

Merchant Processing Terms & Conditions

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

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

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

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

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

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

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

1. **Agreement.** Reference to this "Agreement" includes the Merchant Application & Agreement, these Merchant Processing Terms & Conditions, the additional terms and conditions located at www.MRIMerchantNotification.com, all supplements, schedules, and appendices thereto, any additional location documentation, and any other documents requested by BANK and setting out the terms of any service provided by BANK in connection with the Merchant Application & Agreement. This Agreement is not in full force and effect until accepted by BANK. BANK may adjust or amend the Merchant Profile section with or without notice to MERCHANT prior to accepting the Agreement. MERCHANT acknowledges that BANK will provide transaction processing hereunder through First American or other third parties. MERCHANT agrees that First American may perform the functions of BANK hereunder and that First American may receive the benefits of and enforce the terms of this Agreement against MERCHANT and any third party as an assignee of BANK's rights hereunder, whether or not BANK is a party to such proceeding or transaction. The additional terms and conditions located at www.MRIMerchantNotification.com shall apply to the extent they are relevant to a software-based service for rent payments.

2. **Bank Card Authorization.** MERCHANT understands and acknowledges that all transactions must be authorized.

3. **Transaction Records.** [Intentionally Omitted]

4. **Payments.** MERCHANT understands that an authorization is not a guarantee of payment from Bank. All payments to MERCHANT for legitimate and authorized bank card transactions shall be made by BANK through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, BANK cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, the MERCHANT agrees to assist BANK to help resolve any problems in crediting MERCHANT's account. MERCHANT agrees to provide BANK three (3) days prior written notice of any change of account and to abide by BANK's policies regarding changes to accounts. MERCHANT and not BANK or any processor shall be responsible for verifying that account information is correct on the Merchant Application & Agreement, voided check and all account statements. BANK is not responsible for incorrect account numbers. Unless proper notice is provided by MERCHANT to BANK, MERCHANT shall not change any of its accounts. All payments to MERCHANT for the amount of bank card transactions properly submitted to BANK shall be less discount, credit chargebacks, reserve amounts, transaction fees, statement fees, and other applicable fees all of which are the responsibility of MERCHANT. Any payment made by BANK to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by BANK. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to transactions described in Sections 8, 9, and

15 of this Agreement unless and until MERCHANT provides to BANK the requested documentation. If MERCHANT fails to provide requested documentation, such payments shall be earned compensation of BANK. Fees and other charges due BANK hereunder may be deducted from amounts due MERCHANT or may be debited against any of MERCHANT's accounts at BANK's sole discretion. The discount and other fees may be collected by BANK on a daily, monthly, or other basis, as determined by BANK. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's account, or paid directly by MERCHANT through ACH or otherwise at BANK's sole discretion. MERCHANT must notify BANK in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of BANK and MERCHANT subject to or relating to this Agreement or BANK's obligations hereunder. Save and except BANK's right to funds owed BANK under this Agreement or incorrectly paid to MERCHANT, if no notice of error is received within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. Any amount inadvertently or incorrectly paid to MERCHANT may be debited from any account of MERCHANT, at the sole discretion of BANK and, in any event, remains an obligation of MERCHANT to BANK payable in full and on demand.

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

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

(a) MERCHANT has delivered MERCHANT's merchandise to the cardholder signing such sales slip or completed MERCHANT's service described on the slip or delivered such other value in accordance with MERCHANT's underlying agreement with the cardholder;

(b) Unless expressly authorized in writing by BANK and as permitted by Visa, MasterCard and American Express rules and regulations, MERCHANT has not and shall not make any cash advances to cardholder, either directly or by deposit to the cardholder's account;

(c) Neither MERCHANT nor any owner, director, officer, member, partner or employee of MERCHANT ("Affiliates") has advanced any cash to cardholder or any person in connection with the purported bank card sale;

(d) MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange bank card account number information in the form of imprinted sales slips, mailing lists, tapes, or any other media obtained by reason of a bank card transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, to BANK, to Visa, to MasterCard, to American Express, to Discover, or to Wex/Voyager, or PIN Debit/EBT Networks, or pursuant to a valid subpoena;

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

(f) MERCHANT understands that transactions completed at one location may not be processed at another location.

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

(h) MERCHANT warrants it has not and will not reverse engineer any software of First American found or used in connection with the operation of the POS equipment

(i) MERCHANT shall not, under any circumstances, present to BANK a sale which has been split into multiple bank card transactions;

(j) If an authorization number is required or requested, MERCHANT warrants it shall use only the authorization number obtained through the Voice Authorization Network phone number provided by BANK. MERCHANT shall not use any number given by the cardholder or any type of number which has been obtained from any other source.

