

Pay Factory, Inc.
Card Services Agreement
Terms and Conditions

Last Updated March, 2022

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

Thank you for selecting Pay Factory as your payment facilitator. These terms and conditions, along with the attached Addenda and your Sponsored Merchant Application (collectively, the “**Agreement**”), will govern the legal relationship under which the payment processing services described herein will be provided to you. This Agreement is in addition to, and does not supersede or replace, any other agreement(s) between you and Pay Factory unrelated to the provision of payment processing services. Pay Factory is entering into this Agreement on behalf of, and as an agent of, Processor (defined below).

1. Definitions

- 1.1. “**ACH**” refers to the Automated Clearing House.
- 1.2. “**Acquirer**” refers to Pay Factory, Processor, and/or Bank, any of which shall have the authority to exercise rights belonging to the Acquirer hereunder.
- 1.3. “**Addendum**” (and the plural, “**Addenda**”) refers to each Addendum attached hereto, or any other Addendum otherwise executed or agreed to between the parties.
- 1.4. “**Agreement**” refers to these terms and conditions, along with the attached Addenda and the Sponsored Merchant Application, as any of the same may be amended from time to time pursuant to these terms.
- 1.5. “**American Express**” refers to American Express Travel Related Services Company, Inc. or its successors or assigns.
- 1.6. “**Applicable Law**” refers to all applicable federal, state, and local laws, statutes, ordinances, case law, regulations, and regulatory guidance.
- 1.7. “**Bank**” refers to the acquiring bank identified in the Sponsored Merchant Application, or such other acquiring bank(s) as Pay Factory or Processor may contract with to provide sponsorship with the Payment Networks, as well as any successors and assigns of such acquiring bank(s).
- 1.8. “**Card**” refers to an account, or evidence of an account, authorized and established between a Cardholder and a Payment Network, or representatives or members of a Payment Network, that Sponsored Merchant accepts from Cardholders as payment for a good or service.
- 1.9. “**Card Information**” refers to all information related to a Cardholder or Card obtained by Sponsored Merchant in connection with a Transaction, including, without limitation, names, addresses, zip codes, card numbers, expiration dates, security codes, PIN numbers, credit limits, or account balances.
- 1.10. “**Cardholder**” refers to the person or entity to whom a Card is issued or who is authorized to use a Card.
- 1.11. “**Chargeback**” refers to the reversal of any Transaction pursuant to the Operating Rules for whatever reason.

1.12. “**Data Compromise Event**” refers to any event that results, or could result, directly or indirectly, in the unauthorized access or disclosure of Transaction Information, Cardholder information and/or Card Information.

1.13. “**Discover**” refers to Discover Financial Services, LLC or its successors or assigns.

1.14. “**Mastercard**” refers to Mastercard International Incorporated or its successors or assigns.

1.15. “**NACHA**” refers to the National Automated Clearing House Payment Network or its successors or assigns.

1.16. “**Operating Rules**” refers to all rules, bylaws, programs, and regulations of the Payment Networks, as the same are amended from time to time, including, without limitation, the provisions thereof governing or otherwise applicable to “Merchants,” “Sponsored Merchants,” or “Submerchants.” Operating Rules for Visa and Mastercard are presently available online at usa.visa.com and www.mastercard.us, respectively. Operating Rules (or excerpts thereof) for American Express and Discover are presently available online at www.americanexpress.com/merchantopguide and https://www.discoverglobalnetwork.com/content/dam/discover/en_us/dgn/pdfs/MIT-Implementation-Guide.pdf, respectively. With respect to ACH transactions, Operating Rules shall also refer to NACHA rules and regulations. The Operating Rules are hereby incorporated into this Agreement by reference.

1.17. “**Pay Factory**” refers to Pay Factory, Inc., a payment facilitator.

1.18. “**Payment Network**” refers to each of Visa, Mastercard, American Express, Discover, and any card network issuing credit or debit cards, and, for purposes of this Agreement, further includes the Payment Card Industry Security Standards Council. With respect to ACH transactions, Payment Network shall also refer to NACHA.

1.19. “**PCI DSS**” refers to the Payment Card Industry Data Security Standards.

1.20. “**Processing Fees**” refers to the fees and charges set forth on the fee schedule that is part of the Sponsored Merchant Application and this Agreement or any Addenda thereto, as modified or amended from time to time, whether by the Payment Networks or by Acquirer pursuant to this Agreement, including, without limitation, by messages included on any processing statement.

1.21. “**Processor**” refers to Worldpay, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384, and its successors and assigns, or such other payment processor as Pay Factory may contract with to provide payment processing functionality.

1.22. “**Reserve Funds**” refers to funds placed in one or more non-segregated and non-interest bearing accounts established by Acquirer in accordance with this Agreement to ensure payment of all obligations or anticipated obligations hereunder, including, without limitation, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Acquirer or the Payment Networks.

