

## MERCHANT PROCESSING AGREEMENT

This Merchant Processing Agreement (“**Agreement**”) is made among Commerce Bank, a Missouri bank and trust company, having its principal office at 811 Main Street, Kansas City, Missouri 64105 (“**Bank**”) and Merchant (“**Merchant**”) identified on the Merchant Processing Application (“**Application**”) to which this Agreement made a part of in consideration of mutual promises. Bank and Merchant are individually referred to as “**Party**” and jointly referred to as “**Parties**”. Bank and Merchant hereby agree as follows:

Bank participates in programs affiliated with Visa, MasterCard, Discover, American Express and Other Networks that allow Cardholders to purchase goods and services from selected merchants located in the United States by use of their Cards.

Merchant wishes to participate in the Visa, MasterCard, Discover, American Express and the Other Networks systems at its United States locations by accepting Cards from Cardholders for the sale of Merchant’s goods and services.

Upon Bank’s acceptance and approval of Merchant’s Application, this Agreement shall be a binding agreement among Bank and Merchant. The date listed on the Acceptance Letter will be considered the “**Effective Date**” and will be used for Term commencement.

### 1. **Definitions.**

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

“**Account**” shall mean Merchant’s commercial bank account at Bank or at another financial institution acceptable to Bank which Bank or its agent can access through the ACH system.

“**ACH**” shall mean the Federal Reserve’s Automated Clearing House system.

“**Acceptance Letter**” shall mean the letter sent to Merchant by Bank stating Bank’s acceptance and approval of Merchant’s Application and the Effective Date.

“**Affiliate**” shall mean any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with a party, as applicable.

“**Agreement**” means this Merchant Processing Agreement, the Merchant Processing Application, and each exhibit, schedule, and addendum referencing this Agreement, as well as all documents and other materials incorporated herein by reference.

“**American Express**” shall mean American Express Travel Related Services Company, Inc.

“**Card(s)**” shall mean Visa, MasterCard, Discover, American Express and Other Network credit or Debit Cards.

“**Card Network**” means Visa, MasterCard, Discover, American Express or any Other Network, as the same are defined herein.

“**Cardholder**” shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.

“**Chip Card**” shall mean a standard-size plastic debit or credit card that contains an embedded microchip as well as a traditional magnetic stripe. The chip encrypts information to help increase data security when making transactions at terminals or ATMs that are chip-enabled.

“**Data Incident**” shall mean any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

“**Debit Card**” shall mean a card that functions like a check through which payments for goods or services are made electronically from the bank account of a Cardholder.

“**Discover**” shall mean Discover Financial Services, LLC.

“**Merchant Service Provider**” shall mean a third party other than Bank used by Merchant in connection with the Services received hereunder, including but not limited to, Merchant’s software providers, equipment providers, and/or third-party processors.

“**MasterCard**” shall mean MasterCard International, Inc.

“**Operating Rules**” means the by-laws, operating regulations and/or all other rules, policies and procedures of Visa, MasterCard, Discover, American Express and/or Other Networks in effect from time to time.

“**Other Network**” shall mean any network or card company other than Visa, MasterCard, Discover or American Express that is identified on the Merchant Processing Application and in which Merchant participates hereunder.

“**PCI DSS**” shall mean the Payment Card Industry Data Security Standard.

“**PIN**” shall mean personal identification number.

“**Service**” shall mean any and all services described in, and provided by Bank pursuant to, this Agreement.

“**Transaction**” means any sale of products, services or credit therefore, from a Merchant for which the customer makes payment using any Card presented to Bank for payment.

“**Visa**” shall mean Visa USA, Inc.

**2. Operating Rules; Compliance with Laws; Addendums.** Both Merchant and Bank agree to honor qualified Cards in connection with the sale of merchandise or services in compliance with, and subject to, the Operating Rules, including but not limited to PCI DSS. Both Merchant and Bank shall comply with all applicable federal, state and local laws and regulations in connection with Merchant’s receipt of the Services. Other Services applicable to this Agreement will be contained in an addendum to this Agreement as may be published and modified from time to time by Bank and the Parties agree that such addendum shall be incorporated into and made part of this Agreement and that such addendum shall apply only with respect to those Services actually provided by Bank and received by Merchant hereunder. In the event of a conflict between the terms and fees set forth on the Application and the addendum, the addendum shall control.

**3. Change in Business.** Merchant agrees to provide Bank with thirty (30) days prior written notice of Merchant’s intent to change its business form or entity in any manner (e.g., a change from a sole proprietorship to a corporation, Merchant name change), and/or of Merchant’s intent to sell its stock or assets to another entity.

**4. Card Acceptance.** Merchant agrees to honor all valid Cards that qualify under their chosen acceptance category. When accepting any Card and completing any Card Transaction, Merchant shall follow all procedures and rules contained in the Operating Rules, including but not limited to, obtaining authorization for all Transactions. Any authorization obtained by Merchant shall be noted by Merchant in the appropriate place on the Transaction sales ticket or credit voucher. If Merchant cannot, for any reason, obtain an electronic authorization, Merchant will make a direct phone call to a designated number to obtain authorization or approval on a Transaction (“**Voice Authorization**”) from the designated authorization center, and will legibly print the authorization number on the Transaction sales ticket or credit voucher. All Transaction sales ticket and credit vouchers will be on forms acceptable to Bank or in a format approved by Bank in writing, and will be completed to include the Merchants business name, address and contact information, Cardholder’s signature (as required under the Operating Rules), the signature of the authorized user (if different), the date, a description of the merchandise sold or services rendered, and the total charges therefor. All Transactions delivered to Bank by Merchant will represent obligations of a Cardholder in amounts set forth therein for merchandise sold or services rendered only and shall not involve any element of credit for any other purpose. Merchant represents that as of the date any Transaction is delivered to Bank, Merchant has no knowledge or notice that would impair the validity of the Transaction or its collectability. Merchant shall not make any special charge or extract any special agreement, condition or security from a Cardholder in connection with any Transaction. Merchant shall prevent/prohibit the owner, officer, immediate family member, or any principal of the Merchant from personally executing their own Transaction to affect a purchase or

credit or cash advance and must be responsible for the actions of its employees and agents.