(k) MERCHANT is responsible for its employees' actions while in its employ.

(l) MERCHANT will not sell, purchase, provide, exchange or in any manner disclose Card account number, transaction, or personal information of or about a Cardholder to anyone other than BANK, or in response to a valid government demand. This warranty applies to all media created or obtained by MERCHANT as a result of a Transaction.

6. **Business Changes.** MERCHANT shall provide at least thirty (30) days written notice to BANK for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, or address, change of Sales Profile as described in the Merchant Application & Agreement, any ownership change, any material adverse change in MERCHANT's financial condition, or transfer or sale of substantially all of the assets of MERCHANT. At all times MERCHANT shall provide BANK with its current mailing address. BANK shall have the right to charge a fee of no less than twenty dollars (\$20.00) for returned mail items.

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If BANK receives a returned mail item with no forwarding address, BANK may exercise its right to suspend mailing MERCHANT's monthly statements until such time as the correct address has been provided by MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, utilize the merchant account to process e-commerce transactions or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining BANK's prior written consent to the change, move, or addition. MERCHANT also agrees that prior to any changes, BANK must first accept the change and confirm such acceptance in writing. MERCHANT acknowledges that codes of professional responsibility and rules and regulations of professional associations if applicable to MERCHANT, may also apply to the transactions covered by this Agreement. MERCHANT may, however, bring any inconsistency between this Agreement and such codes and rules to the attention of BANK and request a modification to this Agreement to eliminate such inconsistency. BANK may, in its discretion, agree to such modification to the extent it is consistent with BANK policy and in conformity with then existing Visa, MasterCard, American Express, Discover, Wex/Voyager and PIN Debit/EBT Networks rules, regulations and applicable laws. Until BANK agrees to such modification in writing, the terms of this Agreement shall remain in place.

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

7. **Chargebacks.** MERCHANT expressly acknowledges and agrees to any charge or debit made by BANK against any of MERCHANT's accounts as a result of the exercise of chargeback or retrieval rights by a cardholder, issuing bank, processor, or other intermediary pursuant to applicable operating regulations of Visa, MasterCard, American Express, Discover, Wex/Voyager, PIN Debit/EBT Networks or other card brands/organizations as the same may be in effect from time to time. MERCHANT also understands and acknowledges that BANK may debit or reduce MERCHANT's bank account regardless of whether the cardholder has returned merchandise. MERCHANT understands that BANK will assess MERCHANT a fee as well as administrative costs as determined by BANK for each chargeback. MERCHANT, whether consented to or not by cardholder, shall not present to BANK for processing any sales slip representing a transaction which has been previously charged back to BANK and returned to MERCHANT. MERCHANT's obligations and BANK's rights under this paragraph shall survive the termination of this Agreement. MERCHANT shall not bill or collect from any cardholder for any transaction for which the cardholder paid with a bank card unless the cardholder exercised a chargeback, the MERCHANT has fully paid for such chargeback, and the MERCHANT otherwise has the right to do so. Without prior notice, BANK shall have the right, at any time, to reduce MERCHANT's bank card transaction proceeds received from issuing banks, debit any of MERCHANT's accounts and/or demand immediate payment from MERCHANT through ACH or otherwise for any bank card transaction which is disputed, questioned or returned to BANK by the financial institution or company which has issued the bank card (the "Card Issuer") and to chargeback such transaction to MERCHANT in any situation, including but not limited to, the following situations:

