



THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION. PLEASE READ THE ARBITRATION PROVISION CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS. AS MORE FULLY DESCRIBED HEREIN, IT PROVIDES THAT ANY CLAIMS (AS DEFINED BELOW) MUST, AT THE ELECTION OF EITHER YOU OR US, BE RESOLVED BY BINDING INDIVIDUAL ARBITRATION. THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT, AND ARBITRATION DECISIONS ARE SUBJECT TO VERY LIMITED REVIEW.

This Agreement (as amended from time to time by the BANK, the "**AGREEMENT**") is made by and between WOODFOREST NATIONAL BANK, a national banking association ("**BANK**"), and the merchant identified in the Merchant Payment Card Application (the "**MERCHANT**"), which is hereby incorporated herein for all purposes and is subject to the approval and acceptance of BANK. The parties hereto agree as follows:

**1. DEFINITIONS; EFFECTIVENESS OF AGREEMENT; AMENDMENT AND RATIFICATION OF AGREEMENT.**

- A. **Definitions.** Except where otherwise defined herein, the following capitalized terms shall have the meanings set forth below. Words used herein in the singular shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural and vice versa.
- 1) "**Applicable Law**" means, with respect to any person, any law (including common law), ordinance, judgment, order, decree, injunction, permit, statute, treaty, rule or regulation, regulatory bulletin or guidance, regulatory examination or determination of a governmental authority applicable to such person.
  - 2) "**Average Sales Ticket Amount**" shall be the product of (i) the Net Processing Volume divided by (ii) the total number of settled card transactions processed and/or submitted by the MERCHANT using the Services for the same month less the number of returns, daily discounts, and monetary adjustments for the same month.
  - 3) "**Electronic Commerce Transactions**" means Non-Swiped Card Transactions that are processed as electronic commerce transactions. Examples of Electronic Commerce transactions include those that are initiated or performed using Mail-Order, Telephone-Order, or Internet-Order.
  - 4) "**Exempted Transactions**" means those transactions that qualify for an exemption pursuant to sections 12 CFR 235.5(b) or (c), as amended from time to time.
  - 5) "**Net Processing Volume**" means the dollar amount of all settled card transactions processed, directly or indirectly, for the MERCHANT by the BANK as a result of the Services for any given month less the amount of all returns, daily discounts, and monetary adjustments for the same month.
  - 6) "**Non-Regulated Institution**" means any issuer that qualifies for the small issuer exemption as provided in 12 CFR 235.5(a), as amended from time to time.
  - 7) "**Non-Swiped Card Transaction**" means any card transaction other than a Swiped Card Transaction.
  - 8) "**Operating Rules**" shall mean any certificate of incorporation, bylaws, rules, policies, technical specifications, bulletins, mandates, documentation, manuals, regulations, requirements, or procedures imposed, promulgated, or adopted by any Payment Network, as they may be amended or supplemented from time to time. Such Operating Rules include, without limitation, any (i) exception item processing rules and guidelines (e.g., chargebacks, representations, etc.), and (ii) PCI Standards adopted, imposed, or enforced from time to time by any Payment Network.
  - 9) "**Payment Network**" means any payment card network (e.g., American Express, Discover Network, etc.), electronic funds transfer network (e.g., PULSE, STAR, NYCE, etc.), card association (e.g., MasterCard, Visa, etc.), or other person that provides electronic fund transfer services, transaction switching services, authorization or funds settlement services, or similar or related services.
  - 10) "**PCI Standards**" means the Payment Card Industry Data Security Standards (PCI-DSS), as established from time to time by the Payment Card Industry Security Standards Council (or any successor thereto), as such standards are amended, modified, or supplemented from time to time. PCI Standards may be obtained by visiting <https://www.pcisecuritystandards.org/index.php>.
  - 11) "**Regulated Institution**" means any issuer that is not a Non-Regulated Institution.
  - 12) "**Restricted Transactions**" are any transactions designated as "restricted transactions" pursuant to 12 CFR 233.2, as amended from time to time. Generally, "restricted transactions" include those in which a person accepts credits, funds, instruments, or other proceeds from another person in connection with unlawful Internet gambling.
  - 13) "**Services**" means the card transaction processing and related and/or incidental services provided, directly or indirectly, by BANK to MERCHANT from time to time pursuant to the terms and conditions of this Agreement.
  - 14) "**Swiped Card Transaction**" means a card transaction where the magnetic stripe or integrated circuit chip of the card is read during a cardholder-present, retail payment card transaction that is electronically authorized by a card issuer or its agent, presented for clearing within twenty-four (24) hours of the date and time the authorization was obtained, and where the cardholder's signature was obtained.
  - 15) "**Swiped Card Transaction Ratio**" means a percentage equal to a fraction, the numerator of which is equal to the number of Swiped Card Transactions for the month and the denominator is equal to the sum of (i) the number of Non-Swiped Card Transactions for the month, plus (ii) the number of Swiped Card Transactions for the month.
  - 16) "**Truncation Laws**" means any federal, state, or local laws, rules, and/or regulations that require merchants or payment acceptance devices to truncate or suppress the display or printing of any portion of (i) the digits of the cardholder's account number in conjunction with a payment card transaction, and/or (ii) any expiration date associated with the cardholder's account number.
- B. **Effectiveness of Agreement.** This Agreement shall be effective only upon acceptance by BANK, with such acceptance to occur only by BANK issuing to MERCHANT a Merchant Identification Number ("**MID**").

C. Amendment and Ratification of Agreement. MERCHANT acknowledges that the terms and conditions set forth herein (including but not limited to Fees, rates, and charges) may be amended or modified by BANK at any time by BANK providing MERCHANT with written notice of such amendments and/or modifications, which may be electronically delivered to MERCHANT (whether one or more, the "Amendment"). MERCHANT agrees that any such amendments and/or modifications will be effective as of the effective date contained in such Amendment (the "Amendment Effective Date"). MERCHANT further agrees that upon the occurrence of any of the following, MERCHANT shall be deemed to have ratified the Agreement as amended and/or modified by the Amendment: (i) MERCHANT'S use of the Service on or after the Amendment Effective Date, (ii) MERCHANT'S failure to terminate the Service and/or this Agreement prior to the Amendment Effective Date, and/or (iii) MERCHANT'S performance of any transaction using the Service on or after the Amendment Effective Date.