1.23. “**Security Standards**” refers to all rules, regulations, or standards adopted or required by the Payment Networks relating to data security and the protection of Card Information, including, without

limitation, PCI DSS, Visa's Cardholder Information Security Program and Payment Application Best Practices, Mastercard's Site Data Protection Program and POS Terminal Security Program, American Express's Data Security Operating Policy, Discover's Information Security & Compliance Program, and any successor rules, regulations or standards, in each case, as any of the same may be amended from time to time.

1.24. "Services" refers to those services provided by Acquirer, necessary and required to facilitate the authorization, processing, and settling of Transactions.

1.25. "Settlement Account" refers to the account maintained by Sponsored Merchant at a bank or depository institution acceptable to Acquirer for credits and debits related to Transactions, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Acquirer or the Payment Networks.

1.26. "Sponsored Merchant" refers to the legal entity identified in the Sponsored Merchant Application.

1.27. "Sponsored Merchant Application" refers to the application that Sponsored Merchant completed and signed (including by electronic signature or otherwise electronically indicating acceptance of the terms) and which is subsequently accepted by Acquirer, whether evidenced by the execution of this Agreement or by the processing of presented Transactions.

1.28. "Transaction" refers to any interaction between a Cardholder and a Sponsored Merchant in which a Cardholder (a) uses a Card to purchase Sponsored Merchant's goods or services and which results in activity on the Cardholder's account; or (b) initiates an ACH payment transaction to Sponsored Merchant.

1.29. "Transaction Information" means any data or information resulting from a Transaction, including payment processing-related information collected or stored by Processor or Pay Factory, including the price paid for products or services, data, time, approval, unique transaction number, store identifier, and may include Card Information and Cardholder information.

1.30. "Visa" refers to Visa Inc. or its successors or assigns.

2. Services

2.1. Subject to Applicable Law and the Operating Rules, Pay Factory (or its agents, contractors, or designated representatives) will provide the Services to Sponsored Merchant pursuant to the terms of this Agreement. Sponsored Merchant agrees to abide by, and to use the Services in strict compliance with, Applicable Law, the Security Standards, and the Operating Rules.

2.2. Upon request, Pay Factory, Processor, and/or Bank may elect to provide certain ACH processing services to Sponsored Merchant at the rates specified in the Sponsored Merchant Application and under the terms set forth in this Agreement. To the extent Sponsored Merchant uses such ACH processing services, it agrees to abide by NACHA rules and regulations, as the same may be amended from time to time.

3. Sponsored Merchant Representations and Responsibilities

3.1. At the time of signing of the Sponsored Merchant Application, and at each time Sponsored Merchant submits a Transaction, Sponsored

Merchant agrees with, and represents and warrants to, Pay Factory, Processor, and Bank that:

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

3.1.2. Sponsored Merchant meets the definition of, and has satisfied the requirements applicable to, "Merchants," "Sponsored Merchants," and/or "Submerchants" under the Operating Rules (taking into account the fact that Sponsored Merchant is authorized to accept cards pursuant to this Agreement rather than a merchant agreement);

3.1.3. Each statement made by Sponsored Merchant on the Sponsored Merchant Application is true, and except as has been disclosed in writing to Pay Factory, remains true;

3.1.4. Sponsored Merchant has its principal place of business in its located in, and has been formed (if Sponsored Merchant is an entity or organization) under the laws of, the United States;

3.1.5. Sponsored Merchant has included its "doing business as" name, its country location (which name and country is the same as that disclosed to Cardholders in connection with a Transaction), the appropriate Sponsored Merchant category code/Card acceptor business code ("MCC"), and its unique merchant identification number ("MID") (defined below) in the authorization request/message and clearing record/message for such Transaction;

3.1.6. Sponsored Merchant is not operating a business prohibited by the Operating Rules and has correctly identified for Pay Factory the MCC that most closely reflects the Sponsored Merchant's primary business in accordance with applicable MCC guidance from the Payment Networks.

3.1.7. Sponsored Merchant has not had a contract to accept Transactions terminated at the direction of a Payment Network or governmental authority; and

3.1.8. The Transaction is legal and genuine, was conducted in accordance with this Agreement, and arises from a bona fide sale of goods or services by Sponsored Merchant in the United States for which, to the extent required by the Operating Rules, authorization was obtained; except as otherwise permitted by the Operating Rules;

3.1.9. The goods have been shipped or delivered and/or the services performed;

3.1.10. The Transaction represents a valid obligation for the amount submitted and does not involve the use of the Card for any other purpose;

3.1.11. The Transaction is not one that Sponsored Merchant knows or should have known to be fraudulent, unauthorized, or the product of collusion between the Cardholder and the Sponsored Merchant, and the Transaction is not otherwise unlawful or impermissible under this Agreement, Applicable Law or the Operating Rules;

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

3.1.13. For Transactions involving Cards, the Sponsored Merchant has taken reasonable steps to ensure the validity of the Card and the identity of the Cardholder;

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

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

3.1.16. Sponsored Merchant has not disbursed or advanced any cash or quasi cash (including, without limitation, gaming chips or money orders) to the Cardholder in connection with the Transaction;

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

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

3.1.19. Any Transaction submitted to Pay Factory to credit a Cardholder's account represents a refund for a Transaction previously submitted to Pay Factory.

