MERCHANT ACCOUNT APPLICATION AND AGREEMENT V1.8

INTERNAL USE ONLY	
Merchant #	Reseller
	Tradewinds Enterprises, Llc

BUSINESS INFORMATION

CORPORATE / LEGAL NAME

FEDERAL TAX ID NUMBER

LOCATION ADDRESS | CITY | STATE | ZIP

MERCHANT NAME (DBA OR TRADE NAME) ☐ **Information same as above corporate / legal**

LOCATION ADDRESS | CITY | STATE | ZIP

CONTACT INFORMATION

BUSINESS PHONE | FAX NUMBER | BUSINESS EMAIL | WEBSITE ADDRESS

PROCESSING INFORMATION

AVERAGE TRANSACTION AMOUNT | MAXIMUM TRANSACTION AMOUNT | MONTHLY VOLUME | AMEX MONTHLY VOLUME

$ | $ | $ | $

DESCRIBE YOUR PRODUCT/SERVICE: | MCC/SIC CODE:

PAYMENT CARD INDUSTRY DATA SECURITY STANDARD: MUST PROVIDE COPY OF SELF ASSESSMENT QUESTIONNAIRE. IF APPLICABLE, MUST PROVIDE CERTIFICATE OF COMPLIANCE. MERCHANTS HAVE 90 DAYS AFTER BOARDING TO BECOME PCI COMPLIANT BY PROVIDING SAQ AND/OR SCAN, OR WILL BE CHARGED NON-COMPLIANCE FEE.

ENTITY TYPE

☐ INDIVIDUAL / SOLE PROPRIETOR ☐ PARTNERSHIP ☐ CORPORATION ☐ GOVERNMENT ☐ LLC ☐ NON-PROFIT (MUST PROVIDE 501C LETTER) ☐ PUBLICLY TRADED PA/PC

YEARS IN BUSINESS: | STOCK SYMBOL (IF PUBLICLY TRADED COMPANY):

LOCATION

BUILDING TYPE:	☐ SHOPPING CENTER	☐ OFFICE BUILDING	☐ INDUSTRIAL BUILDING	☐ RESIDENCE	
MERCHANT:	☐ OWNS	☐ RENTS			
AREA ZONED:	☐ COMMERCIAL	☐ INDUSTRIAL	☐ RESIDENTIAL		
SQUARE FOOTAGE:	☐ 0-500	☐ 501-2,500	☐ 2,501-5,000	☐ 5,001-10,000	☐ 10,000+

PRINCIPALS

PLEASE LIST ALL PRINCIPALS WHO, DIRECTLY OR INDIRECTLY, THROUGH ANY CONTRACT, ARRANGEMENT, UNDERSTANDING, RELATIONSHIP OR OTHERWISE, OWN 25 PERCENT OR MORE OF THE EQUITY INTERESTS OF THE LEGAL ENTITY LISTED IN THIS APPLICATION:

1. PRINCIPAL NAME:

FIRST | LAST | SSN | % OWNERSHIP | TITLE

ADDRESS | CITY | STATE | ZIP

EMAIL | PHONE NUMBER

DRIVERS LICENSE NUMBER AND EXP DATE | DATE OF BIRTH

2. PRINCIPAL NAME:

FIRST	LAST	SSN	% OWNERSHIP	TITLE

ADDRESS	CITY	STATE	ZIP

EMAIL	PHONE NUMBER

DRIVERS LICENSE NUMBER AND EXP DATE	DATE OF BIRTH

3. PRINCIPAL NAME:

FIRST	LAST	SSN	% OWNERSHIP	TITLE

ADDRESS	CITY	STATE	ZIP

EMAIL	PHONE NUMBER

DRIVERS LICENSE NUMBER AND EXP DATE	DATE OF BIRTH

4. PRINCIPAL NAME:

FIRST	LAST	SSN	% OWNERSHIP	TITLE

ADDRESS	CITY	STATE	ZIP

EMAIL	PHONE NUMBER

DRIVERS LICENSE NUMBER AND EXP DATE	DATE OF BIRTH

CONTROLLING PERSON

COMPLETE THE FOLLOWING INFORMATION FOR ONE INDIVIDUAL WITH SIGNIFICANT RESPONSIBILITY FOR MANAGING THE LEGAL ENTITY LISTED IN THIS APPLICATION, SUCH AS: AN EXECUTIVE OFFICER OR SENIOR MANAGER (E.G., CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER, CHIEF OPERATING OFFICER, MANAGING MEMBER, GENERAL PARTNER, PRESIDENT, VICE PRESIDENT, TREASURER); OR ANY OTHER INDIVIDUAL WHO REGULARLY PERFORMS SIMILAR FUNCTIONS. IF APPROPRIATE, AN INDIVIDUAL LISTED UNDER THE SECTION ABOVE MAY ALSO BE LISTED IN THIS SECTION.

IS THIS INDIVIDUAL ALREADY LISTED IN THE PRINCIPAL SECTION. ***(If No, please complete the next section)*** ☐ NO ■ YES

FIRST	LAST	SSN	% OWNERSHIP	TITLE

ADDRESS	CITY	STATE	ZIP

EMAIL	PHONE NUMBER

DRIVERS LICENSE NUMBER AND EXP DATE	DATE OF BIRTH

GENERAL INFORMATION

HAVE MERCHANT OR OWNERS / PRINCIPALS EVER FILED: ☐ BUSINESS BANKRUPTCY ☐ PERSONAL BANKRUPTCY ☐ NEVER FILED

IF YES, PLEASE EXPLAIN:

DOES THIS BUSINESS CURRENTLY PROCESS CARDS? ☐ NO ☐ YES

IF YES, CURRENT PROCESSOR:

HAVE MERCHANT OR OWNERS / PRINCIPALS EVER BEEN TERMINATED FROM ACCEPTING BANKCARDS FOR THIS BUSINESS OR ANY OTHER BUSINESSES? ☐ NO ☐ YES

IF YES, PLEASE EXPLAIN:

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WHICH PAYMENTS WOULD YOU LIKE TO ACCEPT? (CHECK ALL THAT APPLY.)

☐ VISA, MASTERCARD, DISCOVER ☐ AMERICAN EXPRESS OPTBLUE® ☐ AMERICAN EXPRESS ESA#: _____ ☐ PIN DEBIT ☐ EBT - EBT FNS NUMBER: _____

NOTES:

* See, Merchant Agreement, Section 46 for details regarding participation in American Express OptBlue.

☐ By checking this box, Merchant opts out of receiving future commercial marketing communications from American Express.
Note that you may continue to receive marketing communications while American Express updates its records to reflect your choice. Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express.

SALES METHOD (MUST EQUAL 100%)

IN PERSON _____ %	MAIL/PHONE _____ %	E-COMMERCE _____ %
Card-present (i.e swiped, dipped, NFC, etc.)	Card-absent	Card-absent, Internet based

BANK ACCOUNT INFORMATION (ATTACH VOIDED CHECK)

ROUTING NUMBER: ACCOUNT NUMBER:

BANK ACCOUNT FOR*: ☐ Debits (such as fees & chargebacks) ☐ Deposits (such as payouts) OTHER (describe): _____

ROUTING NUMBER: ACCOUNT NUMBER:

BANK ACCOUNT FOR*: ☐ Debits (such as fees & chargebacks) ☐ Deposits (such as payouts) OTHER (describe): _____

*If no selection is made, then the Bank Account listed will be used for Debits and Deposits

MERCHANT QUESTIONNAIRE (PLEASE PROVIDE ALL APPLICABLE INFORMATION)

A. FOR ALL MERCHANTS

i. PLEASE DESCRIBE YOUR REFUND/RETURN POLICY

ii. PLEASE LIST EQUIPMENT AND/OR SOFTWARE USED TO PROCESS CARDS (POINT-OF-SALE, TERMINAL, PAYMENT GATEWAY, ETC.)

B. FOR CARD-NOT PRESENT MERCHANTS (E-COMMERCE & MOTO)

i. INVENTORY MAINTAINED:

☐ ON-SITE ☐ OFF-SITE (I.E. WAREHOUSE). IF SO, PROVIDE ADDRESS _____

☐ 3RD PARTY FULFILLMENT CENTER. IF SO, PROVIDE FULLY EXECUTED FULFILLMENT AGREEMENT ☐ SERVICE ONLY (NO PRODUCTS SOLD)

ii. ARE THERE ANY OTHER COMPANIES INVOLVED IN SHIPPING OR FULFILLING PRODUCT/SERVICE (I.E. FULFILLMENT CENTER)?

☐ NO ☐ YES. IF SO, PROVIDE FULLY EXECUTED FULFILLMENT AGREEMENT

iii. DO YOU OFFER RECURRING AND TIME-EXTENDED SERVICES (SUBSCRIPTIONS, MEMBERSHIPS, RECURRING PLANS, ETC.)? IF YES, PLEASE DESCRIBE AND INCLUDE DURATION

N/A

iv. CUSTOMER PROFILE (ESTIMATE THE PERCENTAGE OF SALES IN EACH CATEGORY – MUST ADD UP TO 100%)

INDIVIDUAL CONSUMERS: %	BUSINESSES: %	GOVERNMENT: %

v. CUSTOMER LOCATION PROFILE (ESTIMATE THE PERCENTAGE OF EACH CARDHOLDER'S LOCATION – MUST ADD UP TO 100%)

LOCAL: %	NATIONAL: %	INTERNATIONAL: %

vi. HOW LONG AFTER CHARGING THE CUSTOMER IS THE PRODUCT FULFILLED OR DOES THE SERVICE BEGIN?

WITHIN: ☐ 24 HOURS ☐ 2 DAYS ☐ 3-10 DAYS ☐ 11-30 DAYS ☐ 31-90 DAYS ☐ 90 + DAYS

vii. HOW LONG AFTER THE TIME OF ORDER DOES THE CARDHOLDER RECEIVE THE PRODUCT OR SERVICE?

WITHIN: ☐ 24 HOURS ☐ 2-5 DAYS ☐ 6-10 DAYS ☐ 11+ DAYS

viii. IS THE CARDHOLDER CHARGED AT:

☐ TIME OF ORDER ☐ UPON SHIPMENT

ix. DO YOU HAVE A RETAIL LOCATION (FOR MOTO/INTERNET MERCHANTS)? IF YES, PLEASE CONFIRM PHYSICAL ADDRESS

x. HOW DO YOU ADVERTISE (INTERNET, MAGAZINES, TV, ETC.)? LIST ALL THAT APPLY:

xi. IS YOUR BUSINESS SEASONAL?

☐ YES ☐ NO

IF YES, WHICH MONTHS?

☐ JANUARY ☐ FEBRUARY ☐ MARCH ☐ APRIL ☐ MAY ☐ JUNE
☐ JULY ☐ AUGUST ☐ SEPTEMBER ☐ OCTOBER ☐ NOVEMBER ☐ DECEMBER

FEE SCHEDULE (SCHEDULE A)

TRANSACTION PRICING

Interchange Plus Pricing

Pass Through Interchange Plus	Percentage: 0.30000 %

Tiered Pricing

Qualified Rate	Mid-Qual Surcharge*	Non-Qual Surcharge*
Percentage: ____ %	Percentage: ____ %	Percentage: ____ %

*Rate will be added to the Qualified Rate.