2. **RIGHTS, DUTIES, RESPONSIBILITIES, AND ACKNOWLEDGMENTS OF MERCHANT.** The MERCHANT does hereby acknowledge and agree as follows:

A. Fees Applicable to the Service. MERCHANT agrees to pay the following fees in exchange for BANK'S provision of the Service (collectively, the "Fees"):

<b>Option 1:</b>	
<b>MONTHLY SERVICE FEE*</b>	<b>AMOUNT OF FEE (\$US)</b>
Monthly Processing Fee	\$15.00 Per Month
<b>TRANSACTION FEES</b>	
Qualified Retail Discount Rate	2.60% of Settled Transaction Amount
Non-Qualified Retail Discount Rate	3.50% of Settled Transaction Amount + \$0.10 Per Settled Transaction
<b>Option 2:</b>	
<b>ACTUAL MONTHLY VOLUME</b>	<b>APPLICABLE RATE</b>
\$0.00 - \$800.00	\$20.00 / Flat Fee Per Month
\$800.01 - \$1,500.00	\$40.00 / Flat Fee Per Month
\$1,500.01 - \$3,000.00	\$80.00 / Flat Fee Per Month
\$3,000.01 - \$5,000.00	\$150.00 / Flat Fee Per Month
\$5,000.01 +	Then Option 1 Pricing Applies
<b>OTHER FEES (Applies to Option 1,2)</b>	
Card Reader Peripheral Device	\$59.00
Account Maintenance Fee - Fee for any maintenance activities and account handling including changes to Account and returned mail handling	\$10.00 Per Occurrence
Additional User Fee – Fee for additional user added to account	\$1.95 per month, per additional user
Chargeback Fee	\$25.00 Per Each Chargeback
Representment Fee	\$25.00 Per Each Representment
Retrieval Request Fee	\$25.00 Per Retrieval Request
Pre-Arbitration Handling Fee	\$35.00 Per Pre-Arbitration
Returned Item/ACH Fee	\$35.00 Per Returned Item/ACH
Investigation/Suspicious Activity Fee	Up to 10% of the dollar amount investigated
Divert Fee	\$28.00 Per Divert Occurrence
Hourly Research Fee	\$25.00 Per Hour (one hour minimum applies)

**\*Includes PCI Protection Plan monthly fee. See PCI Protection Plan program document for important terms, conditions, and limitations that apply to the PCI Protection Plan.**

1) Responsibility of Merchant for Fees and Taxes. MERCHANT'S Account (as defined below) will be debited via ACH for amounts set forth in the Fees section hereof. MERCHANT is obligated to pay all taxes and other charges imposed by any governmental authority on the Service provided under this Agreement. BANK reserves the right, in its sole discretion, to change, amend, add, or adjust any discount rates or Fees set forth herein or in the Merchant Payment Card Application, in accordance with Section 1.C of this Agreement.

2) Transaction Fees: Discount Rate for Transactions.

a. Qualified Retail Discount Rate; Applicability and Eligibility Requirements. The Qualified Retail Discount Rate is charged on all Swiped Card Transactions that are performed with either consumer credit cards (excluding rewards cards), or debit cards that are issued by a Regulated Institution.

b. Non-Qualified Retail Discount Rate; Applicability. The Non-Qualified Retail Discount Rate will be charged on all transactions that do not qualify for the Qualified Retail Discount Rate. By way of illustration, but not by limitation, the Non-Qualified Retail Discount Rate will be charged on all manually keyed or Electronic Commerce Transactions or any transactions involving Exempted Transactions, traditional rewards cards, or debit cards that are issued by a Non-Regulated Institution.

3) Settlement of Fees; Posting. MERCHANT acknowledges that all Transaction Fees will be debited from merchant's account each business day and that all Fees other than the Transaction Fees will be debited from the MERCHANT'S account within five (5) business days following the last day of each month. In the event BANK attempts to collect Fees and is unable to collect such fees after three (3) attempts, BANK may terminate the Agreement.

B. Disputes between Merchant and Cardholders. MERCHANT acknowledges that all disputes between MERCHANT and any cardholder relating to any card transaction will be settled between MERCHANT and the cardholder and that the BANK bears no responsibility or liability for such transactions. Moreover, MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's fees and costs, which BANK may incur as the result of any cardholder claim

which is pursued outside the Operating Rules. In the event of a chargeback loss to BANK, MERCHANT hereby transfers and assigns to BANK (i) any lien rights that it has or may have on the merchandise sold to the cardholder, and (ii) any rights it may have against the cardholder (related to said chargeback loss) to BANK.

- C. Liability of Merchant for Chargebacks. MERCHANT is liable for repayment to BANK for all valid chargebacks related to all cards, including, credit, Debit and/or ATM transactions. BANK will comply with the applicable Operating Rules of each Payment Network in processing any chargebacks which result from cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between MERCHANT and the cardholder, and MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's costs, which it may incur as the result of any cardholder claim which is pursued outside Operating Rules.
- D. Use of Independent Sales Offices and Third Parties. MERCHANT acknowledges that BANK may have been referred to MERCHANT through an independent sales office of BANK. MERCHANT acknowledges that the independent sales office is only an independent contractor, is not an employee or agent of BANK and has no authority to alter the terms of this Agreement without BANK'S prior express written approval. MERCHANT acknowledges that BANK may provide the Services or portions thereof through contracts or subcontracts with third parties engaged in the business of transaction processing and authorization. BANK provides the Services through Merchants' Choice Payment Solutions, a registered ISO of BANK.
- E. Exchange and Return Policies. MERCHANT'S policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with applicable Operating Rules of the Payment Networks. MERCHANT agrees to disclose, if applicable, to a cardholder before a card sale is made, that if merchandise is returned:
- 1) No refund, or less than full refund, will be given;
  - 2) Returned merchandise will only be exchanged for similar merchandise of comparable value;
  - 3) Only a credit toward purchases will be given; or
  - 4) Special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other noncredit terms).
- F. If MERCHANT does not establish and conspicuously disclose the policy described in this Section 2.E, a full refund in the form of a credit to the cardholder's card account must be given. MERCHANT shall under no circumstances issue cash for returns of products where products were originally purchased in a card transaction. Disclosures must be made on all copies of sales drafts or invoices in letters approximately 1/4 inch high in close proximity to the space provided for the cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the cardholder's signature.
- G. Duty to Provide Terminal/Device and Communications Facilities. MERCHANT acknowledges and agrees that it is solely responsible for purchasing or obtaining any compatible terminal/device upon which the Services may be accessed and that the costs and expenses incurred by the MERCHANT in purchasing and/or maintaining such terminal/device shall be borne solely by the MERCHANT. Moreover, MERCHANT acknowledges that use of the Services requires communications facilities (e.g., cellular/wireless, Wi-Fi, internet, etc.) and agrees that any expenses incurred by MERCHANT to obtain or maintain such facilities levied by any third party communications provider are the sole responsibility of the MERCHANT and the BANK shall have no liability or obligation therefor.
- H. Obligation to Obtain Authorization on All Transactions; No Guarantee of Payment for Authorizations. MERCHANT agrees to obtain an authorization on all transactions and MERCHANT further agrees that it will not attempt to settle any card sale for which an authorization has been declined. Any transaction that is not properly authorized is made with full recourse and may be charged back to MERCHANT. MERCHANT understands that a payment authorization does not constitute a guarantee of payment, only funds availability as of the time of the authorization and any settled transaction may be subject to dispute or chargeback.
- I. Full Recourse. MERCHANT acknowledges that BANK shall have full recourse to charge back the amount of a card sale for which (i) the imprint of the card is not obtained, (ii) the signature of the cardholder is not obtained and the cardholder disputes that he/she authorized the charge or (iii) the transaction was not properly authorized.
- J. Maintenance of Settlement Account; Obligation of Merchant to Balance and Reconcile.
- 1) MERCHANT will, at all times, maintain an account at a financial institution that is a member of the Federal Reserve ACH System (the "Account"). All credits for collected funds and debits for Fees (as defined below), payments and chargebacks under the terms of this Agreement shall be made to the Account. MERCHANT may not close or change the Account without prior written notice to BANK. MERCHANT will be solely liable for all fees and costs associated with the Account and for all overdrafts. MERCHANT will maintain sufficient funds in the Account to accommodate all transactions, including Fees, contemplated by this Agreement.
  - 2) MERCHANT shall promptly upon receipt, examine, balance, and reconcile all statements relating to the Account. Additionally, MERCHANT shall, on a daily basis, balance and reconcile all DAILY deposit and debit totals to confirm accuracy. MERCHANT is required to notify BANK IN WRITING of any and all errors on MERCHANT'S statements and/or DAILY totals. Each such written notice shall contain the following information: (i) MERCHANT name and account number, (ii) the specific dollar amount of the asserted error, (iii) a detailed description of the asserted error, and (iv) a detailed explanation of why MERCHANT believes an error exists and the cause of the error, if known. The written notice MUST be RECEIVED by BANK within thirty (30) days after MERCHANT receives the statement (regarding an asserted error on a statement) or within thirty (30) days from the date the alleged error on a DAILY total was made. FAILURE TO TIMELY SEND THE NOTICE REFERRED TO HEREIN CONSTITUTES A WAIVER OF ANY AND ALL RIGHTS MERCHANT MAY HAVE AGAINST BANK RELATED TO THE ASSERTED ERROR.
- K. Compliance with Applicable Laws and Operating Rules. MERCHANT agrees that it is solely responsible for complying with all Applicable Laws and Operating Rules in connection with its use of the Service. MERCHANT acknowledges that it is the MERCHANT'S sole obligation to ensure that it possesses the most current version of the portions of the Operating Rules of each Payment Network applicable to MERCHANT. Moreover, MERCHANT agrees to abide by transaction deposit restrictions as specified in the Visa International Operating Regulations, as amended from time to time. Furthermore, MERCHANT acknowledges and agrees as follows:
- 1) Truncation Laws. MERCHANT will comply with all applicable Truncation Laws and acknowledges that it is the MERCHANT'S sole responsibility to verify compliance with federal, state, and local laws pertaining thereto.
  - 2) Unlawful Internet Gambling Enforcement Act and Regulation GG. In accordance with the requirements of the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG, MERCHANT acknowledges that the Service may not be used to process any Restricted Transactions. By executing the Merchant Payment Card Application and submitting the application to the BANK, MERCHANT certifies that it does not engage in Internet