**5. Limited Acceptance.** Merchant acknowledges and agrees that it will accept all Card types. If Merchant wishes to be a limited acceptance Merchant, which means that Merchant has elected to accept only certain Card types (e.g. credit Cards only or Debit Cards only) it may do so with written notification to Bank. Bank may be required to register and obtain approval of a Merchant that chooses limited acceptance with the Card Networks. Merchant further acknowledges and agrees that Bank has no obligation other than those expressly provided under the Operating Rules and applicable law as they may relate to limited acceptance and that Bank's obligations do not include policing Card types at the point of sale. As a limited acceptance Merchant, Merchant will display the Card Network approved signage representing the limited acceptance category it has selected and will be solely responsible for the implementation of its decision for limited acceptance. Merchant will be solely responsible for policing, at the point of sale, the Card type(s) of Transactions it submits for processing by Bank. Should Merchant submit a Transaction for processing for a Card type it has indicated it does not wish to accept, Bank may process that Transaction and Merchant will pay the applicable fees, charges, and assessments associated with that Transaction.

**6. Transaction Processing.** Bank will initiate payment to Merchant of the total face amount of each Transaction acquired and accepted hereunder, subject to the terms and conditions of this Agreement, the Operating Rules, and applicable law, after Bank receives payment for such Transactions. Unless otherwise agreed to in writing by Bank, Merchant shall electronically deliver to Bank and in a format acceptable to Bank all Transaction sales tickets and credit vouchers within one (1) business day after the applicable Transaction date (or such period of time as determined by the applicable Card Network) or in the case of a delayed merchandise delivery, the Transaction sales ticket shall be delivered within one (1) business day of the merchandise delivery date. Merchant agrees that it shall deliver Transactions to Bank within (1) business day. The preparation and delivery to Bank by Merchant of Transactions shall constitute an endorsement to Bank by Merchant of each Transaction, and Merchant authorizes Bank or its representative to place Merchant's endorsement on any Transaction at any time. Bank may refuse to acquire any Transaction which, in whole or in part, could be charged back to the Merchant pursuant to Section 14 below, if it had acquired the Transaction. Merchant acknowledges and agrees that Bank is not responsible for any action or inaction taken by the financial institution or other entity that issued the Card(s) to the Cardholder or the processor of such Card(s). In processing Transactions, Merchant must not:

- (i) accept Cardholder payments for previous Card charges, whether disputed or undisputed, incurred at the Merchant location;
- (ii) require a Cardholder to complete a postcard or similar device that includes the Cardholders account number, card expiration date, nature or any other card account data in plain view when mailed;
- (iii) add any tax to Transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the Transaction amount and not collected separately);
- (iv) enter into interchange any Transaction sales ticket for a Transaction that was previously charged back to Bank and subsequently returned to the Merchant, irrespective of Cardholder approval;
- (v) pursue payment on Transactions offered to and accepted by Bank under this Agreement (Merchant agrees not to sue or make any collections thereon except as may be specifically authorized by Bank and, in the event of such authorization, Merchant agrees to hold all collections, if any, in trust for Bank and deliver the same in kind to Bank immediately upon receipt);

(vi) request or use a Card account number for any purpose other than as payment for goods and services;

(vii) submit a Transaction that Merchant knows or should have known to be either fraudulent or not authorized by the Cardholder;

(vii) present Transactions to Bank until such time as all of its principal obligations to the Cardholder in connection with the Transaction have been performed;

(ix) make cash refunds on Card Transactions, unless otherwise allowed by the Operating Rules or applicable Law; or

(x) knowingly submit any Transaction that is illegal or that the Merchant should have known was illegal.

**7. Card Sales.** Merchant shall only complete and deliver to Bank Transactions produced as the direct result of bona fide sales made by Merchant to Cardholders and for only those products and/or services identified by Merchant to Bank in connection with Merchant's initial application for services. Merchant shall obtain Bank's prior written approval before accepting Cards for the purchase of products and/or services not identified on the Application submitted by Merchant to Bank. Merchant is expressly prohibited from processing, factoring, laundering, offering and/or presenting to Bank Transactions which are produced as a result of sales made by any person or entity other than Merchant. In the event that Merchant fails to comply with this Section, Merchant agrees that Bank shall have the right at any time thereafter to immediately terminate this Agreement with notice to Merchant in accordance with Bank's standard operating procedure.

**8. Minimum and Maximum Transaction Amounts.** In accordance with applicable law and the Operating Rules for each Card type:

(i) Merchant may establish a minimum Transaction amount as a condition for honoring Card credit Transactions; so long as such minimum amount does not exceed ten dollars (\$10.00) and must not be discriminatory between Card issuers or between the Card Networks. In accordance with applicable law and the Operating Rules, a maximum sale amount for Card credit Transactions may only be set by Merchants which are federal agencies or institutions of higher learning.

(ii) Except as set forth herein, Merchant shall not establish a minimum or maximum sale amount as a condition for honoring a Debit Card, signature debit (non-PIN debit) and/or prepaid Cards.

**9. Surcharges, Convenience Fees and Service Fees.** Except as permitted by the Operating Rules, Merchant must not directly or indirectly require any Cardholder to pay a surcharge. Merchant must not directly or indirectly require Cardholders to pay any part of any Merchant discount or any contemporaneous finance charge in connection with a Transaction. Merchant may provide a discount to its customers for cash payments. Merchant is permitted to charge a fee (such as a bona fide commission, postage, expedited service or convenience fees, and the like) if the fee is imposed on all like transactions regardless of the form of payment used, or as the Card Networks have expressly permitted in writing. For purposes of this Section 9: (i) a surcharge is any fee charged in connection with a Transaction that is not charged if another payment method is used; and (ii) the Merchant discount fee is any fee a Merchant pays to Bank so that Bank will process the Transactions of the Merchant. Certain states may have surcharging restrictions which Merchant must comply. If Merchant desires to assess a Card surcharge, convenience or service fee on Transactions, Merchant must notify Bank in writing at least thirty (30) calendar days before assessing a Card surcharge, convenience or service fee. Merchant may be required to be registered with the Card Networks.