Rate ☐ Flat Rate ☐ Surcharge ☐ Dual Pricing

Visa/MasterCard/Discover Percentage: ____ %	Offline Debit: ☐ Pass-through Network Fees Percentage: ____ %

American Express

American Express (OptBlue)	Percentage: 0.00000 %

EBT & PIN Debit

EBT Rate	PIN Debit Rate: ☐ Pass-through Network Fees
Percentage: 0.00000 %	Percentage: 0.30000 %
Authorization Fee: $ 0.10000	Authorization Fee: $ 0.10000

If no pin-debit fees are filled in, the default rate of 0.85% + $0.35/trans will be assessed to the account if actual PIN-debit transaction are processed.

Special Pricing or Exception Notes

OTHER FEES

Authorization Fee	$ 0.10000	**Batch Fee**	$ 0.05000
Transaction Fee	$ 0.00000	**Chargeback Fee**	$ 35.00000
Monthly Dashboard Access Fee	$ 5.00000	**Retrieval Fee**	$ 5.00000
Voice Authorization/IVR Fee	$ 0.75000	**AVS Transaction Fee**	$ 0.05000
Monthly Minimum Fee	$ 25.00000	**Monthly Fee**	$ 10.00000
Application Fee	$ 0.00000	**Other** Include Fee Type & Billing Method (One time, monthly, etc.)	
Annual Fee	$ 0.00000	$ 0.00000 Fee Type:	Billing Method: One Time
Monthly PCI Fee	$ 5.00000	$ 0.00000 Fee Type:	Billing Method: One Time

POS HARDWARE

Purchase: $____ + tax & shipping Equipment Billable to: ■ Merchant ☐ Reseller

Non-Billable programs: ☐ Terminal Placement Program* ☐ Stage Only (VAR/Reprogram)

*The undersigned Merchant agrees to pay shipping & handling on the initial shipment of the designated equipment below. Upon request of termination of services prior to the completion of the 36 month equipment commitment, the undersigned Merchant agrees to return all provided equipment to ISO within seven (7) days or will be subjected to the debit for the amount of $500 as cost of provided terminal and $200 for the cost of the provided pinpad. Further, Merchant will be charged for equipment in the event it is returned in damaged condition. For the Terminal Placement Program, there will also be a fee of $20-$30, based on the equipment, which shall be charged monthly per terminal, in addition to any other fees which may apply.

Merchant is responsible for any local Sales or Use Tax on the cost of the equipment and will be debited separately once equipment is shipped. If the above is blank, the Merchant will be billed

Terminal Type: bar sheet only

SERVICE PROVIDER FEES

☐ Gateway	☐ Wireless	☐ POS System	☐ Per Trans Fee	☐ Setup Fee	☐ Monthly Fee	☐ Other Fee
$ 0.00000	$ 0.00000	$ 0.00000	$ 0.00000	$ 0.00000	$ 0.00000	$ 0.00000
☐ Gateway	☐ Wireless	☐ POS System	☐ Per Trans Fee	☐ Setup Fee	☐ Monthly Fee	☐ Other Fee
$	$	$	$	$	$	$

Please list any other service providers:

The Qualified Rate & Pass Thru Interchange Plus programs include all Visa, MasterCard, and Discover Cards, unless otherwise noted. ISO shall apply a wholesale fee of 0.20% to all American Express transactions for Merchants in the American Express OptBlue Program, and such wholesale fee shall be in addition to the rates set forth above where applicable. American Express shall deduct a fee from each Charge from Merchant submitted to American Express by Bank or ISO for settlement ("Wholesale Fee"). The Wholesale Fee is not interchange. To pass through MasterCard's annual Acquirer License Fee, assessments for MasterCard transactions will be charged the current Acquirer License Fee. Card Brand & network fees are passed through at the rates established by the Card Brands. Chargeback reversal fee is $10 per occurrence. ACH Reject Fee is $35 per occurrence. Annual IRS Reporting Fee is $1.95 annually and charged the first month. PCI non-compliance is $25 per month. Arbitration Fee is $25 per occurrence. If a Transaction type that is not covered or included in the Merchant Agreement, such as PIN DEBIT or EBT, is submitted, ISO shall process and settle such Transaction, and shall assess fees consistent with other pricing in your Merchant Agreement. Merchant is responsible for providing any documentation necessary related to same.

MERCHANT ACCEPTANCE AND AGREEMENT

By executing this Merchant Application on behalf of the merchant described above (the "Merchant"), the undersigned individual(s): (i) represent(s) and warrant(s) that all information contained in this Merchant Application is true, correct and complete as of the date this Merchant Application is signed, and that such individual(s) have the requisite corporate power and authority to complete and submit this Merchant Application. Further, the signors hereof acknowledge and agree that the information provided herein is for the purpose of obtaining or maintaining a merchant account with the bank identified below ("Bank") on behalf of Merchant; and authorize Bank and/ or ISO to investigate the Merchant and each person listed on this Merchant Application, including, without limitation, obtaining credit information from credit bureaus and reporting agencies, and other information at Bank and/or ISO's discretion, for which Merchant grants explicit and continuing permission including through third parties. Merchant further acknowledges receipt of the Merchant Agreement, incorporated herein by reference and available at the link below (the Merchant Application together with the Merchant Agreement and any attachments, schedules, addenda or amendments thereto, shall be referred to as the "Agreement"), and agree, on behalf of the Merchant to be bound by the terms and conditions of the Agreement upon approval of this Merchant Application and issuance of a merchant account number. Merchant understands that this Agreement shall not take effect until the Merchant Application has been approved and a merchant number is issued. Further, Merchant understands that Merchant's information may be used to ensure continuity of services provided to you hereunder and explicitly consents to same, including, without limitation, by moving your services to a different sponsoring financial institution and/or back-end processors.

MERCHANT: (Legal Name of Business):

PRINCIPAL 1: (Signature of Principal/Owner): DATE:

PRINCIPAL 2: (Signature of Principal/Owner): DATE:

PRINCIPAL 3: (Signature of Principal/Owner): DATE:

PRINCIPAL 4: (Signature of Principal/Owner): DATE:

ISO (Maverick Bankcard, Inc.) (Signature): **NAME AND TITLE:**

BANK (Signature): **NAME AND TITLE:**

PERSONAL GUARANTEE

In consideration of Bank's and ISO's acceptance of this Agreement, the undersigned Principal ("Guarantor") (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of Merchant to Bank and ISO under the Agreement, and payment of all sums due there under, and in the event of default, hereby waives notice of default and agrees to indemnify Bank and ISO for all funds due from Merchant pursuant to the terms of the Agreement. Guarantor waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant, and further waives any and all rights or defenses arising by reason of any modification or change in the terms of the Agreement whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance there under is due, and / or any change in any interest or discount rate or fee there under. Guarantor acknowledges and agrees that Bank and ISO may proceed directly against Guarantor without first pursuing or exhausting remedies available against Merchant. To the fullest extent permitted by law, Guarantor waives all rights and defenses available to Guarantor respecting Bank and ISO's enforcement of this guaranty. In the event that Guarantor is a natural person, this guaranty shall survive the death of such Guarantor and be binding on such Guarantor's heirs and estate, without any diminution of the rights of the rights of Bank and ISO with respect to the guaranty. Without limiting any of the foregoing, Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because (a) this Agreement cannot be enforced against Merchant; (b) Bank and ISO make changes or modifications to this Agreement; (c) Bank and ISO release any other Guarantor or Merchant from any obligation under this Agreement; (d) any Applicable Law affects the rights of Bank and ISO under this Agreement; or (e) any other event occurs that may affect the rights of Bank and ISO against Guarantor or Merchant under this Agreement. Guarantor confirms that Guarantor, collectively or individually, is a party to the Agreement, and unconditionally and specifically authorizes Bank and ISO or their authorized agents, to debit any overdue fees, costs, chargebacks, assessments (sometimes called fines, fees, or penalties), expenses or obligations under the Agreement and / or any contractual relationship with Bank and ISO from any personal checking account or other account owned or controlled by Guarantor, and further to report any default hereunder on Guarantor's personal Credit Bureau Report. Guarantor agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of Bank in connection with the enforcement of this Guaranty.

PRINCIPAL/GUARANTOR 1:	DATE:	PRINCIPAL/GUARANTOR 2:	DATE:

PRINCIPAL/GUARANTOR 3:	DATE:	PRINCIPAL/GUARANTOR 4:	DATE:

BANK DISCLOSURE: Member Bank Information

The merchant account number ("MID") assigned to Merchant indicates which Bank accepted Merchant's offer to procure the Services:

AxiomBank	Avidia Bank	North American Banking Company		Westamerica Bank
258 Southhall Ln., Ste. 400	42 Main St.	1901 Oakcrest Ave., Ste. 9A	7690 N. Palm Ave., Ste. 101	3750 Westwind Blvd., Ste. 210
Maitland, FL 32751	Hudson, MA 01749	Roseville, MN 55113	Fresno, CA 93711	Santa Rosa, CA 95403
(800) 584-0015	(800) 508-2265	(651) 636-9654	(559) 439-0200	(800) 939-9942
MID Prefix. starts with 2099/3099/4011/5011	MID Prefix. starts with 3011/4099	MID Prefix. starts with 7011	MID Prefix. starts with 2011	MID Prefix. starts with 8011/815

IMPORTANT BANK RESPONSIBILITIES

1. A Visa Member (meaning, a financial institution that is a member of Visa's network) is the only entity approved to extend acceptance of VISA products directly to a Merchant.
2. A Visa Member must be a principal (signor) to the Merchant Agreement.
3. The Visa Member is responsible for educating Merchants on pertinent VISA Operating Regulations with which Merchants must comply.
4. The Visa Member is responsible for and must provide settlement funds to the Merchant.
5. The Visa Member is responsible for all funds held in reserve that are derived from settlement.

IMPORTANT MERCHANT RESPONSIBILITIES

1. Ensure compliance with cardholder data security and storage requirements. (To review these requirements, go to www.visa.com)
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement, which is attached hereto and available for viewing at the following link: https://dashboard.maverickpayments.com/legal/merchant-agreement/v1.8
4. Comply with VISA Operating Regulations.

The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the VISA Member – the Bank - is the ultimate authority should the Merchant have any problems.

PRINCIPAL 1:	DATE:	PRINCIPAL 2:	DATE:

PRINCIPAL 3:	DATE:	PRINCIPAL 4:	DATE:

SUMMARY OF KEY TERMS

This Summary of Key Terms provides a quick-reference table of important provisions in the Merchant Agreement (the "Agreement"). It is provided for your convenience only. The Summary of Key Terms is not part of the Agreement and does not modify the Agreement. If it conflicts with the Agreement, the Agreement will control. While ISO provides this chart to aid your understanding of the Agreement, reviewing it is not a substitute for reading all of the terms and conditions below.