gambling. MERCHANT agrees that it will notify BANK in the event of any change in circumstance affecting the immediately preceding certification.

3) VISA Cardholder Information Security Program. MERCHANT will comply with, and cause its agents to comply with, the provisions of the VISA Cardholder Information Security Program, as amended from time to time.

- L. Compliance with PCI Standards and Non-Disclosure. MERCHANT will at all times be in compliance with the then-current PCI Standards and MERCHANT acknowledges that it is the MERCHANT's sole obligation to ensure that it possesses the most current version of the PCI Standards. MERCHANT agrees it will not disclose a cardholder account number, personal information, or other transaction information to third parties other than to MERCHANT'S agent, BANK, or BANK'S agent for the sole purpose of assisting MERCHANT in completing the transaction or as required by Applicable Laws. If storing of material containing cardholder account numbers or imprints is absolutely necessary, MERCHANT must store all material containing such information in an area limited to selected personnel and render all data unreadable prior to discarding, in all cases in accordance with the PCI Standards. **MERCHANT agrees it will not under any circumstances retain or store "sensitive authentication data" (as such term is defined in the PCI Standards) subsequent to authorization of a transaction.**
- M. Duty to Cooperate. MERCHANT agrees to provide, at its sole cost and expense, such assistance and cooperation as the BANK, its representatives, or any Payment Network may request from time to time including, without limitation, with the investigation and/or remediation of a suspected, threatened, or actual data compromise incident affecting MERCHANT or any person acting on behalf of MERCHANT. If MERCHANT is undergoing a forensic investigation at the time of the execution of the Application, MERCHANT will (i) notify BANK of the nature and details of such forensic investigation, and (ii) fully cooperate with such forensic investigation until its completion.
- N. Duty to Honor All Cards. MERCHANT will honor all cards provided:
- 1) the card is valid and is presented to MERCHANT at the time of the sale by the authorized cardholder or an authorized user of the card account;
  - 2) the card is used as payment for products or services that are sold or rendered by MERCHANT; and
  - 3) the MERCHANT has followed applicable procedures as established by BANK for completion of sales drafts.
- O. MERCHANT acknowledges that a card is "valid" for purposes of this Section 2.N only if it is presented on or after the valid date, if any, and before the expiration date shown on its face.
- P. Use and Identification of Third Parties. MERCHANT may designate a third party that does not have a direct agreement with BANK as its agent for the direct delivery of data-captured Visa transactions to VisaNet for clearing and settlement. MERCHANT must:
- 1) Advise BANK that it will use a third party agent;
  - 2) Agree that BANK must reimburse MERCHANT only for the amount of Visa transactions delivered by BANK to VisaNet, less the appropriate discount fee;
  - 3) Assume responsibility for any failure by its agent to comply with the Visa International Operating Regulations, including but not limited to, any violation resulting in a chargeback or loss.
- Q. MERCHANT agrees to identify all third party agents of MERCHANT involved in the payment process that may have access to cardholder data.
- R. Liability for Acts and Omissions. MERCHANT will be solely responsible and liable for all acts and omissions of its employees, agents, and independent contractors, and for the breach or violation of this Agreement or any Applicable Laws, Operating Rules, and/or PCI Standards.
- S. Completion of Sales Drafts. MERCHANT agrees to complete sales drafts in conformity with the terms of this Agreement and the Operating Rules of each applicable Payment Network. Moreover, the MERCHANT acknowledges and agrees as follows:
- 1) For transactions that are not mail, phone orders or internet orders, and unless the transaction is a Swiped Card Transaction, MERCHANT must obtain the imprint of the card, including the name of the cardholder, the cardholder account number and the card's expiration date;
  - 2) MERCHANT is not authorized to accept mail or phone order transactions unless specifically authorized by BANK and that acceptance of such transactions without written authorization from BANK will constitute a breach of the Agreement. If MERCHANT is authorized by BANK to accept mail or phone order transactions, MERCHANT must obtain the name of the cardholder, the cardholder account number and the expiration date;
  - 3) MERCHANT must obtain the signature of the cardholder or authorized card user for card present transactions. The letters MO or TO, as the case may be for a mail order or telephone order transaction, shall be clearly indicated on the sales draft; and
  - 4) MERCHANT must make available and deliver to each cardholder following MERCHANT'S receipt of an authorization relating to any card transaction a sales receipt, with such sales receipt to contain the following minimum information:
    - a. The date of the sale;
    - b. A short description of the products sold or rendered;
    - c. The total cash price of the sale or the words "deposit" or "balance" if full payment is to be made in this manner at different times on different sales drafts;
    - d. The city and state wherein such transaction occurred; and
    - e. Type of fuel sold and odometer reading (if permitted by POS device) in the case of fleet card transactions.
  - 5) MERCHANT will deliver a completed copy of the sales draft to the cardholder.
- T. Obligation to Capture Cards. MERCHANT will use its reasonable, best efforts to recover any card: (i) on VISA cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number, (ii) if MERCHANT is advised by BANK (or its designee), the issuer of the card or the designated voice authorization center to retain it, (iii) if MERCHANT has reasonable grounds to believe the card is counterfeit, fraudulent or stolen, or not authorized by the cardholder, (iv) on Discover Network cards, if the printed four digits on the signature panel do not match the last four digits of the embossed account number, or if the card does not have the Discover Network acceptance mark in the lower right corner on both sides of the card, or (v) for MasterCard, the embossed account number, indent printed account number and/or encoded account number do not agree, or the card does not have a MasterCard hologram on the lower right corner of the card face.
- U. Maintenance of Swiped Card Transaction Ratio. MERCHANT must ensure that the Swiped Card Transaction Ratio for any given month is equal to or greater than eighty percent (80%).
- V. Maintenance of Net Processing Volume Threshold. MERCHANT must maintain a monthly Net Processing Volume of less than or equal to \$5,000.00 U.S. dollars.