**10. Merchant Account.** Bank is responsible for providing settlement funds directly to the Merchant. Merchant shall establish and maintain an Account with sufficient cleared funds to meet its obligations under this Agreement. Merchant irrevocably authorizes Bank to debit and/or credit the Account to settle any and all fees and other amounts due Bank under this Agreement, and such authority shall remain in effect for a period of one (1) calendar year following the date of termination of

this Agreement. In the event Merchant desires an Account change, Merchant shall give Bank thirty (30) days prior written notice in accordance with the notice provisions herein of any such change, and Bank shall use commercially reasonable efforts to affect such Account change; however, such Account change shall not be effective until the date on which Bank actually makes such Account change on Bank's system. In no event shall Bank have any liability for any amounts directed to an Account that has been designated by any purported representative of Merchant or its Merchant Service Provider at any time during the term of this Agreement, regardless of any Account change. All amounts due Bank under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant as of the date Bank originates an ACH debit transaction to Merchant's Account. Furthermore, upon the request of Bank at any time, in its sole discretion, Merchant shall establish and maintain a "reserve" balance in the Merchant Account in an amount, as determined by Bank in its sole discretion, sufficient to cover any future chargebacks, fees, fines, losses and/or any other unpaid charges due to Bank. If Bank determines such action is reasonably necessary to protect its interests, Bank may, without notice to Merchant, apply deposits in the Account against any outstanding amounts Merchant owes under this Agreement. Also, Bank may exercise its rights under this Agreement to collect any amounts due to Bank including, without limitation, rights of set-off and recoupment. Merchant agrees that Bank may set off any amounts due to Bank from amounts owed to Merchant, including, but not limited to, any amounts owed to Merchant from Bank and/or any of its affiliate(s), whether or not such amounts are related to this Agreement. Merchant shall have no right to withdraw funds or debit the reserves in the Account. In the event of a bankruptcy proceeding, Bank may exercise their rights under this Agreement to debit the Account for amounts due Bank regardless the pre-petition or post-petition nature of the amount due Bank. In the event of a bankruptcy proceeding, Merchant also agrees that it will not contest any motion for relief from the automatic stay, which Bank may file to debit the Account; and funds in the Account will remain in the Account following termination for such timeframe as determined by Bank. Bank will have sole control of the Account in the event of a bankruptcy proceeding. Bank does not consent to the assumption of this Agreement. Merchant's closing (or termination of) its Account shall not constitute a mutually agreed upon termination of this Agreement. Failure to comply with this Section may result in immediate termination of this Agreement or result in settlement delay or withholding of funds.

**11. Cash Payments; Cash Advances; Duplicate Transactions; Collection of Pre-Existing Debt.**

(i) Merchant shall not receive any payments from a Cardholder for charges included in any Transactions resulting from the use of a Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of effecting a deposit to the Cardholder's Card account.

(ii) Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party. Merchant agrees that any such deposit shall be grounds for immediate termination of the Agreement. Additionally, Merchant shall not obtain under any circumstance authorization for, nor process a sale on, any Card Merchant is authorized to use. Processing Merchant's own Card is grounds for immediate termination of the Agreement.

(iii) Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any chargebacks, which may result therefrom.

(iv) Merchant shall not present any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check; and/or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

**12. PIN Debit Processing.** Merchant may honor at the locations set

forth on the Application Debit Cards serviced by the electronic funds transfer networks in connection with the sale of merchandise or services to the Cardholders of such Debit Cards ("**Debit Card Sales**"). Bank agrees to accept from Merchant via electronic transmission Transaction sales tickets evidencing such Debit Card Sales and return credit Transactions associated with Debit Card Sales.

(i) General: Merchant agrees to honor all valid Debit Cards, which are properly presented by Cardholders in payment for goods or services. Cardholders will be entitled to the same services and return privileges Merchant extends to cash customers, and Merchant will not impose any special conditions in connection with Debit Card Sales or require that a Cardholder provide any personal information as a condition for honoring a Debit Card in connection with Debit Card Sales unless such information is required to provide delivery of goods and services or Merchant has reason to believe the identity of the person presenting the Debit Card may be different from that of the Cardholder. Merchant's Account will be used in order to facilitate payment of amounts due. All credits and debits in connection with Debit Card Sales will be made to the Merchant's Account

(ii) Credit Referrals. Merchant will promptly initiate a refund to the Cardholder, as permitted by the Operating Rules, whenever Merchant determines that a Debit Card Sale should be canceled or reversed.

(iii) Returns and Adjustments.

(a) Merchant will attempt to settle in good faith any dispute between Merchant and a Cardholder involving a Debit Card Sale. Merchant will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card Sales.

(b) Merchant may initiate a credit Transaction for a return only if the Cardholder provides the Transaction sales ticket from the original Transaction. A credit Transaction must: (i) be processed to the same Debit Card as the original Transaction within one (1) year following the original Transaction date; (ii) be initiated through use of a PIN and a POS terminal; (iii) include the Transaction date of the original Transaction; (iv) be for an amount less than or equal to that of the original Transaction; and (v) be initiated from the same Merchant as the original Transaction (same Terminal or Merchant Outlet is not required). A cash refund, store credit or other form of credit may be made to the recipient of a gift (instead of to the Cardholder) or for a prepaid Card Transaction, if the Cardholder states that the prepaid card has been discarded. The Debit Card Sales ticket for any Debit Card Sale for which no refund or return will be accepted by Merchant must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with Operating Rules.

(iv) Presentation of Debit Card Sales Tickets and Return Credit Transactions.

(a) Merchant will electronically transmit to Bank all Debit Card or return credit Transactions associated with Debit Card Sales in a manner acceptable to Bank. Merchant will make a good faith effort to electronically transmit data within one (1) banking business day after the Transaction date. Merchant will not extend the time of payment for or extend credit for any part of a Debit Card Sale. Merchant represents and warrants that the electronic transmission of each Debit Card Sales ticket and return credit Transactions will evidence a true record of the Debit Card Sale Transaction.

(b) Bank will process Debit Card Sales transmitted by Merchant, and Bank will promptly credit, debit or charge, as applicable, the appropriate amount to the Merchant's Account.

(c) Bank may refuse to accept or may revoke its acceptance of any Debit Card Sales ticket or return credit Transaction associated with a Debit Card Sale, and Bank may debit, charge or credit the Merchant's Account in the corresponding amount, if: (i) the Debit Card Sale or return credit Transaction was completed

without prior authorization; (ii) the Debit Card Sales ticket or return credit Transaction involved circumstances constituting a breach of any agreement, representation, or warranty of Merchant; (iii) the Debit Card Sale or return credit Transaction was in violation of applicable law, rules or regulations; (iv) the Cardholder is the Merchant, any partner of or shareholder of the Merchant, or any affiliate, spouse or immediate family member of any of them; or (v) the Debit Card Sale or return credit Transaction was not made in connection with the sale of goods or services by Merchant.

### **13. Refunds and Adjustments.**

(i) Disclosure of Refund Policy. Merchant is required to maintain a fair policy with regard to the return/cancellation of merchandise or services and adjustment of Card sales. Merchant is required to disclose the return/cancellation policy to customers.

(ii) Merchant will attempt to settle in good faith any dispute between Merchant and a Cardholder involving a Card sale. Merchant will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Card Sales.