PROVISION	SUMMARY	SECTION REFERENCE
Initial Term	Three years from issuance of your Merchant Account Number.	Section 4
Renewal Terms	The Agreement auto-renews for two-year periods unless earlier terminated by non-renewal or another permitted reason.	Sections 4, 26, and 27
Early termination fee	If the Agreement is terminated early, you will be charged the greater of (1) $295; or (2) the average overall monthly fees charged in the six (6) months preceding such termination, multiplied by the remaining months in the then-current term.	Section 4
Reserve Account	This Agreement authorizes ISO and Bank to establish, require, and/or create a Reserve Account to help satisfy current, future, or anticipated obligations pursuant to this Agreement.	Section 6
Dispute Resolution	Any dispute among the parties to this Agreement is subject to binding arbitration.	Section 39
Limitation of Liability	ISO and the Bank disclaim liability for certain categories of damages, including punitive damages. Their liability to you is also capped at a dollar amount not to exceed the last six (6) months of processing fees incurred by you.	Sections 22 and 23
Fees	You will be charged the fees on the Fee Schedule (Schedule A) to the Application. However, ISO may amend the terms of the Agreement or the fees you are charged from time to time. If ISO increases the fees it charges under this Agreement (as opposed to fees other parties assess and that ISO passes through to you), you will receive advance notice and will have the opportunity to cancel this Agreement without penalty within a prescribed window of time.	Fee Schedule (Schedule A) to the Application; Sections 7, 27, and 30

In consideration of the mutual promises and covenants contained in this Merchant Agreement (together with the Merchant Account Application, and any schedules, amendments, attachments or addenda thereto, the "Agreement"), and the agreement of Merchant to participate in the card processing services program established by Bank, the parties agree as follows:

1. Parties.

The parties to this Agreement are Maverick Bankcard, Inc, ("ISO"); Axiom Bank, N.A., FFB Bank, Avidia Bank, WestAmerica Bank, or North American Banking Company, depending on the party that is actually processing the Transactions, as defined herein("Bank"), and the Merchant set forth on the Merchant Application ("Merchant"). Either ISO or Bank, or both, shall have the authority to exercise rights belonging to ISO and Bank hereunder.

2. Definitions.

For the purposes of this Agreement and any attachments, addenda, schedules and/or exhibits hereto, the following definitions apply unless otherwise provided (see, e.g. Section 46) the context otherwise requires:

"Address Verification" means a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.

"Applicable Law" means: (i) all applicable federal, state and local laws, rules and regulations; and (ii) the Rules.

"Association(s)" means VISA U.S.A., Inc. ("Visa"), Mastercard International Incorporated ("Mastercard"), American Express Travel Related Services ("American Express"), and Discover Financial Services LLC ("Discover").

"Authorization" means, as of the time the Authorization is requested, an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the available credit limit associated with the applicable card and that the Card has not been reported as lost or stolen. All Transactions requiring Authorization by the Associations must be authorized. (Note: an Authorization does not mean that the person using the Card is the legitimate Cardholder, that the transaction will not be disputed, subject to chargebacks, or is otherwise valid).

"Authorization Center" means the facility or facilities designated from time to time by Bank or ISO to which Merchant shall submit all requests for Authorization.

"Business Day" means any day other than: (i) a Saturday or Sunday; or (ii) a day on which banking institutions in California are authorized by law or executive order to be closed (and on which Bank is in fact closed).

"Card(s)" means either a Visa, Mastercard or Discover credit card, debit card (or other similar card that requires a PIN for identification purposes), or pre-paid, stored-value or gift card.

"Cardholder" means a person authorized to use a Card.

"Chargeback" means the reversal of any Transaction pursuant to the Rules for any reason.

"Forced Sale" means a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.

"Full Recourse Transactions" means mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.

"Issuer" means a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.

"Merchant Statement" means an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 5 of this Agreement).

"Monthly Chargeback Violation," for any given calendar month, means each instance of a Chargeback where there have been more than five Chargebacks been processed in that month and the Transaction Ratio for that month is equal to or greater than 1%.

"Mid-Qualified Transactions" means any Transaction categorized as such by the processor designated by Bank to settle Transactions with the Associations

"Non-Qualified Transactions" means: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction categorized as such by the processor designated by Bank to settle Transactions with the Associations.

"Normal Transaction" means a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the Card's magnetic strip.

"Pre-Authorized Recurring Order Transaction" means a Transaction that has been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.

"Qualified Transactions" means any Transaction categorized as such by the processor designated by Bank to settle Transactions with the Associations.

"Rules" means all rules, regulations, by-laws, standards and procedures adopted and/or amended from time to time by the Associations (including without limitation, the Payment Card Industry Data Security Standard), Bank and each relevant Issuer. "Rules" shall be deemed to include the MOG, as defined in Section 46(o).

"Services" means the transaction processing services described on the attached Schedule A, as the same may be amended from time to time.

"Transaction" means the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the Transaction is approved, declined, or processed as a Forced Sale. The term "Transaction" also includes credits, errors, returns and adjustments.

"Transaction Chargeback Ratio" for any given calendar month, means the number of Chargebacks processed in that month divided by the total number of Transactions processed in that month.

"Wholesale Fee" means the fee that American Express shall deduct from each Charge from a Merchant submitted to American Express by ISO or Bank for settlement. The Wholesale Fee is not an interchange fee.

3. Services Provided to Merchant.

During the term of this Agreement, subject to the terms and conditions of this Agreement: (i) ISO shall provide technical documentation as needed, and technical support and customer support (including without limitation, Authorization, settlement and Chargeback processing and reporting) in order to allow Merchant to accept and process Transactions; and (ii) Bank shall provide the Services to Merchant. Merchant acknowledges that it may have been referred to ISO by an independent sales office, and such independent sales office is an independent contractor, is not an employee or agent of ISO or Bank, and has no authority to alter the terms of this Agreement without Bank and ISO's prior written approval. In the event that any representation made by an independent sales office conflicts with this Agreement, the terms of the Agreement shall control.

4. Term and Termination Fee.

This Agreement shall become effective when the Merchant Application form to which this Agreement is attached (or in connection with which this Agreement is provided) has been approved and a merchant number is issued (regardless of whether ISO or Bank signs this Agreement), and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of two (2) years each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and, regardless of any such termination, Merchant shall remain liable for all obligations to Cardholders and Bank that are incurred while this Agreement is in effect. In the event this agreement is terminated early, Merchant hereby authorizes Bank or ISO to charge an "Early Termination Fee" or "ETF" and deduct the greater of (a) $295; or (b) the average overall monthly fees charged and retained by ISO or Bank in the six (6) months during which Merchant used the Services preceding such termination, multiplied by the remaining months in the then current term. Notwithstanding the foregoing, in the event Merchant's processing in the six (6) months preceding such termination is not reflective of Merchant's overall use of the Services, and/or does not use the Services for any portion of the six (6) months preceding such termination, then ETF shall be calculated as follows: a range of 4-6% of the Merchant's approved monthly volume, multiplied by the number of months remaining in the then current term. The parties agree that the foregoing amounts are not a penalty, but instead a reasonable estimate of the damages that ISO and/or Bank would suffer by such early termination. The Early Termination Fee is in addition to, and not in lieu of, any other damages which ISO or Bank may be entitled and shall apply in the event of early termination for any reason whatsoever regardless of the party that ultimately terminates the Agreement.

5. Merchant Operating Account.

Prior to accepting any Cards, Merchant shall establish or maintain at least one demand deposit account at Bank, or at a financial institution approved by ISO, through which fees, charges, the Early Termination Fee, and any other amounts due to Bank and/or ISO or credits due to Merchant in accordance with this Agreement may be processed, charged and collected by Bank and ISO, (referred to hereinafter individually and collectively as the "Operating Account" each of which is subject to the terms and conditions hereof). Merchant authorizes Bank and/or ISO to debit all amounts Merchant owes Bank and/or ISO hereunder or any other agreement entered into between Merchant, Bank and/or ISO from an Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank and/or ISO, through the ACH Banking Network or by a manual debit of an Operating Account. Merchant waives any and all claims for loss or damage arising out of any such charges or debits to any Operating Account. Merchant agrees that during the Term of this Agreement and for a period of at least 12 months following termination, Merchant shall maintain an Operating

Account in good standing and shall maintain the balance of an Operating Account in an amount sufficient to satisfy its obligations hereunder or any other agreement entered into between Merchant Bank, and/or ISO. In the event ISO at any time receives a Notice of Change (NOC) in regards to the Operating Account, Merchant understands and agrees ISO may implement the changes set forth in such NOC in accordance with Applicable Law and to avoid disruption to Merchant's receipt of the Services hereunder.

6. Reserve Account.

(a) Upon, or at any time after, execution of this Agreement, Merchant authorizes Bank to establish a non interest bearing reserve account at Bank (the "Reserve Account") in such amount as Bank or ISO from time to time may determine in their sole discretion is sufficient help to satisfy Merchant current, future or anticipated obligations related to Transactions processed or otherwise incurred by Bank or ISO on Merchant's behalf under this Agreement (or any other agreement between Merchant, Bank, and ISO), Applicable Law or private regulation, including amounts owed to cover any Chargebacks, refunds, fees, assessments, charges, actual or potential losses, or risks, (collectively the "Liabilities"). Further, at any time during the term of this Agreement or at its termination, Bank and ISO may increase the amount of the Reserve Account. All decisions relating to the establishment, amount, increase, or distribution of the Reserve Account will be in the sole discretion of Bank and ISO.
(b) Bank or ISO may fund the Reserve Account by deducting amounts from payments due to Merchant, by effecting a charge against Merchant's Operating Account or against any of Merchant accounts at Bank or any other account authorized by Merchant via ACH payment as authorized herein, or by demanding payment from Merchant (which payment Merchant shall make within ten (10) days after receipt of any such demand).
(c) The Reserve Account will be maintained for a minimum of nine months after the date on which this Agreement terminates or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank and ISO, and commercially reasonable, and that Merchant's account with Bank under this Agreement and any other agreement entered into between Merchant and Bank is fully resolved. Merchant and ISO acknowledge and agree that only Bank, and/or ISO, may authorize or effect any release of funds from the Reserve Account to Merchant. Bank and ISO may withdraw funds from the Reserve Account at any time to offset any indebtedness of Merchant to Bank that may arise out of or relate to the obligations of Merchant under this agreement (including, but not limited to, Chargebacks and fees) or to offset any other indebtedness of Merchant to Bank under any other agreement entered into between Merchant and Bank. Upon expiration of this nine-month period, or greater time if Bank or ISO remain exposed to Liabilities under the Rules, any balance remaining in the Reserve Account will be paid to Merchant. To the extent commercially reasonable under the circumstances, Bank will inform Merchant of any debits from the Reserve Account during this nine-month period, or greater time if required under the Rules. Notwithstanding the foregoing, Bank, in its sole discretion, may release funds from the Reserve Account prior to the expiration of such nine-month period based on its assessment of the risks associated with effecting such release.
(d) Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, if it determines such action is reasonably necessary to protect its interest. Bank, on its own behalf or at ISO's request, may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and Bank or ISO. Merchant acknowledges and agrees that Merchant's interest in the Reserve Account is strictly limited to surplus funds in the Reserve Account, if any should exist, after satisfaction of all Liabilities. In the event that a court for any reason determines at any time that Bank is not the sole and exclusive owner of the funds in the Reserve Account, then Merchant also grants to Bank and ISO a security interest in and lien to all funds held in the Reserve Account, regardless of source, as part of a security agreement within the meaning of the Uniform Commercial Code. Merchant also grants to Bank and ISO a security interest in and lien upon:(a) the Operating Account (as set forth in Section 5) and all funds at any time in the Operating Account, whatever the source of such funds; (b) future Transactions; and (c) all Merchant's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Bank and ISO, Merchant will execute one or more financing statements or other documents to evidence this security interest, as may be required. Merchant authorizes and appoints ISO and Bank its attorney in fact to sign its name to any financing statement used for the perfection of any security interest or lien granted in this Agreement. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements between Merchant, ISO and Bank. With respect to such security interests and liens, Bank and ISO will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Bank and ISO written consent prior to granting a security interest of any kind in the Secured Assets to a third-party.
(e) In the event of a bankruptcy proceeding, Bank and ISO may exercise their rights under this Agreement to debit the Reserve Account for amounts due Bank and ISO regardless of the pre-petition or post-petition nature of the amount due Bank and/or ISO, and Merchant promises not to contest any Motion for Relief from Automatic Stay that Bank and ISO may decide to file to debit the Reserve Account. Further, Bank and ISO do not consent to the assumption of this Agreement in the event of a bankruptcy proceeding. Nevertheless if this Agreement is assumed Merchant agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. Sec. 365, as amended from time to time, (i) Merchant must establish or maintain a Reserve Account in an amount satisfactory to Bank and ISO; (ii) Bank and ISO have the right of recoupment and set off. This means that they may offset any outstanding/uncollected amounts owed to them from: (1) any amounts they would otherwise be obligated to deposit into the Account; and (2) any other amounts ISO and Bank may owe Merchant under this Agreement or any other agreement.
(f) The rights conferred upon Bank and ISO in this Section are not intended to be exclusive of each other or of any other rights and remedies of Bank and ISO under this Agreement, at law or in equity. Rather, each and every right of Bank and ISO at law or in equity will be cumulative and concurrent and in addition to every other right. Merchant acknowledges and agrees that Bank may, in its sole discretion, delegate or assign any of its rights, rotes, security interests, exercises of discretion or business judgment, responsibilities or obligations concerning any Reserve Account, including, without limitation, the right to establish, fund, maintain, hold in a bank account, debit, collect or release funds from or take any other actions or impose any other requirements with respect to any Reserve Account as are granted to Bank in this Section 6 or elsewhere in this Agreement, to any third-party entity that may provide back-end processing services to Merchant and/or otherwise bear the ultimate risk of losses associated with Merchant's Liabilities hereunder.