- (a) Where the transaction had not been authorized as required;
- (b) Where sales slip covers goods or services other than those described in the Merchant Application & Agreement;
- (c) Where a cardholder contends to the Card Issuer that: the obligation was not valid or the payment was not properly credited to the cardholder's account.
- (d) Where original sales slip is not received by BANK from MERCHANT when requested by BANK in accordance with this Agreement;
- (e) Where the transaction was generated through the use of an expired bank card;
- (f) Where the signature on the sales slip is different from the signature appearing on the signature panel of the card or where no signature appears on the signature panel of the card;
- (g) Where a Card Issuer or BANK has information that impropriety or fraud occurred at the time of transaction, whether or not such transaction was properly authorized by the Card Issuer or the cardholder participated in or authorized the transaction, or where the Card Issuer represents that there is no bank card outstanding with the account number used;
- (h) BANK reasonably determines that the transaction record is improper, fraudulent, not a bona fide transaction in MERCHANT's ordinary course of business or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, impropriety, or dishonesty on the part of card user, cardholder, MERCHANT or Affiliates;
- (i) In any situation where the sales slip was executed or credit given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT hereunder, or MERCHANT's violation of Visa, MasterCard, American Express, Discover, Wex/Voyager, or PIN Debit/EBT Networks rules and regulations which has resulted in a transaction being charged back by the Card Issuer;
- (j) As required by bank card brand/organization rules or regulations as they currently exist or as they may be amended from time to time;
- (k) In such other circumstances where BANK determines or suspects in its sole discretion that the transaction may result in a chargeback for any reason, whether or not enumerated under this paragraph and whether or not the transaction results in a chargeback; or
- (l) If with respect to any of MERCHANT's outlets, the ratio of bank card counterfeit and fraud volume to bank card transaction volume or the ratio of the number of bank card chargebacks to the number of bank card transactions exceeds 1% or credits processed exceed ten percent (10%) for any given month. In such event, without limiting other rights hereunder, BANK in its sole and absolute discretion may charge back all bank card sales for all locations.

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

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

10. **Exclusivity.** [Intentionally Omitted]

11. **Term; Termination.** The initial term of this Agreement shall commence upon BANK's acceptance hereof (as evidenced by BANK's performance hereunder) and continue in full force and effect for the term set forth in the Acknowledgements section of the Merchant Application & Agreement. Thereafter, the Agreement will automatically renew for the term set forth in the Acknowledgements section of the Merchant Application & Agreement. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement

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

13. **Attorneys' Fees and Collection Costs.** MERCHANT shall be liable for and shall indemnify and reimburse BANK for any attorneys' fees, arbitration cost, and expenses incurred by BANK in the enforcement hereof, including but not limited to collecting any amounts or obligations due from MERCHANT. BANK shall assess a collection fee of not less than two hundred dollars (\$200.00) in the collections of any obligation or amounts due by MERCHANT.

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

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

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

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

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

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

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

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

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

equipment and check imagers.

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

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

Apple Pay. By using Apple Pay, you are agreeing to be bound by the <https://developer.apple.com/apple-pay/terms/apple-pay-web-direct-merchants>, as they may be amended by Apple from time to time. If Apple amends the Apple Pay Platform Web Merchant Terms and Conditions, the amended and restated version will be posted here: www.merchantnotification.com. Such amendments to the Apple Pay Platform Web Merchant Terms are effective as of the date of posting. Your continued use of Apple Pay after the amended Apple Pay Platform Web Merchant Terms are posted constitutes your agreement to, and acceptance of, the amended Apple Pay Platform Web Merchant Terms. If you do not agree to any changes to the Apple Pay Platform Web Merchant Terms, do not continue to use Apple Pay.

For non-profit organizations ("NPO"), unless exempt from applicable laws that otherwise prohibit such discrimination, NPO represents and warrants that the NPO does not discriminate against any person or group of people in its hiring and employment practices, codes of conduct, programs, services or in any other aspect of its operations or activities on the basis of that person or group of people's personal characteristics or attributes. For clarity, discrimination, as defined includes, but is not limited to; hiring and employment policies or practices that discriminate against a person or group of people on the basis of their sexual orientation or gender identity, even if such policies and practices are permitted under applicable law.

Google Pay. By using Google Pay, you are agreeing to be bound by the <https://payments.developers.google.com/terms/sellertors>, as they may be amended by Google from time to time. If Google amends the Google Pay API Terms of Service, the amended and restated version will be at www.merchantnotification.com. Such amendments to the Google Pay API Terms of Service are effective as of the date of posting. Your continued use of Google Pay after the amended Google Pay API Terms of Service are posted constitutes your agreement to, and acceptance of, the amended Google Pay API Terms of Service. If you do not agree to any changes to the Google Pay API Terms of Service, do not continue to use Google Pay.

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

Merchant agrees and warrants the following:

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

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

Debit/EBT network fees may be billed on a pass-through basis.