(iii) Procedure for Refunds/Adjustments. If Merchant allows a price adjustment, return of merchandise, or cancellation of services in connection with a Card sale, Merchant will prepare and deliver to Bank a credit voucher reflecting such refund or adjustment within three (3) business days of receiving the Cardholder's request for such refund or adjustment. The amount of the refund or adjustment cannot exceed the amount shown as the total on the original Transaction except by the exact amount required to reimburse the Cardholder for postage that the Cardholder paid to return merchandise. Merchant is not allowed to accept cash or any other payment or consideration from a Cardholder in return for preparing a refund to be deposited to the Cardholder's account or to give cash refunds to a Cardholder in connection with a Card sale, unless required by law.

(iv) Limiting Customer Refunds and Exchanges (Credits) – Retail Only: Merchant may limit acceptance of returned merchandise or establish a policy to make price adjustments for any Transactions provided that proper disclosure is made and purchased goods or services are delivered to the Cardholder at the time the Transaction takes place. Proper disclosure by Merchant shall be determined to have been given at the time of the Transaction if the following words or similar wording reflecting your policy is legibly printed on all copies of the Transaction sales ticket, in letters approximately .25 inch high and in close proximity to the space provided for the Cardholder's signature: "NO REFUND," or "EXCHANGE ONLY," or "INSTORE CREDIT ONLY."

(v) Refunds And Exchanges (Credits) - Card-Not-Present Transactions Only. Merchant may limit acceptance of returned merchandise or establish a policy to make price adjustments for any Transactions. If your refund policy prohibits returns under certain circumstances, Merchant may still receive a chargeback relating to such sales pursuant to the Operating Rules.

### **14. Chargebacks; Exception Items; Risk Monitoring Programs.**

Merchant agrees to reimburse Bank the gross amount of any Transaction, and Bank shall have the right at any time to charge Merchant's Account therefor without notice in accordance with Bank's standard operating procedure, for any return (whether or not a credit voucher is delivered to Bank), chargeback, compliance case, any other Card Network action, or if the extension of credit for merchandise sold or services or Transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local or otherwise; or if Bank has not received payment for any Transaction, notwithstanding Bank's prior payment to Merchant for such Transaction pursuant to the terms herein. Not limiting the generality of the foregoing, Merchant agrees that any operational and/or other Services performed on behalf of Merchant, including, but not limited to, production of facsimile or other electronic copies of sales tickets in response to Transaction copy requests, response to compliance cases, augmentation of Merchant data for interchange, Transaction

stand-in, digital sales ticket storage and retrieval, etc. shall in no way affect Merchant's obligations and liability in this Agreement including those in the foregoing sentence. Merchant may instruct Bank in the defense of chargebacks, compliance cases and similar actions, and Merchant agrees that it will promptly provide any such instructions to Bank. Bank shall have the right to charge Merchant the gross amount of any Transaction as provided by the Operating Rules. In order to monitor potential economic hardship or damage to the goodwill of the Card Networks, the Card Networks have implemented merchant review programs to identify questionable business activity or Merchant's Transactions that generate excessive Cardholder complaints, chargebacks or other disputes. These review programs include potential fines and handling fees, operating procedure requirements, settlement or withholding, audits or termination of the Agreement. In the event any fees, fines or penalties resulting from Merchant's Transactions are levied against Bank for any reason, Merchant shall reimburse Bank on demand or Bank may, at its sole option, charge Merchant's Account. In the event Merchant or any of its locations are identified by such review programs, excessive chargebacks or suspicious transactions, Bank, in its sole option, reserves the right to require operating procedure modifications or audits, access incremental chargeback fees, institute settlement delay or withholding or immediately terminate this Agreement and/or cease processing for the applicable Merchant locations upon notice to Merchant.

**15. Advertising.** (i) Merchant will prominently display the promotional materials provided by Bank, if any, in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logotype of a Card Network ("**Marks**") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the discretion of Bank and must be utilized in accordance with the Operating Rules; (ii) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease use and return any inventory to Bank upon any termination thereof; (iii) Merchant shall not use any promotional materials or Marks associated with Visa, MasterCard, Discover, American Express or Other Networks in any way which implies that Visa, MasterCard, Discover, American Express or the Other Networks endorses any goods or services other than Card Services and Merchant shall not refer to Visa, MasterCard, Discover, American Express or Other Networks in stating eligibility for Merchant's products or services. Merchant shall be fully liable to Bank for any and all loss, cost and expenses suffered or incurred by Bank, arising out of failure to return or destroy such materials following termination.

**16. Merchant Service Providers.** Merchant may use one or more Merchant Service Providers in connection with the Services and/or the processing of some or all of its Card Transactions. In no event shall Merchant use a Merchant Service Provider unless such Merchant Service Provider is compliant with PCI DSS and/or Payment Application Data Security Standard ("**PA-DSS**"), depending on the type of Merchant Service Provider, as required by the Operating Rules. Merchant acknowledges and agrees that Merchant shall cause its Merchant Service Provider to complete any steps or certifications required by any Card Network (e.g., registrations, PA-DSS, PCI DSS, audits, etc.). Merchant shall cause its Merchant Service Provider to cooperate with Bank in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such Merchant Service Provider. Merchant shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. Merchant shall bear all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of any Merchant Service Provider(s) for a particular purpose and for determining the extent of such Merchant Service Provider's compliance with the Operating Rules and applicable law. Merchant expressly agrees that Bank shall in no event be liable to Merchant or any third party for any actions or inactions of any Merchant Service Provider used by Merchant, even if Bank introduced and/or recommended the use of such Merchant Service Provider to

Merchant, or never objected to the use of such Merchant Service Provider, and Merchant hereby expressly assumes all such liability.

**17. Cardholder Information.** Merchant shall not disclose, sell, purchase, provide, or exchange Cardholder name, address, account number or other information to any third-party other than to Bank (and its third-party processors) or a Card Network for the purpose of completing a Transaction. Without limiting the foregoing, Merchant shall not provide any such information to its Merchant Service Provider. Merchant represents and warrants that neither it nor its Merchant Service Provider shall retain or store any portion of the magnetic-stripe data subsequent to the authorization of a Transaction, nor any other data prohibited by the Operating Rules and/or this Agreement.

**18. Term; Termination; Early Termination Fee.**

(i) Term. The term of this Agreement (the "Term") shall be as specified on the Application.