7. Fees.

Merchant shall pay all fees to Bank and ISO as specified on Schedule A, as amended by Bank or ISO from time to time. Merchant understands that the rates and fees charged are based in part upon Merchant's activity, including information provided on the Merchant Application. Bank and/or ISO reserve the right to adjust the fees in the event of change in processing activity, change in Application Law or regulation, and/ or as otherwise set forth herein, including, without limitation, Sections 30 and 31A. Bank or ISO shall collect all fees due in the manner set forth on the Agreement. For each Transaction, Bank or ISO will charge Merchant as follows:
(a) An amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction ("Merchant Discount Rate");
(b) A specified amount per Transaction ("Transaction Fee"); and
(c) A specified amount per Authorization ("Authorization Fee").
(d) As otherwise permitted or referenced in this Agreement.
The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on Schedule A. Merchant acknowledges and agrees that the foregoing fees, and other applicable Transaction Fees shall be charged, as applicable on all Transactions, including credits, errors, returns, and adjustments. Merchant understands that certain business types may be required to enter into additional terms and conditions specific to such Merchant's business type as a precondition to receipt of the Services described herein, including, without limitation entering into a Restricted Industry Addendum; any fees or amounts reflected in same shall be made part of and included in Schedule A. Different Merchant Discount Rates apply to Qualified, Mid Qualified and Non-Qualified Transactions, as shown on Schedule A. Merchant agrees that Bank will, and authorizes Bank to, deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on Schedule A. Merchant also agrees to pay to Bank or ISO the amount of any fees, charges or penalties assessed against Bank or ISO by any Association or Issuer for Merchant's violation of any Applicable Law, its breach of this Agreement, or violation of any Association rule or regulation. Merchant shall pay Bank or ISO for any other services provided to Merchant by Bank or ISO and for all other fees shown on Schedule A, including, but not limited to, monthly minimum fees, Chargeback fees and customer service fees. Merchant understands and agrees that fees charged in connection herewith and Merchant's receipt of the Services are provisional, and subject to adjustment.
The fees charged Merchant pursuant to this Agreement are based upon projections regarding Merchant’s anticipated volume, average transaction size and method of doing business, all as set forth in the Merchant Application, or as otherwise agreed to between Merchant, Bank and ISO. If these projections prove materially inaccurate, Bank and ISO may adjust Merchant's fees without prior notice and/or terminate this Agreement and impose an Early Termination Fee. Any such adjustment, or termination, shall be in addition to, and not in lieu of, any other remedies available to Bank and ISO.

8. Billing.

All amounts Merchant owes to Bank or ISO, for any reason, may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, set off against any account or property Bank or ISO holds for or on behalf of Merchant and any other method permitted by Applicable Law.

9. Security Interest.

As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank and ISO a security interest in: (i) the funds held in the Operating Account and in the Reserve Account; and (ii) any inventory with respect to which a Transaction has occurred but has not yet been fulfilled. Merchant will execute and deliver to Bank and ISO documents, in a form satisfactory to Bank and ISO, as Bank and ISO may reasonably request in order to perfect Bank's and ISO's security interest in the Operating Account, Reserve Account and such inventory, and will pay all costs and expenses associated with filing the same or this Agreement in all public filing offices, where filing is deemed by Bank and ISO to be necessary or desirable. Bank and ISO are authorized to file financing statements relating to the Operating Account, the Reserve Account and such inventory where authorized by law. Merchant appoints Bank and ISO as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or ISO.

10. Processing Transactions.

(a) Merchant shall obtain Authorizations and process Transactions using such equipment and software as may be approved from time to time by Bank and ISO, in its sole discretion (the "Equipment"). Merchant shall be responsible to ensure that all equipment is compliant with all Rules. Merchant shall validate Cards and Cardholders in face-to-face transactions as required by Applicable Law.
(b) Merchant shall obtain Authorizations for Transactions in a manner required by Applicable Law and in the manner, and following the processes and procedures, determined from time to time by Bank, in its sole discretion, and communicated to Merchant by either Bank or ISO.
(c) Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder’s consent for a Pre-Authorized Recurring Order Transaction.
(d) Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be illegal, fraudulent or not authorized by the Cardholder.
(e) Merchant shall not process a Transaction that does not result from an act between a Cardholder and Merchant.
(f) Merchant shall not request or use any Card number for any purpose other than as payment for its goods or services and such Transactions must conform to Merchant’s stated business activity as described in the Merchant Application.
(g) Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder’s specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

11. Prohibited Transactions. Merchant shall not do any of the following:

(a) Establish a minimum on debit cards or greater than $10.00 on credit cards or a maximum dollar Transaction amount;
(b) Obtain multiple Authorizations for amounts less than the total sale amount;
(c) Obtain Authorization for the purpose of setting aside the Cardholder’s credit line for use in future sales;
(d) Extend credit for or defer the time of payment of the total cash price in any Transaction;
(e) Honor a Card except in a Transaction where a total cash price is due and payable;
(f) Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
(g) Transmit or accept payment for any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;

(h) Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (ii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
(i) Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
(j) Re-process any Transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval;
(k) Initiate a Transaction credit without a preceding debit at least equal to the credit;
(l) Initiate a Transaction credit without a balance in the Operating Account at least equal to the credit;
(m) Use the Equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
(n) Use the Equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
(o) Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
(p) Disclose any information obtained through the Equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;
(q) 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;
(r) Disburse funds in the form of cash;
(s) Accept a Card to collect or refinance an existing debt (whether originally owed to Merchant or otherwise) that is considered uncollectible (for example, payments to a collection agency or attempts to recover funds for a dishonored check) except to the extent specifically permitted by Applicable Law;
(t) Issue a Transaction credit in respect of goods or services acquired in a cash transaction which are returned;
(u) Make any cash refund to a Cardholder who has made a purchase with a credit Card (all Transaction credits shall be issued to the same credit Card account number used in the sale);
(v) 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;
(w) Accept a Card for the purchase of Scrip (as defined by applicable VISA regulations), except to the extent specifically permitted by Applicable Law;
(x) Accept any payment directly from a Cardholder for previous Card charges incurred and processed by Merchant;
(y) Require, through an increase in price or otherwise, any Cardholder to pay any surcharge in connection with any Transaction or to pay any part of any charge imposed on Merchant by Bank except, in either case, as expressly permitted by, and under terms and conditions that comply in full with, Applicable Law;
(z) Provide cash to a Visa cardholder unless Merchant is either (i) participating in Visa Cash-Back Services or (ii) a hotel or cruise line;
(aa) Cause any Cardholder to waive its right to dispute a Transaction;
(bb) Request the Card Verification Value 2 data (as defined by Visa) on any paper order form;
(cc) Request a Cardholder account number for any purpose that is not related to payment for goods or services;
(dd) Add any tax to Transactions, unless applicable law expressly requires that a merchant be permitted to impose a tax, and only if such tax is included in the Transaction amount and not collected separately; or
(ee) Process payments for a product or service that has not been disclosed and approved by Bank and ISO. This includes web processing and processing on a website that has not been approved by Bank and ISO. Merchant shall disclose to Bank and ISO all URLs through which Merchant processes transactions or otherwise accepts at the time of executing this Agreement, upon request, and before processing through any URL not previously disclosed.
The foregoing description of prohibitions and other prohibitions, policies, rules and requirements referenced throughout this Agreement concerning the processing of Transactions, are subject to change, with or without notice, pursuant to Applicable Law and the Rules. In addition to any other rights or damages available to Bank or ISO, should Merchant engage in any of the prohibited transactions, including without limitation, that Merchant offers any products or services that are not bona fide and compliant with the Rules, Merchant shall be responsible to pay ISO an amount equal to the damages that ISO could suffer related to such prohibited conduct, in an amount no less than $10,000 per occurrence, plus all costs, fees, assessments, attorneys' fees and other costs and expenses incurred by ISO.

12. Prohibition of Furnishing Account Information;

Use of Third Parties. Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange any Card information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained through the use of a Card to any third-party. Merchant may use third parties that do not have a direct agreement with Bank as Merchant's agent for the direct delivery of Transactions for clearing and settlement if
(a) Merchant advises Bank that it will use a third-party processor in this capacity, identifying the third party so selected by Merchant;
(b) Merchant agrees that Bank will reimburse Merchant only for the Visa Transactions delivered by that third-party processor to VisaNet; and
(c) Merchant assumes responsibility for any failure by its third-party processor to comply with Applicable Law. Merchant shall notify Bank of the identity of any third party performing services to Merchant in connection with which such third party has access to any Card information.