- W. Maintenance of Average Sales Ticket Amount. MERCHANT must maintain an Average Sales Ticket Amount of less than or equal to \$250.00 dollars.
- X. Duty to Avoid Excessive Chargebacks. MERCHANT agrees it will not allow or experience a number of chargebacks against its merchant account in excess of one percent (1%) of the number of sales transactions processed for each month.
- Y. Maintenance of Return Threshold. MERCHANT agrees it will not allow or experience the dollar amount of returns to exceed twenty percent (20%) of the average monthly dollar amount of MERCHANT's card transactions.
- Z. Future Delivery of Goods/Services. MERCHANT agrees it will not present any sales draft or other memorandum to BANK for processing (whether by electronic means or otherwise) that relate to the sale of goods or services for future delivery without BANK'S prior written authorization. If the BANK has authorized the MERCHANT to engage in the sale of goods and/or services with a future delivery date in writing and in advance, MERCHANT will (i) maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions, and (ii) not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services.
- AA. Submission of Sales Drafts for Clearing. MERCHANT agrees to electronically deposit sales drafts and credit vouchers no later than the business day following the transaction date.
- BB. Obligation to Notify Bank of Changes. MERCHANT must notify BANK in writing of any changes to the information in the Application, including but not limited to:
- 1) Transfer or sale of any substantial part of its total assets, or the liquidation of MERCHANT;
  - 2) Change of the basic nature of its business, including selling any products or services that were not sold at the time the Application was submitted to BANK, or if the MERCHANT begins to engage in any Restricted Transactions;
  - 3) Change of ownership or transfer of control of its business; or
  - 4) Upon MERCHANT entering into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in MERCHANT'S business.
- CC. The notice must be received by BANK within ten (10) business days of the change. MERCHANT is liable to BANK for all losses and expenses incurred by BANK arising out of a failure to report changes to BANK.
- DD. Surcharging Prohibited. MERCHANT agrees it will not require, unless specifically allowed by law, any cardholder to pay any part of any discount or charge imposed upon MERCHANT by this Agreement, whether through any increase in price or otherwise. Further, unless specifically allowed by law, MERCHANT will not require a customer presenting a card for payment to pay any charge not also required from a person paying cash. These terms shall not, however, be construed as prohibiting discounts to customers for payments in cash.
- EE. Refinancing of Existing Debt. MERCHANT agrees it will not process for payment any transaction(s) representing the refinancing of an existing obligation of a cardholder including, but not limited to, obligations:
- 1) previously owed to MERCHANT;
  - 2) arising from the dishonor of a cardholder's personal check; and/or
  - 3) representing the collection of any other pre-existing indebtedness.
- FF. Compliance with VISA Prohibitions. MERCHANT agrees to abide by transaction processing prohibitions, as specified in the Merchant Prohibitions section of the Visa International Operating Regulations.
- GG. Cash Advances. MERCHANT must report to BANK its participation in any cash advance program outside of that offered by BANK. Moreover, MERCHANT agrees it will not deposit any transaction for the purpose of obtaining or providing a cash advance. MERCHANT agrees it will not disburse funds in the form of cash.
- HH. Fraudulent/Illegal Transactions; Transactions Originating from Other Sources. MERCHANT agrees it will not accept or deposit any fraudulent/illegal transactions and may not under any circumstances present for processing or credit, directly or indirectly, a transaction which originated with any other merchant or any other source.
- II. No Credits without Preceding Debit. MERCHANT agrees it will not initiate a transaction to credit any card account unless such card account had a preceding debit to such card account submitted by MERCHANT.
- JJ. Telemarketing Transactions Prohibited. MERCHANT agrees it will not deposit telemarketing transactions under this Agreement unless authorized by BANK in advance of processing any telemarketing transactions. If MERCHANT deposits any such transaction, MERCHANT may be immediately terminated and BANK may hold funds and/or demand an escrow pursuant to Sections 5 and 9; further, MERCHANT may be subject to Payment Networks reporting requirements set forth in Section 9.G.
- KK. Deposit of Duplicate Transactions Prohibited. MERCHANT will not deposit duplicate transactions. MERCHANT shall be debited for any adjustments for duplicate transactions and shall be liable for any chargebacks which may result therefrom. Merchant will be liable for any fees assessed by any Payment Networks against the BANK as a result of such duplicate transactions.
- LL. No Sales Transactions to Effectuate Chargeback. MERCHANT agrees it will not initiate a sales transaction using a card in an attempt to collect a chargeback.
- MM. Prohibited Activities. MERCHANT agrees it will not engage in any activity that is prohibited by the Operating Rules of any applicable Payment Networks. Moreover, MERCHANT agrees that it will not (i) deposit a transaction receipt that does not result from an act between the cardholder and MERCHANT, or (ii) violate disclosure of account and Visa transaction information prohibitions, as specified in the Visa International Operating Regulations, or those of any other Payment Networks.
- NN. No Minimum/Maximum Purchase Amounts Using Card. MERCHANT agrees it will not establish a minimum or maximum dollar amount as a condition of honoring a VISA, MasterCard, or Discover Network transaction.
- OO. Conditions Precedent to Settling Card Transaction. MERCHANT agrees it will not submit a card transaction for settlement until it does one of the following:
- 1) Completes the transaction;
  - 2) Ships or provides the goods, except as specified in the Delayed Delivery Transactions section of the Visa International Operating Regulations; or
  - 3) Performs the purchase service, or obtains the cardholder's consent for a recurring transaction.
- PP. Prohibition of Scrip. MERCHANT will not permit any card to be used to purchase Scrip.
- QQ. Fraudulent and Unauthorized Transactions. MERCHANT agrees not to submit a transaction for settlement through any Payment Network that MERCHANT knows or should have known to be either fraudulent or not authorized by the cardholder.