(ii) Termination. Notwithstanding the foregoing, Bank may terminate this Agreement:

(a) with or without cause (including, without limitation, excessive chargebacks), upon ninety (90) days written notice to Merchant; and/or

(b) immediately and without notice, if Merchant: (1) violates any applicable Federal, State, or local law or regulation applicable to credit card practices; (2) violates Card Network Operating Rules and regulations; (3) engages in any irregular practice which exposes Bank to liability (such as, without limitation, "factoring" or providing "cash advance" services); (4) creates harm or loss of goodwill to Bank or Card Networks; or (5) in the event of Default as outlined in Section 24 below. All obligations of Merchant, incurred or existing under this Agreement as of the date of termination, shall survive such termination. This Agreement shall be binding upon the parties hereto, their successors and assigns.

(iii) Early Termination Fee. Merchant agrees to pay Bank the early termination fee ("**Early Termination Fee**") set forth in the Application if Merchant terminates the Agreement prior to the expiration of the Initial Term (except if as a result of Bank's material uncured breach of the Agreement). The Early Termination Fee shall be deducted in a single payment for the full amount via ACH debit to the Account, at Bank's option, upon or at any time after Bank's receipt of Merchant's notice of termination.

**19. Bank Fees.** Merchant agrees to pay Bank the fees, expenses and all other amounts set forth in the Agreement including, but not limited to, the fees outlined on the Application or any amendment, addendum, schedule or exhibit to the Agreement. Merchant also understands and agrees to pay an annual PCI DSS compliance fee per Merchant relationship, and as applicable, a monthly PCI DSS non-compliance fee per Merchant location for each calendar month that Merchant cannot prove to Bank compliance with PCI DSS. Bank agrees not to increase Bank's processing fees for the Services on the Application exclusive of interchange, access fees, dues, assessments and other processing fees designated by any Card Networks during the first twelve (12) months of the Initial Term. Thereafter, Bank may increase its processing fees for the Services on the Application upon prior written notice to Merchant. Except as limited above, Bank may make a fee change upon prior notice to Merchant via electronic transmission (e.g., via e-mail) which Bank may change from time to time upon notice to Merchant in accordance with Bank's standard operating procedure, and such fee change shall be immediately payable by Merchant when assessed by Bank and Merchant's acceptance and submission of a Card Transaction.

**20. Review of Reports; Failure to Reject.** Merchant agrees that it shall review all reports, statements and invoices prepared by Bank or its agent and made available to Merchant. Bank reserves the right to send some or all of the reports, statements, invoices and/or notices of any pricing changes permitted under this Agreement via electronic transmission (e.g., via e-mail) which Bank may change from time to

time upon notice to Merchant in accordance with Bank's standard operating procedure. Merchant expressly agrees that Merchant's failure to reject any settlement oriented report (including any Account change) within thirty (30) business days from the date the report or statement is made available to Merchant, or any other report, statement or invoice within thirty (30) business days from the date the report, statement or invoice is made available to Merchant, shall constitute Merchant's acceptance of the same.

**21. Third Party Assessments.** Notwithstanding any other provision of this Agreement, Merchant shall be responsible for all amounts imposed or assessed by third parties such as, the Card Networks or Other Networks, and Merchant Service Providers (including telecommunication companies). Such amounts include, but are not limited to, fees, fines, assessments, penalties, loss allocations, etc. Any changes or increases in such amounts shall automatically become effective upon notice to Merchant in accordance with Bank's standard operating procedure and shall be immediately payable by Merchant when assessed by Bank.

**22. IRS Reporting.** The Housing Assistance Tax Act of 2008 requires Bank to maintain on file Merchant's taxpayer identification number ("TIN") and tax filing name. The TIN and tax filing name must match what is on file with the Internal Revenue Service. Merchants that have provided Bank with an incorrect TIN and/or tax filing name will be assessed a TIN/Tax No Match fee per Merchant location. This fee will be assessed until Merchant's TIN and/or tax filing name has been corrected with Bank.

**23. Exclusivity.** The Parties agree that Bank shall be the exclusive provider of the Services to Merchant at all of its locations.

**24. Default.** The following events shall be considered an event of Default: (i) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, if a receiver is appointed for Merchant, or Merchant pledges the Agreement and/or any future Merchant receivables for the benefit of creditors, or admits its inability to pay its debts as they become due or if Bank determines, in its sole discretion, that the Merchant has failed to maintain an acceptable financial condition; (ii) Merchant fails to pay or reimburse the fees, expenses or charges referenced herein when they become due; (iii) Merchant is in default of any terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; (iv) Bank reasonably believes that there has been a material deterioration in Merchant's financial condition; or (v) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than twenty-five percent (25%) of either the legal or beneficial ownership of Merchant. Upon the occurrence of an event of Default, Bank may at any time thereafter terminate this Agreement by giving Merchant written notice thereof. Termination of Merchant for any reason shall not relieve Merchant from any liability or obligation to Bank.

**25. Indemnification.** Subject to the other limitations, terms and conditions of this Agreement, Bank shall indemnify, defend, and hold harmless Merchant, and its directors, officers, employees, affiliates and agents from and against all third party proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal fees and expenses and all reasonable collection costs, incurred by Merchant, its directors, officers, employees, affiliates and agents to the extent resulting from or arising out of Bank's gross negligence or willful misconduct. Merchant shall indemnify, defend, and hold harmless Bank, and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal fees and expenses and all reasonable collection costs, incurred by Bank, its directors, officers, employees, affiliates and agents resulting from or arising out of the Services in this Agreement, Merchant's processing activities, the business of Merchant or its customers, any Transaction acquired by Bank, any non-compliance with the Operating Rules (or any rules or regulations promulgated by or in conjunction with the Card Network's) by Merchant or its agent

(including any Merchant Service Provider), any Data Incident, any infiltration, hack, breach, or violation of the processing system of Merchant, its Merchant Service Provider, or any other third party processor or system, or by reason of any breach or non-performance of any provision of this Agreement on the part of the Merchant, or its employees, agents, Merchant Service Providers, or customers. The indemnification of each Party shall survive the termination of the Agreement.

**26. Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri without regard to conflicts of law provisions. The Parties hereby consent and submit to service of process, personal jurisdiction, and venue in the state and federal courts in Kansas City, Missouri or Jackson County, Missouri, and select such courts as the exclusive forum with respect to any action or proceeding arising out of or in any way relating to this Agreement, and/or pertaining in any way to the relationship between Merchant and Bank. MERCHANT AND BANK HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED HEREBY.