15. **Variations.** If in MERCHANT's processing there is a variance from the information,

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

16. **MERCHANT Reserve Account.** BANK may require the MERCHANT or any guarantor to establish a reserve account against current and future indebtedness, or for any transaction which might become subject to a chargeback for any reason. Any reserve will be held by BANK for a period of time as is consistent with BANK's liability (up to 120 days from the date scheduled for last delivery of goods or services to cardholder, not to exceed 540 days from the processing date). BANK, in its sole and absolute discretion, may estimate the amount of the potential losses, fees, and costs and require MERCHANT or any guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. Failure to fund the reserve may result in immediate termination of the Agreement. MERCHANT also understands and agrees that BANK may withhold and retain any and all settlement funds in order to establish a Merchant Reserve Account without notice to MERCHANT. MERCHANT understands and agrees that all reserve funds may be retained and used to offset; 1) any loss which was created prior to establishing the reserve account 2) any current fees or losses due from time to time to BANK, hereunder and 3) any transaction which might result in a loss at a future date as determined by BANK. Reserves shall be held and placed in a non-segregated, non-interest bearing account in BANK's name and MERCHANT will have no right of access to said account. Further the Reserve Account shall not be deemed property of MERCHANT during the period of time the funds are held by BANK.

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

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

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

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

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

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

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

Merchant Services
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the address stated on the records of BANK. Notice to MERCHANT may be by letter, facsimile and/or the MERCHANT's monthly statement.

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

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

23. **Additional Terms and Conditions.** The following provisions may apply: NEXT DAY/ SAME DAY FUNDING (hereafter, "Accelerated Funding") is available for Visa®, MasterCard®, American Express®, Discover® and Wex/ Voyager™ card transactions and PIN based debit transactions only. Accelerated Funding is subject to BANK approval and subject to all provisions of the Merchant Processing Terms & Conditions. Qualifying funds are not deposited on weekends or bank holidays.

Upon execution of this agreement and approval for Accelerated Funding, MERCHANT acknowledges and agrees that the rates and fees charged are not a guarantee that all transactions processed will qualify.

Transactions batched after Cut-Off Time will be treated as batched on the following business day. Funding of Merchants may be impacted by circumstances beyond BANK's control, such as disruptions in network processing or processing delays by a third-party intermediary. BANK reserves the right to adjust or change Cut-Off Times at its sole discretion. For additional detail regarding Accelerated Funding, please go to: www.mrimerchantnotification.com.

MERCHANT agrees and understands that approval for Accelerated Funding is not guaranteed and approval/eligibility of MERCHANT for Accelerated Funding may be removed at any time by BANK, in its sole discretion.

For additional detail regarding Next Day Funding, please go to: www.mrimerchantnotification.com

MERCHANT agrees and understands that MERCHANT is not guaranteed to be accepted into this program. Even if accepted into this program, MERCHANT may be removed from this program at any time at the sole discretion of BANK.

MoneyGram – If MERCHANT chooses to accept MoneyGram, BANK has been approved by MoneyGram to facilitate the distribution of funds to MERCHANT. MERCHANT appoints BANK as its processor for the purpose of receiving payments from its customers through MoneyGram.

MERCHANT agrees: (i) that all MoneyGram Payments transferred to BANK shall be applied to the applicable customer's account with the MERCHANT; (ii) that payment to BANK is payment to the MERCHANT, and once the customer's funds are delivered to BANK, MERCHANT will not have any recourse against the customer for the payment made through the MoneyGram Network to BANK; (iii) to notify its customers that a MoneyGram Payment can be made at approved MoneyGram locations; (iv) that all terms and provisions of the MERCHANT Processing Application and Agreement and MERCHANT Processing Terms & Conditions shall apply to MoneyGram Payments in the same manner in which they apply to other payment methods; and (v) that all other terms and provisions of the MERCHANT Processing Application and Agreement and MERCHANT Processing Terms & Conditions shall remain in full force and effect.

Distribution of Funds. MERCHANT authorizes and directs Bank to deposit a portion of funds to a third-party. BANK may distribute deposits or funds to and may deduct funds from the bank account listed in the MERCHANT Application & Agreement. MERCHANT shall at all times, jointly and severally, indemnify BANK, its member bank, MasterCard, Visa, Discover, and their respective officers, directors, employees, agents and permitted assigns, in respect of, and hold BANK harmless from and against any and all claims, demands, causes of action, actions, proceedings, judgments, debts, obligations, liabilities, damages, fines, fees, penalties, interest obligations, taxes, deficiencies, loss (including without limitation chargeback losses), costs or expenses (including amounts paid to enforce this provision and amounts paid in settlement, interest, court costs, costs of investigation, fees and expenses of attorneys, accountants, financial advisors and other experts, and other expenses) suffered or incurred, directly or indirectly, by BANK's officers, directors, stockholders, partners, employees, representatives and agents arising out of, resulting from, relating to, or constituting, (a) any act or omission by the MERCHANT, or its respective officers, directors,