- RR. Restrictions on Postcard Use. MERCHANT agrees it will not require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed.
- SS. Exclusive Use of Card Account Numbers. MERCHANT agrees it will not request or use an account number for any purpose other than as payment for its goods or services.
- TT. Identification of Fulfillment Houses. Any MERCHANT who relies on any fulfillment houses must submit information to BANK about the fulfillment house, and provide contact information so that the underwriter may contact the fulfillment house to determine its financial capacity to support the MERCHANT.
- UU. Adding Taxes. MERCHANT agrees it will not add any tax to transactions, unless Applicable Law expressly requires that a MERCHANT be permitted to impose a tax.
- VV. No Compelled Waiver by Cardholder. MERCHANT agrees that it will not require a cardholder, as a condition for honoring any card, to sign a statement that waives the cardholder's right to dispute the transaction with any issuer of such card.
- WW. Travelers Cheques. MERCHANT agrees it will not disburse funds in the form of travelers cheques if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from MERCHANT.
- XX. Responsibility of Merchant for Storage of Sales Drafts. MERCHANT assumes the responsibility for storage of all sales drafts and credit vouchers. Failure to provide BANK with requested documentation within five (5) business days after receipt of such request may result in the transaction being charged back to MERCHANT, and BANK shall have the right to debit the Account for full amount of the transaction in question.
- YY. Authorization from Merchant to Bank to Debit Merchant Account. MERCHANT understands that there shall be Fees, chargebacks, assessments, and/or other amounts which shall arise as a result of the Agreement, both during and after termination of the Agreement. MERCHANT authorizes BANK to debit via ACH from any account held by MERCHANT at any financial institution in the amount of any amount owed by MERCHANT under this Agreement, including but not limited to any amounts owed for Fees, chargebacks and/or assessments which shall arise after termination of this Agreement. This ACH authorization will remain in effect after termination of this Agreement and until BANK has received written notice terminating this authorization and all MERCHANT'S obligations to BANK have been paid in full. MERCHANT will indemnify and hold BANK harmless for any action they take pursuant to this Section. MERCHANT will also indemnify and hold harmless any other financial institution for acting in accordance with any instructions from BANK pursuant to this Section.
- ZZ. Guaranty. As a primary inducement to BANK to enter into this Agreement, the Guarantor(s) identified in the Application, by signing the Application, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by MERCHANT of each of its duties and obligations to BANK pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands further that BANK may proceed directly against any Guarantor individually or all Guarantors collectively without first exhausting its remedies against any other person or entity responsible therefor to it or any security held by BANK or MERCHANT. Guarantor(s) authorizes BANK to debit via ACH from any account singly or jointly held by Guarantor(s) at any financial institution in the amount of any amount owed by Guarantor(s) under this Agreement. This ACH authorization will remain in effect after termination of this Agreement, and until BANK has received written notice terminating this authorization and all Guarantor(s) obligations to BANK have been paid in full. Guarantor(s) will indemnify and hold BANK harmless for any action they take pursuant to this Section. Guarantor(s) will also indemnify and hold harmless any other financial institution for acting in accordance with any instructions from BANK pursuant to this Section. This guarantee will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of BANK. Guarantor(s) understand that the inducement to BANK to enter into this Agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the guaranty.

### **3. REPRESENTATIONS AND WARRANTIES BY MERCHANT**

- A. MERCHANT unconditionally represents and warrants to BANK that all transactions submitted to BANK hereunder will represent the indebtedness of a cardholder with whom MERCHANT has completed a sales transaction in amounts set forth therein for products and/or services only, shall not involve any element of credit for any other purposes and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by a cardholder under the Operating Rules of any Payment Networks, or the Consumer Credit Protection Act (15 USC 1601) or other relevant Applicable Laws. Further, MERCHANT warrants that any credit voucher which it issues represents a *bona fide* refund or adjustment on a card sale by MERCHANT with respect to which a sales draft has been accepted by the BANK.

### **4. RIGHTS, DUTIES, AND RESPONSIBILITIES OF BANK**

- A. BANK WILL USE DUE CARE IN PROVIDING SERVICES COVERED BY THIS AGREEMENT AND THE PERFORMANCE OF ALL SERVICES CALLED FOR IN THIS AGREEMENT SHALL BE CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. THE LIABILITY, IF ANY, OF BANK UNDER THIS AGREEMENT FOR ANY CLAIMS, COSTS, DAMAGES, LOSSES AND EXPENSES FOR WHICH IT IS OR MAY BE LEGALLY LIABLE, WHETHER ARISING IN NEGLIGENCE OR OTHER TORT, CONTRACT, OR OTHERWISE, WILL NOT EXCEED IN THE AGGREGATE THE AMOUNT OF FEES PAID BY MERCHANT, LESS INTERCHANGE AND ASSESSMENTS, OVER THE PREVIOUS TWELVE (12) MONTH PERIOD, CALCULATED FROM THE DATE THE LIABILITY ACCRUED. IN NO EVENT WILL BANK OR ITS AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES EVEN IF BANK OR ITS AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.
- B. BANK will provide MERCHANT with any information possessed by BANK which may enable MERCHANT to recover from others the amount of any sale charged back to MERCHANT.
- C. BANK will accept for purchase all sales drafts deposited by MERCHANT that comply with the terms of this Agreement. The electronic submission of sales transactions to BANK through Services provided by BANK shall constitute an endorsement by MERCHANT to BANK of the sales drafts representing such transactions. Unless otherwise informed by BANK and provided MERCHANT completes batch operation prior to 5:59pm CST, BANK will pay MERCHANT up to three (3) business days after the date the BANK receives the transaction submission, the total face amount of each sales draft, less any credit vouchers, discounts, Fees or adjustments determined daily or monthly. All payments, credits and charges are subject to audit and final checking by BANK, and prompt adjustments shall be made for inaccuracies discovered.
- D. Notwithstanding any other provisions of this Agreement, BANK may refuse to accept any sales draft, or revoke its prior acceptance, in any of the following circumstances:

- 1) the sale giving rise to such sales draft was not made in compliance with all the terms and conditions of this Agreement including applicable Operating Rules of the Payment Networks, as well as Applicable Laws; or
- 2) The cardholder disputes his/her liability on any of the following grounds: (i) that the products covered by such sales drafts were returned, rejected or defective in some respect or MERCHANT failed to perform any obligation on its part in connection with such products, and MERCHANT has refused to issue a credit voucher in the proper amount; or (ii) MERCHANT has failed to obtain a signature on the sales draft and the cardholder claims he/she did not authorize the transaction. In the event of a revocation of a prior acceptance of a sales draft, BANK may withdraw from the Account any amount previously paid to MERCHANT for such sales draft.

- E. BANK will provide electronic data capture, monthly activity statement, and will assign customer service phone numbers that will accept all customer service calls and other communications from MERCHANT relating to the Services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and chargebacks.
- F. BANK will process all requests for drafts and chargebacks from card issuers and will provide MERCHANT with timely notice of requests and chargebacks for documentation.
- G. BANK will provide, at MERCHANT'S option, a 24 hour toll-free help line for servicing of peripheral equipment that is supplied by the BANK or its agents to the MERCHANT.
- H. MERCHANT authorizes BANK to control and disburse all appropriate settlement funds to the merchant.
- I. MERCHANT authorizes BANK to provide generally available information relating to MERCHANT, including (without limitation) name of merchant, full merchant address, applicable merchant category/SIC code, merchant's processor(s), and such other information as any Payment Network may require from BANK for, among other reasons, inclusion in publicly available merchant/ATM locator directories.