**27. Limit of Liability; Force Majeure.** EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, BANK DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN. Without limiting the foregoing, Bank shall not be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by Bank) suffered by Merchant, its customers or any third party in connection with the Services provided hereunder. In no event shall Bank be liable for any damages or losses that are wholly or partially caused by the Merchant, or its employees, agents, or Merchant Service Providers, or that first occurred, whether or not discovered by Merchant, more than thirty (30) days prior to Bank's receipt of written notice from Merchant. Bank's liability related to or arising out of this Agreement shall in no event exceed an amount equal to the lesser of: (i) actual monetary damages incurred by Merchant; or (ii) fees paid to and retained by Bank for the particular Services in question for the twelve (12) calendar months immediately preceding the date on which Bank received a written notice from Merchant detailing Bank's material nonperformance under this Agreement. Bank shall not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from labor disputes, fire, weather or other casualty, power outages, and funding delays, however caused, governmental orders or regulations, or any other cause, beyond Bank's reasonable control. Upon such an occurrence, performance by Bank shall be excused until the cause for the delay has been removed and Bank has had a reasonable time to again provide the Services. No cause of action, regardless of form, shall be brought by either Party more than one (1) year after the cause of action arose, other than one for the non-payment of fees and amounts due Bank under this Agreement.

**28. Controlling Documents.** This Agreement (including all addenda, schedules and exhibits hereto and all documents and materials referenced herein) supersedes any and all other agreements, oral or written, between the Parties hereto with respect to the subject matter hereof, and sets forth the complete and exclusive agreement between the Parties with respect to the Services and, unless specifically provided for herein, other services are not included as part of this Agreement. If there is a conflict between the Agreement and an addendum, schedule or exhibit hereto, the addendum, schedule or exhibit shall control. If there is a conflict between the Operating Rules and this Agreement, the Operating Rules shall prevail.

**29. Right to Cease Services.** Bank reserves the right, without notice to Merchant, to delete Merchant from Bank's systems, without relieving Merchant from any of Merchant's obligations under this Agreement, should Merchant not process Transactions through Bank's system for a period of one (1) year or more.

**30. Conversion; Deconversion.** Merchant shall take all necessary steps to, and shall, promptly convert to Bank's system for the Services in this Agreement not later than ninety (90) days after the execution of this Agreement by Bank unless mutually agreed upon. Any third-party fees and expenses incurred by Bank in connection with Merchant's conversion shall remain the sole responsibility of Merchant. However, if Bank should agree to incur any fees related to any conversion or programming effort affecting the Services after Merchant's initial conversion to Bank, and Merchant terminates the Agreement within one (1) year from the Effective Date or never processes a Transaction, then Merchant must reimburse Bank for such conversion fees. Merchant agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by Bank, its affiliates and/or agents) in connection with and/or related to Merchant's deconversion from Bank at the termination of this Agreement.

**31. Confidential Information.** Bank and Merchant will keep strictly confidential and will not use or disclose to any third party or to any employee, officer, director or agent (other than to those employees and Merchant Service Providers of Merchant who participate directly in the performance of this Agreement) for any purpose whatsoever (other than as contemplated herein), including but not limited to, this Agreement and information relating to the finances, systems, methods, techniques, programs, devices and operations of Bank and/or the Card Networks, pricing, materials, processes and any written or oral information furnished by Bank or by Merchant which is either nonpublic, confidential or proprietary in nature unless such use or disclosure is lawfully permitted or is mutually agreed upon in writing by Merchant and Bank; provided, however, Merchant understands and acknowledges that affiliates of Bank and suppliers of Bank will assist in the implementation and maintenance of, and provision of various services under this Agreement, therefore Merchant authorizes Bank to share any information that it obtains from Merchant with its affiliates and suppliers if needed to perform periodical financial, operational and regulatory reviews and audits. Information may also be shared with any regulators having jurisdiction over Bank or its affiliates.

The Parties acknowledge that the injury that would be sustained by the Party disclosing information as a result of the violation of this Section cannot be compensated solely by money damages, and therefore agrees that the disclosing Party shall be entitled to seek injunctive relief and any other remedies as may be available at law or in equity in the event of a violation of the provisions contained in this Section. The restrictions contained herein shall not apply to any information which becomes a matter of public knowledge, other than through a violation of this Agreement or other agreements between the Parties. Neither Party shall use the trade name, trademarks or service marks of the other Party for any purpose without the express written consent of the other Party.

**32. Financial Statements.** From time to time, Commerce may request and Merchant shall produce financial records relating to the financial condition of Merchant. Merchant shall produce such records not later than thirty (30) days following such request.

**33. Security, Data Incidents.** Merchant acknowledges the importance of compliance with Bank and Card Networks' security requirements and obligations to protect Transactions and information whether during transmission, while in storage and from disclosure. Merchant will be solely responsible for the security, quality, accuracy, and adequacy of all Transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Merchant warrants to Bank that it has implemented and will maintain secure systems for maintaining and processing Transaction and information and for transmitting Transactions and information to Bank. Bank shall have no liability whatsoever for the

security or availability of any communications connection used in connection with the Services provided hereunder. Merchant acknowledges that Bank is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including without limitation any Merchant Service Provider of Merchant. Merchant shall notify Bank immediately if Merchant becomes aware of or suspects a Data Incident. Merchant agrees to fully cooperate with Bank and any Card Network with respect to any investigation and/or additional requirements related to a suspected Data Incident until the investigation is complete.

**34. System Requirements and Upgrades.** Merchant acknowledges that Bank may intercept and settle Merchant Transactions directly with other entities processed by Bank. Merchant agrees that the Services shall be provided in accordance with Bank's then current systems, standards and procedures and that Bank shall not be required to perform any special programming, to provide any special hardware or software or to implement any other system, program or procedure for Merchant. Unless otherwise agreed in writing by Bank, all Transaction, settlement and other data and information used in connection with the Services shall be provided to Bank in Bank's then current data formats and by means of Bank's then current telecommunications configurations and protocols. Bank may make changes in the Services based upon, but not limited to, technological developments, legislative or regulatory changes, or the introduction of new services by Bank. Merchant shall comply with all time deadlines, equipment and software maintenance and upgrading requirements which Bank may reasonably impose on Merchant from time to time. Merchant expressly agrees that Bank may honor the request(s) or instruction(s) of any purported representative of Merchant or its Merchant Service Provider at any time during the term of this Agreement, and that Bank may act in reliance upon such request(s) or instruction(s) in connection with Bank's provision of the Services hereunder. All expenses due to required changes and upgrades shall be at Merchant's sole cost and expense.