13. Daily Reconciliation of Transactions, Electronic Access.

Merchant understands and agrees that communications related to the Services, and access to information, shall be made available electronically via an online portal provided by ISO, and that Merchant's use of same is subject to additional terms and conditions. Further, use of the online portal is a condition of receipt of the Services. Merchant understands that only the signor hereof will receive credentials initially for access to ISO's dashboard and electronic portal through which important information must be accessed and reviewed. Merchant agrees that Bank and ISO are entitled to rely on any instructions or directions (i) received through the online portal using approved credentials or (ii) from a person identifying themselves as an individual listed by Merchant as an authorized user, even (as applicable to both (i) and (ii)) in instances where Merchant claims that such credentials were misappropriated, or the instructions or directions are otherwise claimed to have been unauthorized. Without limiting the foregoing, ISO and Bank may rely on any instructions or directions (including those made via email) that include Merchant's MID as sufficient evidence of the sender's authority to provide instructions or directions on Merchant's behalf. Bank and ISO, to a limited extent, shall control and disburse all Transaction-related settlement funds to Merchant. Transactions with respect to which Bank receives payment from or through the Associations will be settled in the manner set forth in this Agreement, including, on a daily, monthly, or debit-based basis, and, except as otherwise expressly provided or permitted pursuant to the terms of this Agreement, Bank shall deliver payment to Merchant in connection with such Transactions by effecting a credit to the Operating Account equal to the reconciled and paid summary Transaction total of all of Merchant's total paid summary Transactions since the previous credit. Notwithstanding the foregoing, Bank may, in its sole discretion or at the direction of ISO, effect a credit to the Operating Account in connection with any Transaction prior to the point in time Bank receives payment in connection therewith from or through the Associations. In either case, Bank may, if necessary or appropriate, reduce any credit made to the Operating Account by, and/or Bank or ISO may require that Merchant pay to Bank or ISO an amount equal to: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the amounts, fees and charges, including (but not limited to) Chargebacks, Merchant owes Bank or ISO hereunder or under any other agreement entered into between Bank and Merchant or Merchant and ISO; (iv) all taxes, penalties, charges, fees and other items incurred by Bank or ISO that are reimbursable pursuant to this Agreement; (v) all applicable rates, fees and charges described on Schedule A; (vi) any amount Bank or ISO previously credited to the Operating Account that Bank or ISO determines, in good faith, was incorrectly so credited; and (vii) any amount Bank or ISO determines, in its sole discretion, represents unacceptable risk to the relevant Cardholder, ISO, or Bank. Any application of funds associated with the settlement of Transactions that differs from the foregoing must be agreed to, in writing, by Bank and Merchant and may not, in any respect, violate Applicable Law.
(a) Reconciliation of Transactions. In addition to the requirements of Section 15 below regarding Merchant Statements, Merchant is responsible for reconciling Transaction activity on its account(s). Merchant must review its processing statements on a regular basis. As a prerequisite to any recovery against Bank or ISO, or the initiation of any legal action against Bank or ISO, Merchant must notify ISO in writing of any dispute, discrepancy, problems, or issues of any kind associated with Merchant's processing activity or account within thirty (30) days of receiving the statement to which the issue relates. A Merchant receives a Merchant Statement on the date it is posted to the Merchant's online account, or if mailed, the third day after mailing. Merchant's failure to raise any issue in compliance with this Section shall result in Merchant's waiver of that issue and any right to recover on the same.
(b) Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer , Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer, or Bank receives adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

14. Adjustments and Returns.

Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If Merchant limits its acceptance of returned merchandise, or if Merchant is an Electronic Commerce Merchant, Merchant will ensure that its return policy is clearly set forth on the Transaction receipt or on Merchant's website, as required by Applicable Law. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay the excess to Bank. Merchant shall make no cash refunds on credit Transactions and shall handle all credit adjustments as provided in this Section 14. If no refund or return will be given, Merchant must advise Cardholder in writing, at the time of the Transaction, that the sale is a "final sale" and "no returns" are permitted. Merchant must advise Cardholder in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies, and shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

15. Recourse; Chargebacks; Merchant Statements.

The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement shall be without recourse to Merchant, except for: (i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) under any of the following circumstances:
(a) No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Bank, or the Transaction was submitted to the Bank or ISO thirty (30) days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
(b) The Transaction was based on a pre-authorization form, the Card on which the Authorization was based was canceled and Merchant was so notified prior to the Transaction;
(c) The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, and Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
(d) The Card expired prior to the date of the Transaction or the date of the Transaction was prior to the validation date, if any, indicated on the Card;
(e) The Transaction information required by this Agreement was not submitted to Bank, or the procedures required by this Agreement to be followed in connection with processing a Transaction were not followed;
(f) Bank or Issuer receives a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
(g) The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
(h) A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in the Transaction;
(i) The Transaction was made at or by a merchant other than Merchant;
(j) The Transaction otherwise violates the terms of this Agreement or any Applicable Law;
(k) A Transaction is charged back; or
(l) Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect. In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Merchant shall pay Bank the amount of the Transaction. Merchants have full liability for,

and must immediately pay, all Chargebacks and any and all fees, charges and liability assessments related to Chargebacks associated with any Transaction. ISO or Bank, without prior notice to Merchant, may: (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; and/or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. Merchant acknowledges that Bank and ISO have no independent control over whether a Transaction is charged back or the outcome of any particular Chargeback case. Further, Merchant acknowledges that Chargebacks may be managed by a third-party, and Merchant agrees to use and comply with the requirements any such third-party system and/ or process. If Merchant has reason to dispute or respond to a Chargeback, then Merchant must do so using the process provided on the applicable Chargeback notice, by the date provided on the applicable Chargeback, which deadlines are not set by ISO or Bank. Bank and ISO have no independent obligation to investigate or attempt to obtain a reversal or adjustment of any Chargeback. If Bank or ISO initiate legal action against Merchant for any unpaid Chargebacks or any other amounts due Bank or ISO hereunder including as related to Merchant's failure to be fully responsible for Chargebacks, Merchant shall pay the costs and attorneys' fees incurred by Bank and/ or ISO, whether suit is commenced or not.

Merchant shall be responsible for all amounts arising from or related to Chargebacks regardless of whether Merchant disagrees with the outcome of any particular Chargeback case.

In addition to any other remedy available to Bank or ISO, upon the occurrence of a Monthly Chargeback Violation, Merchant must pay to Bank or ISO, as applicable but in no case duplicative, a fee that is calculated as follows (where X in the table below is the Transaction Chargeback Ratio for the relevant calendar month and Y is the number of Chargebacks processed during the relevant calendar month):

Y	1.0% <X≤ 1.5%	1.5% <X≤ 2%	2% <X≤ 2.25%	2.25% <X≤ 2.5%	2.5% <X≤ 3%	3% <X≤ 3.5%	3.5% <X≤ 5%	5% <X≤ 7.5%	7.5% < X
5 - 25	$0	$10	$10	$15	$15	$20	$25	$40	$50
26 - 50	$10	$10	$15	$15	$20	$20	$25	$40	$50
51 - 75	$15	$20	$20	$20	$25	$25	$30	$50	$50
76 - 100	$15	$20	$20	$25	$25	$30	$35	$50	$50
101 - 125	$20	$20	$25	$25	$30	$35	$35	$60	$60
126 - 150	$20	$25	$25	$30	$35	$35	$40	$75	$75
151 - 175	$25	$30	$30	$35	$35	$40	$40	$75	$100
175+	$25	$30	$35	$35	$40	$40	$50	$100	$100

At least once each month, Bank or ISO shall provide or make available a statement (the "Merchant Statement") to Merchant. The Merchant Statement shall be accessed via the online portal or system through which merchant account activity may be monitored or reviewed. Access to such online portal or system may be conditioned upon additional terms and conditions, including terms and conditions related to privacy. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.

MERCHANT ACKNOWLEDGES AND AGREES THAT NEITHER BANK NOR ISO SHALL BE LIABLE OR OTHERWISE RESPONSIBLE TO MERCHANT, AND SHALL HAVE NO OBLIGATION TO REIMBURSE MERCHANT, FOR ANY UNDERPAYMENT TO MERCHANT OR OTHER DISCREPENCY THAT IS NOT REPORTED TO BANK OR ISO IN WRITING WITHIN 30 DAYS OF MERCHANT'S RECEIPT OF OR ACCESS TO THE APPLICABLE MERCHANT STATEMENT.

16. Retention of Information.

Merchant shall retain the information required to be submitted in connection with a Transaction or to be maintained in connection with a complaint for seven years from the date of the Transaction or the complaint. At the request of Bank, Merchant shall provide such information to Bank or ISO, as directed by Bank, within five (5) days of receipt of a request from Bank. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall, among other things, constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

17. Recovery of Cards.

Merchant will use its best efforts to reasonably and peaceably recover and retain any Card with respect to which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the Equipment; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card that it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

18. Customer Complaints.

Merchant shall respond promptly to inquiries from Cardholders and shall attempt to resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank or ISO, Bank or ISO may terminate this Agreement. Bank or ISO reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

(a) The Cardholder's name;
(b) The Card account number;
(c) The date and time the Cardholder asserted the claim or defense;
(d) The nature of the claim or defense; and
(e) The action that Merchant took in an attempt to resolve the dispute. Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

19. Confidentiality.

Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to ISO and to Issuers.

20. Compliance with Applicable Law.

General. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses, and that it is in compliance with all Applicable Law and Rules, as they may change from time-to time without notice, in connection with, without limitation, the following:

(a) operation of its business. Merchant represents and warrants that it understands the importance of complying with Applicable Law in connection with any and all actions it takes in connection with Transactions (including without limitation, complying with requirements relating to Transaction information, storage and disclosure), and covenants at all times to comply in full with all Applicable Law. Merchant further acknowledges and agrees that it is responsible for the actions of all of its employees while in Merchant's employ.

(b) Data Security Rules. Without limiting the generality of the foregoing or any other provision of this Agreement, Merchant understands that it and all of its employees, agents, representatives and service providers must comply with the Rules, including without limitation, those relating to Cardholder information security issues, non-disclosure of Cardholder information and Transaction documents, retention and storage of Cardholder and Transaction information and other security procedures adopted by the Associations. Merchant hereby confirms its agreement to abide by and fully comply with such Rules, including without limitation, the Rules and procedures described below:

(i) Visa Cardholder Information Security Program ("CISP"), Mastercard Site Data Protection Program, ("SDP") and Discover Information Security and Compliance (DISC) Visa, Mastercard, and Discover have implemented programs to protect Cardholder data. The CISP, SDP, and DISC, apply to Merchant if Merchant processes or stores Cardholder data as a result of Internet or mail/telephone acceptance of Visa, Mastercard, or Discover Card account information. A copy of the complete Visa Cardholder Information Security Standards manual and a Self-Assessment Worksheet can be obtained online at https://www.visa.com/cisp (Q,S), or from Bank, a copy of the SDP provisions can be obtained from Bank, and a copy of the DISC can be found at www. DiscoverGlobalNetwork.com/DISC. Visa, Mastercard, and Discover may impose restrictions, fines, or prohibit Merchant from participating in Visa, Mastercard, and Discover programs if it is determined that Merchant is non-compliant. Merchant may be required to comply with an audit to verify compliance with security procedures. The following list describes some of the current CISP, SDP, or DISC program requirements, with all of which Merchant may be required to comply, if applicable to Merchant.

(A) install and maintain a working network Firewall to protect data accessible via the Internet; (B) keep security patches up to-date; (C) encrypt stored data; (D) encrypt data sent across networks; (E) use and regularly update anti-virus software; (F) restrict access to data by business "need to know"; (G) assign a unique ID to each person with computer access to data; (H) don't use vendor-supplied defaults for system passwords and other security parameters; (I) track access to data by unique ID; (J) maintain a policy that addresses information security for employees and contractors; and (K) restrict physical access to Cardholder information. Merchant must also comply with the requirements of Section 10.3 of the Visa Rules in connection with suspected or confirmed lasses, thefts, compromises of information, and fraud or laundering associated with information. Please also note that this is not intended to be a complete list, and Merchant remains solely responsible for understanding and complying in full with all of the applicable CISP, SDP, and DISC requirements. See Section 46 for additional information and requirements related to American Express.