**5. Account Monitoring.**

- A. MERCHANT acknowledges that BANK may, but shall not be obligated to, monitor MERCHANT'S daily deposit and transaction activity. MERCHANT agrees that BANK may, upon reasonable grounds, including but not limited to exceeding Net Processing Volume thresholds and Average Sales Ticket Amount thresholds, divert the disbursement of MERCHANT'S funds from any account MERCHANT has in ANY financial institution for any reasonable period of time required to investigate suspicious or unusual deposit activity. BANK will make good faith efforts to notify MERCHANT immediately. BANK shall have no liability for any losses, either direct or indirect, which MERCHANT may attribute to any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-interest bearing account at BANK, and not be released until such time that questionable/suspect/fraudulent transactions have been resolved to the BANK'S satisfaction.
- B. Independent sales office agents of BANK are not permitted to directly access, or hold merchant funds, whether from settlement or reserves.

**6. DISCLAIMER OF WARRANTIES**

- A. DISCLAIMER OF WARRANTIES. BANK SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR ANY DEVICE/TERMINAL OR COMMUNICATIONS FACILITIES UTILIZED BY MERCHANT (SUCH DEVICE/TERMINAL AND ANY COMMUNICATIONS FACILITIES SHALL BE REFERRED TO COLLECTIVELY AS "EQUIPMENT") IN CONJUNCTION WITH THE SERVICE AND IN NO WAY WARRANTS THE CAPABILITIES OF ANY SUCH EQUIPMENT USED IN CONJUNCTION WITH THE SERVICE. MERCHANT EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT ITS SOLE RISK. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE SERVICE IS PROVIDED ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. BANK SHALL NOT BE LIABLE FOR ANY SERVICE OR EQUIPMENT OUTAGES OF ANY DURATION. BANK MAKES NO EXPRESS WARRANTY REGARDING THE SERVICE, THE EQUIPMENT, OR ANY CARD READER PERIPHERAL DEVICE AND DISCLAIMS ANY IMPLIED WARRANTY, WITH RESPECT THERETO INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NONINFRINGEMENT. BANK MAKES NO WARRANTY THAT THE SERVICE WILL MEET MERCHANT'S REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES BANK MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. BANK MAY MAKE IMPROVEMENTS AND/OR CHANGES IN THE SERVICE AT ANY TIME. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**7. LIMITATIONS OF LIABILITY; INDEMNIFICATION**

- A. BANK shall have no liability for any negligent design or manufacture of any Card Reader Peripheral Device used in connection with the Service.
- B. MERCHANT will indemnify and hold BANK harmless for any breach of this Agreement, including but not limited to indemnity from all liability, loss and damage, including reasonable attorney's fees and costs which may arise as a result, whether direct or indirect, of any act or failure to act or the breach of any warranty by MERCHANT pursuant to the terms of this Agreement, the Operating Rules of any Payment Network(s), and/or the PCI Standards. In the event any Payment Network or other entity assesses a fine, reimbursement fee or assessment to BANK due to the direct or indirect actions or omissions of MERCHANT, MERCHANT shall reimburse BANK the amount of the fine, reimbursement fee or assessment.

**8. DISPLAY OF MATERIALS; TRADEMARKS**

- A. Display of Promotional Materials and Marks: Use of the Marks. MERCHANT agrees to prominently display the promotional materials provided by BANK in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Mark") associated with card(s) shall be limited to informing the public that card(s) will be accepted at MERCHANT'S place(s) of business. MERCHANT'S use of promotional materials and marks is subject to the direction of BANK. MERCHANT shall use or display each Mark only in accordance with the Operating Rules of the applicable Payment Network or owner of such Mark.
- B. Termination of Use of Promotional Materials and Marks. MERCHANT may use promotional materials and Marks during the term of the Agreement and shall immediately cease use and return any inventory to BANK upon any termination thereof.
- C. No Endorsement; No Ownership. MERCHANT shall not use any promotional material or Marks associated with VISA, MasterCard or Discover Network in any way which suggests or implies that either endorses any goods or services other than payment card services. Further, MERCHANT may be subject to immediate termination if deemed to be creating harm or loss to the goodwill of VISA, MasterCard, Discover Network, or BANK. MERCHANT acknowledges and agrees that, except for the limited right to display the Mark as expressly provided herein, nothing in this Agreement conveys any rights, titles, or interests in or to any Marks owned by, licensed to, the BANK or any Payment Networks and such Marks remain owned by their respective owners and/or licensors.

- D. Discover Network Program Marks. 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 the Discover Network 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 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 are 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.

## 9. TERMINATION

- A. Termination by Bank for Cause. This Agreement may be immediately terminated by BANK for the following reasons:
- 1) Reasonable belief that MERCHANT is employed in practices that involve elements of fraud or conduct deemed to be injurious to cardholders, the BANK, or any Payment Networks;
  - 2) Reasonable belief that MERCHANT will constitute a risk to BANK by failing to meet the terms of this Agreement;
  - 3) Issuing cash advances as set forth in Section 2.GG;
  - 4) MERCHANT appears on any Payment Network's security reporting;
  - 5) MERCHANT fails to comply with PCI Standards;
  - 6) Any Payment Network requests or requires that this Agreement with MERCHANT be terminated by BANK;
  - 7) MERCHANT has breached any provision, representation, or warranty of this Agreement; or
  - 8) for any circumstances that create or could potentially create harm or loss to the goodwill of the BANK or any Payment Network (including, without limitation, VISA).
- B. Termination by Bank without cause. BANK may terminate this Agreement immediately and without cause upon providing MERCHANT with written notice of such termination.
- C. Reservation of Funds Following Termination. In the event of termination whether with or without cause, MERCHANT expressly authorizes BANK to withhold and discontinue the disbursement of all funds related to payment transactions of MERCHANT in process of being collected and deposited. Collected funds may be placed in an escrow account at BANK until MERCHANT pays any outstanding charges or losses. Further, BANK reserves the right to require MERCHANT to deposit additional amounts, based upon MERCHANT'S processing history and/or anticipated risk of loss to BANK, into an escrow account. BANK shall be granted a continuing security interest in funds held pursuant to this Section. Said escrow account shall be maintained for a minimum of one hundred eighty (180) days after the termination date and for any reasonable period thereafter, during which cardholder disputes may remain valid under the Operating Rules of any Payment Networks. Any balance remaining after chargeback rights have expired will be disbursed to MERCHANT.
- D. Security Interests. This Agreement will constitute a Security Agreement under the Uniform Commercial Code. MERCHANT grants to BANK a security interest in and lien upon: (i) all funds at any time in the Account (ii) all funds in diverted account (see Section 5), (iii) the Reserve Account (as defined below), (iv) future sales drafts, (v) all rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement and (vi) any other account MERCHANT has in any financial institution (collectively, the "Secured Assets"). Upon request of BANK, MERCHANT will execute one or more financing statements or other documents to evidence and perfect this security interest. MERCHANT represents and warrants that no other party has a security interest in the Secured Assets. These security interest 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 and owing 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. MERCHANT will obtain from BANK written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant represents and warrants that no other person or entity has a security interest in any property in which it has granted BANK a security interest hereunder. MERCHANT agrees that this is a contract of recoupment and BANK is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, MERCHANT agrees not to contest or object to any motion for relief from the automatic stay filed by BANK. MERCHANT hereby grants BANK the right to offset by ACH any account MERCHANT has in ANY financial institution in order to collect any amount due from MERCHANT to BANK pursuant to this Agreement.
- E. Reserve Account. (i) Establishment: Upon termination of this Agreement or upon BANK'S request and within BANK'S sole discretion, MERCHANT will establish and maintain a deposit ("Reserve Account") at BANK in an amount reasonably determined by BANK necessary to protect BANK'S interests under this Agreement. (ii) Funding: BANK has the right to debit the Account to establish or maintain funds in the Reserve Account. BANK may deposit into the Reserve Account funds it would otherwise be obligated to pay MERCHANT, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. (iii) Funds: in no event will MERCHANT be entitled to return of Reserve Account funds before two-hundred seventy (270) days following the effective date of termination of this Agreement, provided however, that MERCHANT will remain liable to BANK for all liabilities occurring beyond such two-hundred seventy (270) day period. BANK will have sole control of the Reserve Account. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code Section 365, as amended from time to time, MERCHANT must establish or maintain a Reserve Account in an amount satisfactory to BANK. Reserve Account is a non-exclusive BANK remedy.
- F. Recoupment and Set-Off. BANK has the right of recoupment and set-off from the Reserve Account or the Account. This means that it may offset any outstanding/uncollected amounts owed from: (i) any amounts it would otherwise be obligated to deposit into the MERCHANT Account, and (ii) any other amounts MERCHANT may owe BANK under this Agreement or any other agreement. MERCHANT acknowledges that in the event of a bankruptcy proceeding, in order for MERCHANT to provide adequate protection under Bankruptcy Code Section 362 to BANK, MERCHANT must create or maintain the Reserve Account as required by BANK, and BANK will have the right of offset against the Reserve Account for any and all obligations which MERCHANT may owe to BANK, without regard to whether the obligations relate to sales drafts initiated or created before or after the filing of the bankruptcy petition.
- G. Reporting to MATCH. If MERCHANT is terminated for cause, MERCHANT acknowledges that BANK may be required to report MERCHANT'S business name and the names and other identification of its principals to the Member Alert to Control High-Risk (M.A.T.C.H.) maintained by MasterCard. MERCHANT expressly agrees and consents to such reporting in the event