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agents, sales personnel or employees; or (b) any proceeding asserted or instituted against the MERCHANT or BANK, or any of their properties or assets, by any third party for damages suffered by such third party by reason of, resulting from, arising out of, or relating to any act or omission by the MERCHANT. In no event shall BANK be liable for its actions or omissions in connection with the distribution of deposits or funds per this Agreement. BANK may terminate at any time for any reason without recourse from or liability to the MERCHANT. BANK's assistance, if any, in such distribution shall not be deemed to limit or modify any of BANK's rights under any agreement BANK has with the MERCHANT. Furthermore, nothing expressed or referenced will be construed to give any legal or equitable rights, remedies or claims under or with respect to any agreement BANK has with MERCHANT. All deposits or funds distributed hereunder shall not be final but shall be provisional credit under the Uniform Commercial Code. Furthermore, MERCHANT acknowledges and agrees that, notwithstanding anything in the Uniform Commercial Code or similar laws, BANK shall have priority over all MERCHANT's deposits and funds that it processes, and that BANK may set off amounts it is owed against MERCHANT's funds

24. **Agreement Changes.** This Agreement, along with the additional terms and conditions located at www.MRIMerchantNotification.com may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by BANK. If any term, provision, covenant or condition of this Agreement is determined by any local, state or federal court or law enforcement agency to be invalid, illegal, void or unenforceable in any jurisdiction, then such provision, covenant or condition shall, as to such jurisdiction, be modified or restricted to the extent necessary to make such provision valid, binding and enforceable, or, if such provision cannot be modified or restricted, then such provision shall as to such jurisdiction, be deemed to be excised from this Agreement and any such invalidity, illegality or unenforceability with respect to such provision shall not invalidate or render unenforceable such provision in any other jurisdiction, and the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Additional American Express Card Acceptance Requirements

High CV Merchant. In the event MERCHANT's American Express annual charge volume exceeds \$1,000,000 in a rolling twelve month period or is greater than \$100,000 in any three consecutive months, MERCHANT will be considered a High CV Merchant by American Express and will be required to enter into a direct merchant card acceptance agreement with American Express. Upon any conversion to a direct agreement with American Express, MERCHANT will be bound by American Express' then current Card Acceptance and to any pricing and fees set by American Express.

Marketing and Communications. Upon agreement by MERCHANT to accept American Express transactions, MERCHANT consents to receive commercial marketing communications from American Express. After account setup, MERCHANT may contact BANK directly and request to opt-out of future marketing communications from American Express. This will not preclude MERCHANT from acceptance of important transactional or relationship communications from American Express. After a request to opt-out is received, MERCHANT may continue to receive marketing communications while BANK and American Express updates its records to reflect MERCHANT's request.

Rights and Obligations. MERCHANT agrees that American Express shall have third-party beneficiary rights to enforce this Agreement, but shall hold no obligations to the MERCHANT. MERCHANT warrants that it does not hold third-party beneficiary rights to any agreements between Payment Service Provider and American Express and at no time will attempt to enforce any such agreements against American Express. MERCHANT agrees BANK shall submit Transactions to, and receive settlement from, American Express. MERCHANT agrees (i) BANK shall disclose Transaction Data, Merchant Data, and other information about the MERCHANT to American Express; and (ii) American Express to use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program Agreement, and important transactional or relationship communications from American Express. MERCHANT agrees that American Express may use the information obtained in the Merchant application at the time of setup to screen and/or monitor MERCHANT in connection with Card marketing and administrative purposes. MERCHANT may opt-out of accepting Cards at any time without penalty and without directly or indirectly affecting its rights to accept Other Payment Products. MERCHANT's refund policies for purchases on the Card must be at least as favourable as its refund policy for purchase on any Other Payment Product and the refund policy be disclosed to Card Members at the time of purchase and in compliance with Applicable Law. MERCHANT must report all instances of a Data Incident immediately to BANK. MERCHANT must cease all use of and remove American Express Licensed Marks from the MERCHANT's website and wherever else they are displayed upon termination of the Merchant Agreement or a MERCHANT's participation in the Program.

MERCHANT shall not assign to any third-party any payments due to it under this Agreement, and all indebtedness arising from charges will be for bona fide sales of goods and services (or both) or charitable contributions at its establishments free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that MERCHANT may sell and assign future 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.

MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, IT AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

***Please visit www.americanexpress.com/merchanttopguide for a full copy of the American Express Merchant Operating Guide.**