(ii) Transaction Information. Merchant acknowledges that the sale or disclosure of databases containing Cardholder account numbers, personal information, or other Transaction information to third parties is strictly prohibited by the Rules. Unless Merchant obtains consents from Bank, and each applicable Association, issuing bank and Cardholder, Merchant must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Transaction (including without limitation, the names, addresses and Card account numbers of Cardholders, copies of imprinted sales drafts and/or credit records, mailing lists, tapes or other media obtained in connection with a sales draft and/or credit record) except for purposes of authorizing, completing and settling Transactions and resolving any Chargebacks, retrieval requests or similar issues involving Transactions, other than pursuant to a court or governmental agency request, subpoena or order.

Merchant shall use proper controls for limit access to, and render unreadable prior to discarding all records containing Cardholder account numbers and Card imprints. Merchants may not retain or store magnetic stripe data after a Transaction has been authorized. If merchant stores any electronically captured signature of a Cardholder, Merchant may not reproduce such signature except upon the specific request of Bank. Merchant shall store all media containing Cardholder names, Cardholder account information, and other personal information as well as card imprints (such as sales drafts and credit records, auto rental agreements, and carbons) in an area limited to selected personnel and, prior to discarding any such information, destroy it in a manner that renders the data unreadable. Merchant further warrants and agrees that in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, it will not sell, transfer or disclose any materials that contain Cardholder account numbers, personal information, or Transaction information to third parties, and shall return the information to Bank and provide acceptable proof of destruction to Bank.

Merchant understands and agrees that Bank and/or ISO may, at any time, for any reason, request information and documentation which confirms Merchant's compliance with Applicable Law and the Rules. Merchant shall be fully responsible for any costs, fees or expenses which may arise in connection with fulfilling a request under this Section. Failure to provide such information in a timely manner may lead to termination of the Merchant Account may constitute an Event of Default as set forth herein.

21. Taxes.

Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If either Bank or ISO is required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank or ISO. If excise, sale or use taxes are imposed on Transactions, Merchant shall be responsible for the collection and payment thereof. Merchant shall not add any tax to any Transaction unless Applicable Law expressly provides that Merchant is permitted to impose a tax, and any such tax amount, if so allowed, shall be included in the Transaction amount and not collected separately. Bank or ISO shall be entitled to recover from Merchant any of said taxes paid by it on behalf of Merchant immediately after payment.

22. Limitation of Liability.

In addition to all other limitations on the liability of Bank and ISO contained in this Agreement, neither Bank nor ISO shall be liable to Merchant or Merchant's customers or any other person for any of the following:

(a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so; Any loss caused by a Transaction downgrade resulting from defective or faulty Equipment, even if such Equipment is owned by Bank or ISO;
(b) The unavailability of Services caused by the termination of contracts with computer

hardware vendors, processors or installers, whether terminated by Bank, ISO or any other person for any reason; or
(c) Interruption or termination of any Services caused by any reason except for failure of ISO to repair or replace Equipment at Merchant's expense (in which case, any resulting liability shall be for the sole account of ISO). At no time will ISO's liability exceed the amount of fees collected or reasonably expected to be collected from Merchant for this delay period.
NEITHER BANK NOR ISO SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD-PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR ISO PURSUANT TO THIS AGREEMENT. MERCHANT ACKNOWLEDGES THAT BANK AND ISO HAVE PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT BANK AND ISO HAVE NO LIABILITY WITH RESPECT TO ANY EQUIPMENT. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. IF THERE ARE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR ISO'S PERFORMANCE OR ANY FAILURE TO PERFORM, BANK'S AND ISO'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALLY REASONABLE TO DO SO.

23. Limitation on Damages.

IN NO CASE SHALL MERCHANT BE ENTITLED TO RECOVER DAMAGES FROM ISO OR BANK THAT EXCEED THE FEES RETAINED BY BANK AND ISO, AS APPLICABLE, PURSUANT TO THIS AGREEMENT DURING THE SIX-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES.

24. Indemnification.

Merchant agrees to indemnify and hold Bank and ISO harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or Bank's affiliates, ISO or affiliates of ISO) arising out of any of the following:
(a) Merchant's failure to comply with this Agreement;
(b) Any act or omission of Merchant;
(c) Merchant's failure to comply with any Equipment's user's guide;
(d) Merchant's failure to comply with any Applicable Law;
(e) Any investigation or inquiry by any law enforcement or regulatory authority relating to Merchant;
(f) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
(g) The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
(h) Merchant's selection of an Internet service provider or other telecommunication services provider;
(i) The theft of or damage or destruction to any Equipment; or
(j) Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.

25. Credit Investigation and Bank/ISO Auditing.

Bank or ISO may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank or ISO to complete the respective audit. Merchant authorizes parties contacted by Bank or ISO to release the credit information requested by ISO or Bank, and Merchant agrees to provide a separate authorization for release of credit information, if requested by Bank or ISO. Merchant shall deliver to Bank or ISO such information as Bank or ISO may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. Without limiting the generality of the foregoing, Merchant shall provide to Bank and ISO its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.

26. Termination of Agreement by Bank and ISO.

Bank or ISO may terminate this Agreement upon at least 30 days' prior written notice to the other parties. In addition, Bank may terminate this Agreement immediately upon written notice to Merchant upon the occurrence of any of the following (each, an "Event of Default"):
(a) Any information concerning Merchant obtained by Bank or ISO is unsatisfactory to Bank ISO, in their sole discretion.
(b) Any act of fraud or dishonesty is committed by Merchant, its employees or agents, or Bank or ISO believes in good faith that Merchant, its employees or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation.
(c) Chargebacks are excessive, in the opinion of Bank or ISO.
(d) There is a breach of any representation or warranty made by Merchant to Bank or ISO, or Merchant defaults in the performance of any of its obligations under this Agreement, including any material change in Merchant's the operations, processing activity, products, services, ownership, or financial condition.
(e) Merchant files a petition under any bankruptcy or insolvency law, or has an involuntary bankruptcy petition filed against it.
(f) Bank or ISO determines that the continuation of this Agreement may create harm or the loss of goodwill to Bank or any Association.
(g) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank or ISO hereunder, or terminates ACH authorization or otherwise fails to sufficiently fund the Operating Account.
(h) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank or ISO.
(i) Any insurance policy obtained by Bank, ISO or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason.
(j) Merchant fails to promptly provide financial statements or other documentation evidencing Merchant's financial stability and compliance with Applicable Law which are suitable to Bank and/or ISO, on request.
(k) ISO does not or cannot perform its duties under this Agreement and Bank determines that it is not feasible to provide the Services contemplated by this Agreement to Merchant. Bank is not obligated to provide replacement Services if ISO does not or cannot perform.
(l) Any Association requests or demands that this Agreement be terminated. Bank or ISO may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.
Bank or ISO may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.
In addition, should Merchant experience a material change to its business operations, fulfillment obligations, products, services, ownership, financial condition, or other change to its business that would impact its processing of transactions and the rights and risks of Bank or ISO under this Agreement, Merchant shall promptly notify Bank and ISO. Merchant understands and agrees that, in addition to all other rights and remedies afforded to Bank and ISO under this Agreement, Merchant and its principals, shall be liable to Bank and ISO for failing to notify Bank and ISO of such material change(s).
In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the date of such Transaction.
Merchant acknowledges and agrees that, under the Rules, certain merchant activity and termination of merchant processing agreements may result in Bank or ISO reporting merchants and their principals to the Associations for the inclusion on a terminated merchant file (e.g., Mastercard's "MATCH" list). Merchant, on behalf of itself and its principals, hereby consents to such reporting and waives any claim and holds Bank and ISO harmless related to the same, even in instances where Merchant or its principals believe such reporting to have been improper, injurious, or in error.

27. Termination of Agreement by Merchant.

For changes to this Agreement pursuant to Section 30(b), Merchant may terminate this Agreement upon at least 30 days' prior written notice; provided however, the right to terminate under this Section 27 shall not apply where Bank and ISO have elected to not impose such changes or modification to fees charged to Merchant, or have refunded the applicable fees, within the previous 60 days. For avoidance of doubt, Merchant's foregoing right to terminate does not apply to changes pursuant to Section 30(d).

28. Setoff.

In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and ISO may each set off any amounts due to Bank or ISO against any property of Merchant in Bank or ISO's possession or under its control. In addition, if any owner of Merchant also holds an ownership or other interest in another merchant account with ISO, Merchant hereby authorizes Bank and/or ISO to apply any amounts due from Bank or ISO to Merchant to help offset amounts due to Bank and/or ISO pursuant to such other merchant account(s).

29. Web Processing.

Merchant shall disclose to Bank and ISO all URLs for which merchant processes transactions or otherwise accepts payments at the time of executing this agreement, upon agreement, upon request, and before processing through any URL not previously disclosed. If Merchant processes through an unapproved URL or URLs, it may result in termination and/or funds being held with or without notice to Merchant.

30. Amendments to this Agreement.

From time to time Bank or ISO may amend this Agreement as follows, subject to Merchant's rights under Section 27:
(a) Bank or ISO may amend or delete Cards or Services listed in Schedule A by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank or ISO shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.
(b) From time to time, Bank or ISO may change all rates, fees and charges set forth on Schedule A. Bank or ISO will provide written notice to Merchant of all such amendments. Bank or ISO may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached or if the risk factors associated with processing Transactions increase. If notice is required, Bank or ISO will give written notice on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Section 27.
(c) Bank or ISO may amend this Agreement in any manner other than as described in Section 30(a) or 30(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the later of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank in such written notice.
(d) Merchant shall not have the right to terminate pursuant to Section 27 for any changes to this Agreement implemented at the direction of any Association, bank processor, or other third party (including any pass-through fees) or for the purposes of complying with any law or regulation.
In addition, in the event any information Merchant provides contains errors and/or omissions which ISO is able to verify and validate in its reasonable discretion, ISO may make applicable changes to the information Merchant provides in connection with the Agreement or receipt of Services thereunder. Any written notice to Merchant set forth in this Section 30 may be effectively delivered if included on monthly statements issued or made available to Merchant as described in Section 15 above.

31. Assignment and Use of Other Payment Processing Provider.

This Agreement may not be assigned by Merchant without the prior written consent of Bank and ISO. Bank or ISO may assign this Agreement without limitation. Assignment of this Agreement by Bank or ISO shall relieve Bank or ISO of any further obligations under this Agreement.
During the Term of this Agreement, should Merchant elect to use another payment processing provider thus resulting in a significant decline in Merchant's approved Monthly Volume as stated in the Merchant Application, as determined by Bank or ISO in their sole discretion, Merchant shall, without violating any third party agreement, provide Bank and ISO the opportunity to meet pricing and other terms provided by such third party. Merchant's failure to allow Bank and ISO to meet such other third party processing terms shall constitute a basis for Bank or ISO to terminate this Agreement.

31A. Collections Action, Merchant Bankruptcy.