MERCHANT is terminated for any of the reasons specified as cause by VISA, MasterCard, and Discover Network. Furthermore, MERCHANT shall release and hold BANK harmless for claims which MERCHANT may raise as a result of such reporting.

- H. Bankruptcy. MERCHANT will immediately notify BANK of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against MERCHANT or any of its principals. MERCHANT will include BANK on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to BANK under Applicable Law. MERCHANT acknowledges that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of MERCHANT, and, as such, cannot be assumed or assigned in the event of MERCHANT'S bankruptcy.

10. Notices.

- A. All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed first class, postage prepaid, addressed as follows:  
1) Woodforest National Bank, P.O. Box 8339, The Woodlands, TX 77387-8339  
2) If to MERCHANT, at the MERCHANT'S place of business as also stated on this Merchant Application or current mailing address on file with BANK.

11. Additional Terms.

- A. Applicability of Operating Rules; Compliance. This Agreement is subject to the Operating Rules of the Payment Networks, as such Operating Rules may be amended or modified from time to time. The parties hereto are bound by and shall fully comply with such Operating Rules and by such amendments or additions as may be made thereto by the Payment Networks.
- B. Inspection of Books and Records. Representatives of BANK may, during normal business hours, inspect, audit and make records of MERCHANT'S books, accounts, records and files pertaining to any card or electronic payment transactions. During the term hereof, at the request of BANK, MERCHANT shall provide up to two (2) years of current financial statements and other related information that is requested by BANK. MERCHANT will preserve its records of any card or electronic payment sale and any refund or credit adjustment thereon for at least seven (7) years from the date of such sale, credit, refund or adjustment. MERCHANT agrees that BANK may obtain information from credit reporting agencies about the MERCHANT and the principal once a year or upon exceeding the average monthly volume while this Agreement is in effect.
- C. Confidentiality. MERCHANT acknowledges and agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of BANK (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that MERCHANT uses to protect its own confidential information but in no event shall the degree of care employed by MERCHANT be less than a reasonable degree of care.
- D. Privacy. Woodforest National Bank complies with the Bank Secrecy Act and the USA Patriot Act to help the government fight the funding of terrorism and money laundering activities. Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account or becomes a new customer of the financial institution. Our Customer Identification Program is designed to comply with all federal mandates. When MERCHANT opens an account or obtains a service from the BANK, BANK will ask for owner/officer name, address, date of birth, and other information that will allow BANK to identify MERCHANT. BANK will also be asking MERCHANT to provide identifying documentation, such as driver's license or other forms of identification. BANK can and will refuse to open an account or provide services if adequate identification is not provided, or BANK is dissatisfied with the identification provided. BANK collects non-public personal information about MERCHANT from the following sources: Information received from applications or other forms; Information about transactions with BANK, our affiliates, or others; and Information received from consumer reporting agencies. As required by the USA PATRIOT Act, BANK also collects information and takes actions necessary to verify MERCHANT identity. BANK may disclose all the information collected, as described above, to companies that perform marketing services on BANK'S behalf or to other financial institutions with which BANK has joint marketing agreements. BANK does not disclose any non-public personal information about our MERCHANTS to anyone, including our affiliates, except as permitted by Applicable Law. Internally, BANK restricts access to non-public personal information about MERCHANTS to associates who need to know that information to provide customer support and or to maintain records. BANK'S internal conduct clearly defines the manner in which an associate may access, use, or disseminate non-public information. BANK maintains physical, electronic, and procedural safeguards that comply with federal standards to guard MERCHANT'S non-public personal information. If MERCHANT decides to close account(s) or become an inactive merchant, BANK will adhere to the policies and practices as described in this notice.
- E. Entire Agreement. This Agreement, along with the Merchant Payment Card Application (which is hereby incorporated herein for all purposes), contains the sole, complete and entire agreement and understanding between the parties concerning the subject matter set forth in this Agreement. All prior discussions and negotiations have been, and are, merged and integrated into, and superseded by, this Agreement.
- F. Force Majeure. BANK shall not be liable for any damages resulting from any delay in performance or non-performance caused by circumstances beyond BANK'S control including, but not limited to acts of God, fire, flood, war, governmental action, accident, labor trouble or shortage, or other events of similar effect in connection with BANK'S obligation herein.
- G. Section Headings. All section and paragraph headings used in this Agreement are included for reference purposes only and are not to be given any substantive affect.
- H. Transfer and Assignment. This Agreement may not be transferred or assigned by MERCHANT, whether by operation of law or otherwise, without the prior written consent of BANK and any such transfer or assignment for which the BANK does not provide its consent shall be void. MERCHANT acknowledges that it may not delegate any of its obligations or responsibilities arising from or related to this Agreement to any other person.
- I. Attorney's Fees and Costs. MERCHANT shall be liable for and indemnify BANK for any and all attorney's fees and other costs and expenses paid or incurred by the BANK in the enforcement hereof, or in collecting any amounts due from MERCHANT to BANK hereunder or resulting from any breach by MERCHANT of any of the terms or conditions of this Agreement.
- J. Binding Effect; Governing Law; Jurisdiction and Venue; Limitations on Actions. This Agreement shall be binding upon, and inure to the benefit to, the parties hereto and their respective successors and permitted assigns. Subject in all cases to Section 13 hereof, any action or proceeding on this Agreement by or against BANK shall be initiated and maintained under the jurisdiction of the State of Texas with venue in the state courts of Montgomery County, Texas or the federal courts located in the Southern District of Texas (Houston, Texas). This Agreement shall be construed and governed by the laws of the State of