**35. Merchant Records.** Bank may examine and verify, at any reasonable time, all records of Merchant pertaining to Transactions acquired by Bank hereunder, and Merchant agrees to keep such records in accordance with the Operating Rules of each Card Network. Merchant agrees to retain an original or other photographic or digital image of sales and credit Transactions thereof for such period as may be necessary to enable Merchant and Bank to comply with all applicable laws and the Operating Rules and will deliver a copy of such image of any Transaction or credit Transaction upon request by Bank as evidence of the sale or return. Merchant agrees to keep original copies of all mail/telephone order forms and other documentation relating to Transaction (including copies of Transaction documentation) for the later to occur of: (i) three hundred sixty five (365) calendar days following the Transaction date; or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving or relating to the Transaction. Merchant will be responsible for all liabilities arising from any failure to provide an acceptable copy of any Transaction or credit Transaction as required by law or the Operating Rules.

**36. Electronic Records: Electronic Signature.**

(i) Paper Documents. Merchant agrees that all paper applications and future amendments related to the Merchant Services with which the Merchant Processing Agreement is a part and whether or not the paper records were submitted in advance of, contemporaneously with or subsequent to, this Agreement may, at the option of Bank, be converted by any digital or electronic method or process to an electronic record or subsequently further converted or migrated to another electronic record format or electronic storage medium. Merchant further agrees that upon conversion to an electronic record as authorized herein, such electronic record shall be the record of the transaction and the electronic record shall have the same legal force and effect as the paper document from which it was converted. Merchant waives any legal requirement that any documents digitally or electronically converted be embodied, stored, or reproduced in a

tangible media. Merchant further agrees that a printed or digitally reproduced copy of the electronic record shall be given the same legal force and effect as an original signed writing. In addition, Merchant authorizes and agrees to destruction of the paper documents by Bank upon conversion of the paper documents to a digital or electronic record.

(ii) Electronic Documents. The term Electronic Document, as used in this provision, shall include any document originally presented to Bank in an electronic file format accompanied by an Electronic Signature. The term Electronic Signature includes, but shall not be limited to, (a) a non-electronic handwritten signature, or facsimile signature, that is subsequently converted to an electronic format; (b) a signature produced or reproduced in an electronic file format or by an electronic process, or (c) any electronic symbol, marking, communication, or process attached to or associated with a document. The parties agree that an Electronic Document shall have the same force and effect as if the document were in a tangible format and bore the signing party's non-electronic handwritten signature.

(iii) The Record. Merchant agrees that the electronic version of either, as applicable, (a) the original paper document or (b) the Electronic Document that is retained or produced by Bank which contains a replica of the Electronic Signature, shall be the original record of the transaction to the exclusion of any records produced or retained by other means or by other parties. Copies of the original record shall be made available to Merchant upon request.

**37. Binding on Successors; Assignment.** Neither Party shall sell, assign or transfer this Agreement or any part thereof without the prior written consent of the other Party; provided, however, Bank may, without the consent of Merchant assign any or all of its rights and obligations under this Agreement to its parent, any subsidiary (of Bank or its parent), or any affiliate (of Bank or its parent) or to any other Party pursuant to a merger, acquisition, consolidation, reorganization, or a sale of all or any portion of its assets.

**38. Notices.** All notices, requests, demands and other communications ("Notices") to be delivered hereunder unless specified otherwise herein shall be in writing and shall be deemed given upon receipt. Notices may be delivered in person, by a nationally recognized overnight courier service or registered or certified mail, postage prepaid, to the following addresses:

(i) Bank: Commerce Bank, 811 Main Street, Mail Drop KCBC-1, Kansas City, Missouri 64105, Attention: Merchant Support Center.

(ii) Merchant: to the Merchant address provided on the Application.

**39. Unenforceable Provision.** If any term or provision of this Agreement or any Application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other Application of such term or provision shall not be affected thereby.

**40. No Waiver.** The rights of any Party under any provision of this Agreement shall not be affected by its prior failure to require the performance by the other Party under such provision or any other provision of this Agreement, nor shall the waiver by any Party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself. A waiver of any right or obligation hereunder must be in writing and signed by the Parties to this Agreement.

**41. Remedies.** In the event that either Party breaches or violates any of the obligations contained in this Agreement, and in addition to the rights and remedies otherwise provided in this Agreement, the other Party shall be entitled to exercise any right or remedy available to it either at law or in equity, including without limitation, termination of this Agreement, damages and injunctive relief. The exercise of any right or remedy shall be cumulative.

**42. Amendment of Agreement.** This Agreement constitutes the complete understanding between Merchant and Bank with respect to the subject matter hereof and all prior oral or written communications and agreements with respect thereto are superseded. Unless otherwise required by law, Bank may amend this Agreement or change

terms in our fee schedules by posting notices online, sending a notice or including a message on or with your statement. Your continued use of the Merchant Services after the effective date of any amendment or change will constitute Merchant's acceptance of the terms of the amendment or change. A current version of the Merchant Processing Agreement can be found at:

[www.commercebank.com/merchantagreement](http://www.commercebank.com/merchantagreement).

**43. Authorization.** The execution and delivery of this Agreement by Merchant and the performance hereof by Merchant have been duly authorized by all necessary corporate, limited liability company or partnership or other appropriate authorizing actions on the part of Merchant. Merchant shall provide to Commerce, as Commerce may request from time to time, such documentation relating to Merchant's authority to contract for the Services. This Agreement is valid and enforceable in accordance with its terms.

**44. Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**45. Specialized Rules for Card Present Transactions.**

For Merchants that accept Card present or face-to-face Transactions, the following terms shall also apply.

(i) Presentation of Cards.

(a) For non-Chip Card Transactions, Merchant must examine each Card presented to determine that the Card presented is valid and has not expired by the terms on its face. Merchant must exercise reasonable diligence to determine that the authorized signature on any Card presented corresponds to the Cardholder's signature on the Transaction sales ticket. Merchant must not honor expired, invalid, altered, counterfeit, or revoked Cards or any Card presented by any person other than the proper Cardholder as evidenced by the authorized signature on the Card. **BANK IN OUR SOLE DISCRETION MAY DECLINE AT ANY TIME OR FROM TIME TO TIME TO PROCESS ANY SALES TICKET THAT DOES NOT INCLUDE THE ACTUAL SIGNATURE OF A CARDHOLDER, EVEN IF THE CARDHOLDER'S CONSENT OR INSTRUCTIONS HAVE BEEN OBTAINED BY TELEPHONE OR BY MAIL.**

(b) The signature on the back of the Card must match the one on the Transaction sales ticket. If the Card is not signed, in addition to requesting an authorization, Merchant may review positive identification as allowed by local and state law, such as a passport or driver's license, to confirm that the user of the Card is the Cardholder and record the information and advise the Cardholder to sign the signature panel of the Card in accordance with the Operating Rules.

