the previously listed; and

37.8.15. Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including you or us) that American Express has the right to join, including any allegation involving a transaction using an

American Express product or network or regarding an American Express policy or procedure.