Texas, excluding its conflicts of laws principles. **The Parties hereto agree that any action(s) relating to any Claims (as defined below) by one Party against any other Party must be brought in accordance with Section 13 hereof within two (2) years of the date the Party asserting the Claims obtained knowledge (actual or constructive) of the facts and circumstances giving rise to such Claim(s). Any action(s) not brought within that two (2) year time period shall be barred, without regard to any other limitations period set forth by Applicable Law.**

- K. **Severability.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect.
- L. **Survivability.** The following sections shall survive the execution, delivery, expiration and/or termination of this Agreement and shall remain enforceable after such expiration or termination: 1.A, 2.A, 2.B, 2.C, 2.G, 2.I, 2.J, 2.K, 2.L, 2.M, 2.R, 2.U, 2.V, 2.W, 2.X, 2.Y, 2.XX, 2.YY, 2.ZZ, 3, 4.A, 4.B, 4.D, 4.F, 4.H, 4.I, 5, 6, 7, 9.C, 9.D, 9.E, 9.F, 9.G, 9.H, 10, 11.A, 11.B, 11.C, 11.D, 11.E, 11.F, 11.G, 11.H, 11.I, 11.J, 11.K, 11.L, 11.M, 12, and 13.
- M. **Cumulative Rights; Non-Waiver.** The rights conferred upon BANK in this Agreement are not intended to be exclusive of each other or of any other rights and remedies. Rather, each and every right of BANK at law or in equity will be cumulative and concurrent and in addition to every other right. BANK may at any time and in our sole discretion delay or waive enforcing any of BANK'S rights or remedies under this Agreement or under Applicable Law without losing any of those or any other rights or remedies. Even if BANK does not enforce its rights or remedies at any one time, BANK may enforce them at a later date.

## 12. AMERICAN EXPRESS CARD ACCEPTANCE

- A. If MERCHANT elects to accept any cards issued, directly or indirectly, by American Express or any of its affiliates, MERCHANT agrees to adhere to, and be bound by, the American Express Card Acceptance Agreement, which is accessible by visiting [www.merchantfoundry.com](http://www.merchantfoundry.com).

## 13. ARBITRATION

- A. As used solely in this provision (Arbitration), the term "you" will mean MERCHANT and, if applicable, any Guarantor(s) and their successors and permitted assigns and the terms "we" and "us" will for all purposes mean the BANK and its successors and assigns, and their respective independent contractors, agents, employees, directors, officers, and representatives.
- B. You and we each agree that any Claim (as defined below) that you or we elect to be arbitrated through binding arbitration under this provision will be arbitrated instead of litigated in court under the circumstances and procedures set forth below, even if a lawsuit has already been initiated with respect to that Claim or a related or different Claim. The term "Claim" (a) means any claim, dispute or controversy between you and us arising from or relating to the Services provided under this Agreement, this Agreement, any prior related agreement that you may have had with us, and the validity, enforceability or scope of this provision, and (b) includes claims of every kind and nature, including but not limited to initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statute, common law and equity. The term Claim is to be given the broadest possible meaning and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (i) the Services subject of this Agreement or any prior agreement, and (ii) advertisements, promotions or oral or written statements related to the Services.
- C. Upon the election by you or us of arbitration, any Claim(s) will be resolved pursuant to this arbitration provision and the applicable rules and procedures (collectively, the "Rules and Procedures") of the American Arbitration Association ("AAA"), who shall serve as the arbitration administrator, in effect at the time the Claim(s) is/are filed. If for any reason the AAA is unable or unwilling, or ceases, to serve as arbitration administrator, another nationally recognized arbitration organization utilizing similar rules and procedures will be substituted by us. With respect to any Claims covered by this provision for which neither party has elected arbitration for a particular Claim, a party who has asserted a Claim in a lawsuit in court may still elect arbitration with respect to any Claim subsequently asserted in that lawsuit by any other party or parties. You may obtain copies of the current rules, forms, and instructions for initiating an arbitration with the AAA by contacting the AAA as follows: on the web at [www.adr.org](http://www.adr.org) or by writing to AAA at 1633 Broadway, 10th Floor, New York, NY 10019. This provision expressly delegates all decisions regarding the enforceability (including, but not limited to, challenges based on unconscionability, public policy, vindication of rights, or otherwise) to the arbitrator.
- D. **IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO ANY CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED FOR IN THE RULES AND PROCEDURES OF THE AAA. FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.**
- E. Notwithstanding anything in this Agreement to the contrary, you and us agree not to invoke the right to arbitrate any Claims you bring in small claims court or an equivalent court so long as such Claim(s) is/are pending only in that court and brought and maintained only on an individual basis by you. Moreover, this arbitration provision does not limit or constrain our right to interplead funds in the event of claims by several parties.
- F. **There will be no authority for any Claims to be arbitrated on a class action basis.** Any arbitration hearing that you attend will take place in the county or federal judicial district in which you reside, or by telephone, or at such other reasonably convenient location as agreed by the parties. At your written request, we will temporarily advance up to \$500 towards the filing, administrative and/or hearing fees for any Claim that you may file against us after you have paid an amount equivalent to the fee, if any, for filing such a Claim in state or federal court (whichever is less) in the judicial district in which you reside. At the conclusion of the arbitration, the arbitrator will decide who will ultimately be responsible for paying the filing, administrative and/or hearing fees in connection with the arbitration. Furthermore, at the conclusion of the arbitration, the prevailing party shall recover its reasonable attorney's fees, costs and expert witness fees from the non-prevailing party; provided, that in the event that we are the prevailing party, we agree not to seek such an award or claim such fees unless (i) the substance of your Claims or the relief sought by you is deemed by the arbitrator to be frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), and/or (ii) the aggregate amount of your Claims in the arbitration exceeded \$75,000.00.
- G. This provision is made pursuant to a transaction involving interstate commerce and will be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et seq., as amended. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations and will honor claims of privilege recognized at law. The arbitrator shall be empowered to grant whatever relief would be available in court under law or in equity. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of appeal

provided by the FAA and except that, if the amount in controversy exceeds \$100,000, any party can appeal the award to a three-arbitrator panel administered by the AAA, which will reconsider *de novo* any aspect of the initial award requested by the appealing party. The decision of the panel will be by majority vote. The costs of such an appeal will be borne by the appealing party regardless of the outcome of the appeal.

- H. This provision will survive termination of the Services and/or this Agreement as well as the repayment of all obligations owing by MERCHANT in connection with this Agreement. If any portion of this provision is deemed invalid or unenforceable under any law or statute consistent with the FAA, it will not invalidate the remaining portions of this arbitration provision or the Agreement; provided, however, if the limitations on class actions are struck in a proceeding brought on a class basis, without impairing the right to appeal such decision, this entire arbitration provision (other than this proviso) shall be null and void in such proceeding. In the event of a conflict or inconsistency between the Rules and Procedures of the AAA and this arbitration provision, this provision will govern. If a third party seeks to, or a court allows a third party to, represent either party on a class basis with respect to any Claims, either party shall continue to have the right to enforce individual arbitration of those Claims under this Agreement.

- I. Agreement Revision Date: 05/01/2017