(c) In order to protect Merchant, Merchant must never complete a Transaction if the customer does not present his or her Card or if Merchant cannot obtain an electronic authorization or physical imprint of the Card. If Merchant elects to do so, Merchant will be deemed to warrant the identity of the customer as the authorized Cardholder of the Card, and if the Cardholder later denies making the purchase, Merchant will not be able to rebut the chargeback.

(ii) Completion of Sales Transaction.

(a) Merchant must capture the information from the Card by electronic data capture or use a suitable imprinter to legibly imprint Cards on sales tickets. A photocopy of the Card is not an acceptable substitute for an imprint. If the account number is manually keyed into the terminal, Merchant must imprint the Card. Merchant's name, location, city and state must match the Merchant plate on the imprinter. Merchant must notify Bank of any changes to the information on the Merchant plate on the imprinter. Merchant must use one (1) sales ticket for all goods and services sold in the same Transaction. In addition to having the Cardholder sign the sales ticket, the sales date and dollar amounts and other information must be clearly written or printed

on the sales ticket or captured by an electronic device. A brief description of the goods sold or service rendered must be provided on the sales ticket.

(b) Authorization/approval code numbers shall be clearly recorded in the appropriate place on the sales ticket. Never circle or underline any information on the sales ticket.

(c) Every Transaction sales ticket or credit voucher must be printed from electronic draft capture equipment or imprinted with the Cardholder's account number and Merchant name.

(d) Merchant will require the Cardholder to sign the sales ticket in Merchant's presence. Merchant will give the Cardholder a true and completed copy of the sales ticket or credit voucher. If the Cardholder's copy of the sales ticket or credit voucher is printed from electronic draft capture equipment/terminal, it must contain no more than the last four (4) digits of Cardholder's account number.

(e) Merchant shall not require Cardholders to provide any personal information as a condition for honoring Cards unless otherwise required by the Operating Rules. Personal information includes, but is not limited to, a home or business telephone number, a home or business address, a social security number, or a photocopy of a driver's license.

(f) Merchant shall not retain or store magnetic-stripe data after the authorization of a Transaction, except as required to complete the transmission of such data to Bank.

(iii) Authorization/Approval Codes.

(a) If so directed by a Card issuer or other entity from whom authorization is requested, Merchant shall attempt to retain the Card by reasonable and peaceful means, notify Bank of the recovery of the Card, and ask for further instructions.

(b) If Merchant is suspicious of the Transaction for any reason at all, Merchant should contact the Voice Authorization center, state to the authorization clerk "This is Code Ten" and await instructions.

(iv) Forgeries; Counterfeit Cards. Merchant should examine all notices received from Bank or from the Card Network's or Other Networks to help Merchant determine whether a Card presented is counterfeit. Merchant should attempt to retain the Card while making an authorization request and then match the signature on the Card with the one on the Transaction sales slip. Merchant should compare the embossed account number on the Card to the account number printed on the receipt or displayed on the terminal. Merchant should examine each Card to see if it looks genuine. Merchant should use reasonable, peaceful efforts to recover any Card if: (a) the printed four digits above the embossed account number do not match the account number, if applicable; (b) Merchant is advised by Bank or the Voice Authorization center to retain the Card; or (c) Merchant has reasonable grounds to believe such Card is counterfeit, fraudulent or stolen.

Merchant shall be solely responsible for Merchant's actions in recovering/retaining Cards.

**46. Specialized Rules for Mail Order, Telephone Order and Internet Transactions.**

For Merchants that accept Card not-present or Internet Transactions, the following terms shall also apply.

(i) Completion of Sale.

(a) Merchant must submit one (1) sales Transaction for all goods and services sold in the same sale. The collection and payment of all federal, state and local taxes is Merchant's responsibility. Taxes collected shall be included in the total Transaction amount and not collected separately by another form of payment.

(b) All available information about the sale, including handling and shipping charges, must be accurately recorded.

(c) Merchant will provide to the Cardholder a true and completed

record of the sale.

(d) If Merchant is authorized by Bank to accept Cards for mail, telephone and pre-authorized orders, all available information, including handling and shipping charges, must be accurately recorded. Merchant is responsible for assuring that the purchaser is the Cardholder's on the order, and the Card number is correct and not transposed into an invalid or inappropriate account number. If not, the Transaction may result in a chargeback.

(e) Every Mail Order, Phone Order or pre-authorized Transaction sales ticket or credit voucher must be printed from electronic draft capture equipment or imprinted with the Cardholder's account number and Merchant name and address. For mail, telephone, and pre-authorized orders, all information that would normally be imprinted from a Card must be clearly written in the appropriate areas on the order or sales slip. "Mail Order" or "Phone Order" should be written on the signature line of the sales draft.

(ii) Privacy Policy and Transaction Security. Merchant agrees to post and maintain on all Merchant web sites both Merchant's consumer data privacy policy (which must comply with the Operating Rules) and Merchant's method of Transaction security. Further, Merchant may not retain or store CVV2/CVC2 data subsequent to the Transaction authorization.

(iii) Website Disclosures. Merchant websites must clearly and prominently display the country of the Merchant business and Merchant contact information (e.g. telephone number) on the checkout screen displaying the final Transaction amount or within the sequence of check out web pages.

#### **47. Recurring Transactions**

For Merchants that process Recurring Transaction, the following terms shall also apply.

For recurring transactions, Merchant must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholder's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from Bank or a Card Network; or (iii) an authorization/approval code that the Card is not to be honored. Merchant must include in your Transaction the Card Network mandated electronic indicator that the Transaction is a recurring transaction.

#### **48. Arbitration for Claims Involving American Express**

For Merchants that participate in the American Express OptBlue® program, the following terms shall also apply.

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

(i) Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Section and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with the Agreement. A party can contact JAMS or

AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express or Bank, on one hand, selects the organization and Merchant, on the other hand, select the other within thirty (30) days thereafter or if an arbitrator is appointed pursuant to Section of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in New York, NY.

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

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

(iv) Arbitrator's Authority. The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under the Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section.

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

(vi) Small Claims. American Express will not elect arbitration for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

(vii) Governing Law/Arbitration Procedures/Entry of Judgment. This Section is made pursuant to a Transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have fifteen (15) days to respond before the arbitrator rules on the request. If Merchant's Claim is for ten thousand dollars (\$10,000) or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the

arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where Merchant's headquarters or Merchant's assets are located.

(viii) Confidentiality. The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

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

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

(xi) Definitions. For purposes of this Section only: (A) "American Express" includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing; (B) "Merchant" includes Merchant's Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing; and (iii) "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including Merchant or Bank) that American Express has the right to join, including any allegation involving a Transaction using an American Express product or network or regarding an American Express policy or procedure.