Notwithstanding any other provision in this Agreement, including without limitation, provisions related to delegation of rights and responsibilities hereunder, Merchant acknowledges and agrees that, as contracted and otherwise authorized by Bank, card processing services under this Agreement will be provided to Merchant by ISO whether by and through others, and ISO will therefore bear the ultimate risk of losses associated with

any unpaid Liabilities of Merchant hereunder. Merchant accordingly acknowledges and agrees that ISO shall have standing, and shall otherwise be authorized and entitled in every respect, to manage and maintain the Reserve, and debit funds held in a Reserve Account and apply them to unpaid Liabilities, to exercise rights as the holder of any security interests granted to Bank hereunder, and to pursue any claims, demands or causes of action directly against Merchant to collect unpaid Liabilities due under this Agreement. Merchant further acknowledges and agrees that in the event of any bankruptcy, receivership, assignment for the benefit of creditors or other insolvency proceeding initiated by or against Merchant, whether voluntary or involuntary, (a) ISO shall be the direct counterparty, creditor of and claimant against Merchant on any unpaid Liabilities under this Agreement; (b) ISO shall have, hold and be authorized to exercise and pursue directly all rights to payment of the Liabilities, and all rights and obligations respecting the Reserve Account, that are granted to Bank under this Agreement; and (c) ISO and Merchant, for any and all purposes respecting the Liabilities and the Reserve Account, shall have any such mutuality of interests and obligations as may be required to permit ISO to effectuate its rights of recoupment from or setoff against the Reserve Account. To the extent Bank's authorization is required, Bank expressly authorizes ISO to take the foregoing actions to collect from Merchant as set forth in this Section.

32. Financial Accommodations.

Bank, ISO and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.

33. Waiver.

To the extent that Merchant becomes a debtor under any chapter of title II of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's rights or claims under this Agreement.

34. Cooperation.

In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.

35. Entire Agreement.

This Agreement, together with the Schedules, amendments, addenda or attachments hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

36. Severability.

If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

37. Notices.

Bank and/or ISO may provide any notices required hereunder to Merchant via ISO's dashboard portal, and/ or via statement message on the Merchant Statement. All notices, requests, demands or other instruments which may or are required to be given by Merchant to ISO and/or Bank hereunder shall be in writing and each shall be deemed to have been properly given when: (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) business days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to AXIOM BANK:
258 Southhall Ln., Ste. 400, Maitland, FL 32751

If to AVIDIA BANK:
42 Main St., Hudson, MA 01749

If to WESTAMERICA BANK:
3750 Westwind Blvd., Ste. 210, Santa Rosa, CA 95403

If to FFB Bank:
7690 N. Palm Ave., Ste.101, Fresno, CA 93711

If to NABCO:
1901 Oakcrest Ave, Ste 9A Roseville, MN 55113

If to ISO:
Maverick BankCard, Inc.
5230 Las Virgenes Rd., Ste. 300, Calabasas, CA 91302

If to MERCHANT:
Address listed on the application to which this Agreement is attached.

Additionally, notices, requests, demands or other instruments which are or may be required to be given by Bank and/or ISO to Merchant hereunder may also be deemed to have been properly given when: (iv) served personally on an officer of the party to whom such notice is to be given, (v) upon expiration of a period of three (3) business days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (vi) upon delivery by a nationally recognized overnight delivery service, to the address listed on the Merchant Application to which this Agreement is attached:

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.

38. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to internal principles of conflict of laws, and federal law.

39. BINDING ARBITRATION.

ANY DISPUTE OR CLAIM BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE FULLY AND FINALLY RESOLVED BY BINDING ARBITRATION IN LOS ANGELES COUNTY CALIFORNIA IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES AND PRACTICES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") FROM TIME TO TIME IN FORCE AND EFFECT. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE AND IS THE EXCLUSIVE REMEDY FOR THE RESOLUTION OF SUCH DISPUTES UNDER THIS AGREEMENT. THERE SHALL BE A SINGLE ARBITRATOR, WHO MUST BE (I) A LAWYER ENGAGED FULL-TIME IN THE PRACTICE OF LAW AND A MEMBER IN GOOD STANDING OF THE STATE BAR OF CALIFORNIA AND (II) ON THE AAA REGISTER OF ARBITRATORS. WITHIN THIRTY (30) DAYS OF THE CONCLUSION OF THE ARBITRATION HEARING, THE ARBITRATOR SHALL PREPARE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. JUDGMENT ON THE WRITTEN AWARD MAY BE ENTERED AND ENFORCED IN ANY STATE OR FEDERAL COURT LOCATED IN LOS ANGELES COUNTY CALIFORNIA. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE TRIBUNAL SO SELECTED, TO THE EXCLUSION OF ANY OTHER COURT WHICH MIGHT HAVE HAD JURISDICTION APART FROM THIS SECTION, WAIVE ANY DEFENSE OF LACK OF IN PERSONAM JURISDICTION OF SUCH COURTS AND AGREE THAT SERVICE OF PROCESS IN ANY ACTION BEFORE SUCH COURTS MAY BE MADE BY MAILING IT TO THE PARTY TO BE SERVED AT THE ADDRESS PROVIDED HEREIN. IT IS MUTUALLY AGREED THAT THE WRITTEN DECISION OF THE ARBITRATOR SHALL BE VALID, BINDING, FINAL AND NON-APPEALABLE; PROVIDED HOWEVER, THAT THE PARTIES HERETO AGREE THAT THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO AWARD PUNITIVE DAMAGES AGAINST ANY PARTY TO SUCH ARBITRATION. THE ARBITRATOR SHALL REQUIRE THE NON-PREVAILING PARTY TO PAY THE ARBITRATOR'S FULL FEES AND EXPENSES OR, IF IN THE ARBITRATOR'S OPINION THERE IS NO PREVAILING PARTY, THE ARBITRATOR'S FEES AND EXPENSES WILL BE BORNE EQUALLY BY THE PARTIES THERETO. MERCHANT FURTHER AGREES THAT IT WILL NOT BECOME A MEMBER OF ANY CLASS-WIDE LITIGATION OR ARBITRATION AGAINST BANK AND/OR ISO AND WILL NOT INITIATE ANY CLASS ACTION LITIGATION AGAINST ISO AND/OR BANK. SIMILARLY, ISO AND BANK AGREE THAT THEY WILL PURSUE A CLASS OR COLLECTIVE CLAIM AGAINST MERCHANT. FURTHER, THE PARTIES AGREE THAT THEY WILL NOT ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OF ANY GROUP, CLASS, OR OTHERWISE SIMILARLY SITUATED INDIVIDUAL OR ENTITY.

40. Captions.

Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

41. No Waiver.

Any delay, waiver or omission by Bank to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants an the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

42. Force Majeure.

The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

43. Cooperation.

Merchant covenants and agrees that, if it is undergoing forensic investigation at the time this Agreement is accepted, Merchant will fully cooperate with the investigation until it is completed.

44. Limited Acceptance.

Visa Rules allow Merchant to become a Limited Acceptance Merchant as part of its use of Bank's Services. A "Limited Acceptance Merchant," as defined by Visa, is a merchant that accepts either, but not both, of the following: Visa Credit and Business Category Cards and Visa Debit Category Cards. Merchant has elected to become a Limited Acceptance Merchant by choosing to accept ONLY (please mark the applicable card category below):
Visa Credit and Business Category Cards; Visa Debit Category Cards.
Merchant's failure to select one of the Limited Acceptance Categories above means that Merchant has elected to accept BOTH Visa Credit and Business Category Cards and Visa Debit Category Cards.
If Merchant elects to be a Limited Acceptance Merchant, Merchant must properly display the Visa approved signage that represents the Limited Acceptance Category that Merchant has selected above.

45. Special Merchant Categories.

(a) If Merchant is a Health Care Merchant (as defined by the Visa Core Rules and Visa Product and Service Rules (the "Visa Core Rules")), Merchant acknowledges that it must comply with the provisions of Section 5.9.12 of the Visa Core Rules.
(b) If Merchant is a T&E Merchant (as defined by the Visa Core Rules), Merchant acknowledges that it must comply with all of the provisions of the Visa Core Rules relating to T&E Merchants, including Sections 5.9.6, 5.10.4.1, 7.3.12, and 11.1.3.2. Merchant further agrees that, if it is an International Airline Program Merchant (as defined by the Visa Core Rules), the terms of the attached International Airline Program Merchant Addendum apply.
(c) If Merchant receives BIN Information, Merchant agrees that the terms of the attached Merchant Receiving BIN Information Addendum apply.
(d) If Merchant is an Electronic Commerce Merchant (as defined by the Visa Core Rules and Visa Product and Service Rules -the "VCR"), the following terms apply (references following each requirement indicate whether the requirement is located in the VCR or the Visa Acquirer Risk Program Standards Guide (VPSG); capitalized terms that are not otherwise defined in this Agreement are used as defined in the VCR):
i. Merchant must display its consumer data privacy policy on its website. (VPSG)
ii. Merchant must display the security method it uses for the transmission of payment data on its website. (VPSG)
iii. Merchant must offer Cardholders a secure transaction method and a data protection method, such as Secure Sockets Layer (SSL), 3-D Secure and/or Verified by Visa. (VPSG; VCR Section 1.5.6.2)
iv. For Non-Secure Transactions and Non-Authenticated Security Transactions, Merchant must attempt to obtain a Visa Card expiration date and submit it as part of the Authorization Request. (VCR Section 5.8.4.1)

v. Merchant's website must contain all of the following:
(A) Customer service contact, including email address or telephone number.
(B) The address, including the country, of Merchant's permanent establishment, either:
(1) On the same screen view as the checkout screen used to present the final Transaction amount; or
(2) Within the sequence of web pages the Cardholder accesses during the checkout process.
(C) Policy for delivery of multiple shipments.
(D) Security capabilities and policy for transmission of payment card details.
(E) In addition, on an Online Gambling Merchant's homepage or payment page, all of the following:
(1) The statement "Internet gambling may be illegal in the jurisdiction in which you are located; if so, you are not authorized to use your payment card to complete this transaction";
(2) A statement of the Cardholder's responsibility to know the laws concerning online gambling in the Cardholder's country;
(3) A statement prohibiting the participation of minors;
(4) A complete description of the rules of play, cancellation policies, and pay-out policies;
(5) A statement recommending that the Cardholder retain a copy of Transaction records and Merchant policies and rules; and
(6) An Acquirer numeric identifier specified by Visa.
(VCR Section 5.9.3.1)
vi. Merchant must not display the full Account Number to the Cardholder online. (VCR Section 5.9.3.2)
vii. If Merchant is a Verified by Visa Merchant, Merchant acknowledges that its Electronic Commerce Transactions are not eligible for Chargeback protection from Chargeback reason codes 75 (Transaction Not Recognized) and 83 (Fraud-Card-Absent Environment) if either:
(A) The Merchant is classified with one of the following MCCs:
(1) MCC 4829 (Wire Transfer Money Orders);
(2) MCC 5967 (Direct Marketing – Inbound Teleservices Merchant);
(3) MCC 6051 (Non-Financial Institutions – Foreign Currency, Money Orders [not Wire Transfer], Travelers' Cheques); or
(4) MCC 7995 (Betting, including Lottery Tickets, Casino Gaming Chips, Off-Track Betting, and Wagers at Race Tracks); or
(B) Merchant has been identified in the Merchant Chargeback Monitoring Program or Risk Identification Service Online. Merchant remains ineligible while it is in either program, and for an additional 4 months after exiting the program. This condition also applies if Merchant enabled Verified by Visa while identified in either program. (VCR Section 5.9.3.5)
viii. Merchant must include the following in its transaction receipts:
(A) Customer service contact;
(B) Merchant country; and
(C) Conditions of sale, including return and cancellation policy. (VCR Section 5.10.3.3)
ix. In an Authorization Request, Merchant must not transmit Authentication Data specific to one Transaction with another Transaction, except when either:
(A) 2 Transactions are related due to delayed delivery; or
(B) All items of an order cannot be shipped at the same time. (VCR Section 10.15.3.2)
(b) If Merchant limits its acceptance of returned merchandise or is an Electronic Commerce Merchant, Merchant must ensure that its return policies are clearly indicated to a Cardholder on the Transaction Receipt or on Merchant's website, as follows (VCR Section 5.4.2.4):

Location	Required Disclosure	To be used for the following Merchant Policies
Transaction Receipt (all copies, near the Cardholder signature area or in an area easily seen by the Cardholder)	"No Refund" "No Exchanges" "All Sales Final"	Merchant does not: • Accept merchandise as a return or exchange • Issue a refund to a Cardholder
	"Exchange Only"	Merchant accepts merchandise in exchange for merchandise of equal value to the original Transaction amount
	"In-Store Credit Only"	Merchant accepts merchandise in exchange for an in-store credit document that both: • Equals the value of the returned merchandise • Must be used at the Merchant location
Website (on checkout screen or in sequence of web pages before final checkout)	"Click to accept" or other acknowledgement button or checkbox	All return/refund policies and other purchase terms and conditions

46. Participation in the American Express OptBlue® Program

By checking the "Accept" checkbox next to AMERICAN EXPRESS OptBlue® on the Merchant application, Merchant has elected to participate in the American Express OptBlue program ("American Express Card Acceptance"). The following terms and conditions apply to Merchant's participation in American Express Card Acceptance. In the event of conflict between this Section 46 and the Agreement, this Section shall control with respect to American Express Card Acceptance. In the event of conflict between any defined term in this Agreement and a term defined by American Express, the American Express term shall control.
(a) The definition of "Association(s)" is changed to read as follows, with respect to OptBlue: "Association" means American Express Travel Related Services Company, Inc. ("American Express").
(b) The definition of "Card(s)" is changed to read as follows, with respect to OptBlue: "Card(s)" means an American Express credit card, debit card (or other similar card that requires a PIN for identification purposes), or pre-paid, stored-value or gift card.
(c) The definition of "Issuer" is changed to read as follows, with respect to OptBlue: "Issuer" means American Express or a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards
(d) Merchant authorizes Bank and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant.
(e) Merchant agrees that Bank may collect and disclose Transaction Data, Merchant Data, and other information about Merchant to American Express, and that American Express may use such information: (i) to perform its responsibilities in connection with American Express Card Acceptance; (ii) to promote the American Express Network; (iii) to perform analytics and create reports; and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of American Express Card Acceptance, and important transactional or relationship communications from American Express. American Express may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with American Express Card marketing and administrative purposes.
(f) Marketing Message Opt-Out. Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO; however, Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.
(g) Merchant acknowledges that it may be converted from American Express Card Acceptance to a direct relationship with American Express if and when it becomes a High Charge Volume Merchant ("High CV Merchant") as defined by American Express and in accordance with American Express rules for "High CV Merchant Conversions". By signing the Agreement, Merchant agrees that, upon such conversion:(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 Card acceptance.
(h) Merchant will not assign to any third-party any payments due to it under American Express Card Acceptance, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future American Express-related Transaction receivables to Bank, its affiliated entities and/or any other cash advance funding source that partners with Bank or its affiliated entities, without consent of American Express. Notwithstanding the foregoing, Bank prohibits Merchant from selling or assigning future American Express-related Transaction receivables to any third-party.
(i) Notwithstanding anything in this Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card Acceptance to enforce such terms against Merchant.
(j) By contacting Bank or ISO Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept other Cards.
(k) Bank and ISO have the right to terminate Merchant's participation in American Express Card Acceptance immediately: (i) if Merchant breaches any of the provisions of this Section 46 or any other terms of this Agreement applicable to American Express Card Acceptance, including, but not limited to, the American Express Merchant Operating Guide; or (ii) for cause or fraudulent or other activity, or upon American Express's request. In the event Merchant's participation in American Express Card Acceptance is terminated for any reason, Merchant must immediately cease all use of and remove all American Express Licensed Marks from Merchant's website and wherever else they are displayed.
(l) Refund Policies. Merchant's refund policies for purchases on American Express Cards must be at least as favorable as its refund policy for purchases on any Other Payment Products, and the refund policy must be disclosed to Cardmembers at the time of purchase and in compliance with this Section and Applicable Law. Merchant may not bill or attempt to collect from any Cardmember for any purchase or payment on any American Express Card unless a Chargeback has been exercised, Merchant has fully paid for such Charge, and it otherwise has the right to do so. 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 Payment Products.
(m) Merchant will comply in full with American Express's Merchant Operating Guide ("MOG") (as the same may be amended from time to time), which is incorporated herein by reference. The current MOG can be found at https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf. The term "Rules" shall be deemed to include the MOG.
(n) A copy of the American Express Data Security Requirements("DSR") can be obtained online at https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-dsr.pdf. Merchant shall abide by and fully comply with DSR and Payment Card Industry Data Security Standard (PCI DSS).
(o) Merchant acknowledges and agrees that (i) Merchant will ensure data quality and that Transaction Data and customer information is processed promptly, accurately, and completely, and complies with the American Express Technical Specifications, (ii) Merchant must report all instances of a Data Incident immediately to Bank or ISO after discovery of an incident, (iii) Merchant is responsible for being aware of and adhering to privacy and data protection laws and providing specific and adequate disclosures to Cardmembers of collection use and processing of personal data, and (iv) Merchant will comply with all Applicable Laws, rules, and regulations relating to the conduct of Merchant's business.
(p) All capitalized terms not defined in this Section 46 shall be as defined by American Express, whether in the MOG, American Express Operating Regulations, DSR, American Express Technical Specifications, or other American Express materials.

47. Participation in PayPal In-Store Checkout

Unless Merchant otherwise specifically indicates to Bank that Merchant does not wish to accept any PayPal Payment Method as a method of payment for goods services at Merchant's point(s) of sale, the following terms and provisions will apply. If Merchant elects American Express Card Acceptance and does opt out of the application of this Section 47, the application of Section 46 and this Section 47 will be deemed to be cumulative and not in the alternative.
(a) Merchant acknowledges and agrees that all of its actions associated with the acceptance by Merchant of a PayPal Method as the method of payment for goods or services at a point of sale, and in connection with processing any sale, credit, chargeback, representment, reversal or correction or settlement activity associated with any such transaction is subject to the terms and conditions of the Program Documents, as that term is defined in the PayPal Operating Regulations for In-Store Checkout (as the same may be amended or replaced from time to time, the "PayPal Operating Regulations"). Merchant will comply in full, at all times, will all relevant provisions of the Program Documents, a copy of which Merchant acknowledges and agrees it has received and reviewed. Capitalized and italicized terms used in this Section 47 that are not otherwise defined are used as defined in the PayPal Operating Regulations.
(b) The definition of "Card(s)", as used throughout this Agreement, is changed to read as follows:
"Card(s)" means any of the following: (i) a Visa, Mastercard or Discover credit card, debit card (or other similar card that requires a PIN for identification purposes), or pre-paid, stored-value or gift card; and (ii) any PayPal Payment Method.
(c) The definition of "Issuer", as used throughout this Agreement, is changed to read as follows:
"Issuer" means a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards and PayPal, Inc. ("PayPal"), in connection with any PayPal Payment Method.
(d) Merchant will comply in full with the Program Documents in connection with all of its activities associated with PayPal Acceptance and associated Transaction processing and Settlement of Transactions.
(e) Merchant acknowledges and agrees that Acquirer may disclose Transaction Data and Merchant information to PayPal, regulatory authorities and other entities to which PayPal is

required to provide such information for the purposes deemed necessary and related to performing Transactions or to comply with Applicable Law, including, by way of example and without limitation:
(i) Detailed information about the Transactions conducted by Merchant, including Transaction Data required by the Program Documents, to be delivered to PayPal in connection with Authorization Requests, Transaction Data, and Dispute responses;
(ii) Merchant information and detail about the transactions accepted by Merchant, including the Merchant Category Code assigned by Bank to Merchant;
(iii) Collective and detailed information about Merchant's Transactions, Disputes and other information reasonably required by PayPal during any investigation of Merchant;
(iv) Information regarding the aggregate number, type, and kind of Transactions accepted by Merchant, in the Authorized Jurisdiction; and
(v) Business and registration information provided by Merchant and/or its principals in connection with any application submitted by Merchant to Bank.
(f) Merchant acknowledges and agrees that each of the following is strictly and expressly prohibited:
(i) Any use, storage, or disclosure by Merchant of PayPal's confidential information, any PayPal Account Holder Data or Transaction Data, other than as necessary to complete a Transaction.
(ii) The retention or storage of PayPal Account Numbers, Track Data or Transaction Data.
(iii) Any use of any PayPal Account Holder's personal information for marketing and/or other purposes without explicit consent from the PayPal Account Holder.
(g) Bank may terminate Merchant's PayPal Acceptance and/or this Agreement for any of the reasons set forth in the PayPal Operating Regulations or for any violation by Merchant of the terms that Bank is required to enforce against Merchant in the PayPal Operating Regulations. PayPal may directly contact Merchant if Merchant is terminated by Bank for any reason, including investigating compliance by Merchant with the Security Requirements set forth in Section 13 of the PayPal Operating Regulations.
(h) "PayPal Marks" mean the brands, emblems, trademarks, and/or logos that identify PayPal Acceptance. The PayPal Marks are described in Appendix A of the PayPal Operating Regulations. Merchant may use the PayPal Marks only to promote PayPal products, offers, services, processing and/or acceptance. Merchant use of the PayPal Marks is restricted to the display of decals, signage, advertising, and marketing materials provided or approved by PayPal in writing pursuant to the process set forth in the PayPal Operating Regulations. Merchant shall not use the PayPal Marks in such a way that PayPal Account Holders could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the PayPal Marks. Merchant recognizes that it has no ownership rights in the PayPal Marks. Merchant shall not assign to any third party any of the rights to use the PayPal Marks. Merchant is prohibited from using the PayPal Marks, not permitted above, unless expressly authorized in writing by PayPal.

48. Consent for Messages

Merchant and/or Guarantor acknowledges and agrees that Bank and/or ISO and their affiliates and third party subcontractors and/or agents may use automatic telephone dialing systems to contact Merchant and/or Guarantor at the telephone number(s) Merchant has provided in this Application, or as may be updated by Merchant from time to time, and/or may leave a detailed voice message in the event that Merchant and/or Guarantor is unable to be reached, even if the number provided is a cellular or wireless number or if Merchant and/or Guarantor has previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes. Merchant and/or Guarantor hereby consents to receiving commercial electronic messages (including but not limited to text messages) from Bank and/or ISO and their affiliates and their third-party subcontractors and/or agents from time to time. Merchant and/or Guarantor may withdraw their consent to receive automated calls and/or commercial electronic messages by calling toll free (800) 464-9777.