3.1.20. Sponsored Merchant has the legal right to sell the goods and services purchased by Cardholder via the Transaction and is providing, and will continue to provide, high-quality customer service to the Cardholder with respect to such goods and services;

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

3.1.22. Sponsored Merchant is responsible and financially liable for any dispute or customer-service related issue with a Cardholder, for each Transaction submitted to Pay Factory, and/or for any dispute Transaction or credit

3.1.23. Sponsored Merchant has made clear to each Cardholder that the Sponsored Merchant is responsible for the Transaction (including the delivery of goods or provision of services that are the subject of the transaction) and for customer service and dispute resolution; and

Pay Factory reserves the right to refuse to process any Transaction if there is reason to believe that it has been submitted in violation of this subsection.

3.2. Subject to Applicable Law and the Operating Rules, Sponsored Merchant agrees to accept all categories of Visa and Mastercard Cards unless Sponsored Merchant has notified Pay Factory on the Sponsored Merchant Application of its election to limit such acceptance. Any limitations on acceptance must comply with Applicable Law and the Operating Rules. Furthermore, Sponsored Merchant shall not engage in, and shall maintain a policy against engaging in, any practice that discriminates against or discourages the use of any Card in favor of another Card.

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

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

3.5. Sponsored Merchant shall maintain a written refund policy and shall disclose such policy to Pay Factory and all its Cardholders (including Cardholders making purchase(s) online by displaying such policy on the website) consistent with Applicable Law and the Operating Rules. Any

proposed changes to the refund policy must be submitted to Pay Factory at least thirty (30) days prior to making such change. The amount of any refund shall not exceed the original Transaction except to the extent a Sponsored Merchant agrees to reimburse a Cardholder for return shipping.

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

4. Processing Agreements; Certain Payment Network Terms

4.1. Sponsored Merchant acknowledges and agrees:

4.1.1. This Agreement is subject to the terms of each of Pay Factory's agreements with Processor and/or Bank (collectively, the "**Processing Agreements**"), and this Agreement does not, and may not, restrict or interfere with the right of Processor or Bank to terminate this Agreement at any time or the right of Pay Factory to terminate this Agreement at any time as required by the Processing Agreements.

4.1.2. All obligations in or under any of the Processing Agreements that are intended to apply to Sponsored Merchant (including, without limitation, any obligations of a merchant or sponsored merchant thereunder) are hereby incorporated into this Agreement and shall apply to Sponsored Merchant. Notwithstanding anything herein to the contrary, Sponsored Merchant is not a third-party beneficiary of, has no rights under, and may not bring any claim against Processor or Bank relating to, any of the Processing Agreements.

4.1.3. This Agreement is also subject to the Operating Rules. Without limiting the preceding sentence:

4.1.3.1. This Agreement does not limit the Operating Rules or any of Acquirer's respective rights thereunder.

4.1.3.2. Sponsored Merchant may not take any action that could interfere with, or prevent the exercise of, action by any of Payment Networks to (a) enforce any of the Operating Rules, (b) prohibit Pay Factory or Sponsored Merchant from engaging in any activity such Payment Network deems could injure or create a risk of injury to the Payment Networks or to Processor or its affiliates, including reputational injury, or that could adversely affect such Payment Network or the confidential information thereof.

4.1.3.3. Notwithstanding anything herein to the contrary, to the extent required by a Payment Network, the Operating Rules of such Payment Network shall govern to the extent of any irreconcilable conflict between this Agreement and such Operating Rules.

5. Term; Termination

5.1. This Agreement shall go into effect for a three (3) year term (the "**Initial Term**") commencing on the date this Agreement is accepted by Acquirer, whether by signature or by the processing of presented Transactions. Thereafter, the Agreement will renew automatically for successive one year periods (the "**Renewal Term**") unless Pay Factory provides Sponsored Merchant or Sponsored Merchant provides Pay Factory written notice at least sixty (60) days prior to the applicable term. If Sponsored Merchant presents, and Pay Factory elects to process, Transactions beyond the conclusion of the Initial Term or any Renewal

Term, then the terms of this Agreement will continue to govern such processing activity.

5.2. Any Payment Network may terminate or limit this Agreement as permitted by the Operating Rules of such Payment Network.

5.3. In addition to any other termination rights, Acquirer may terminate this Agreement (or, pursuant to clause (i) of this Section 5.2, may terminate this Agreement as to any Payment Network) or any Addendum immediately, or may suspend Services or decline to process particular Transactions, with or without notice, if (a) Sponsored Merchant fails to strictly comply with any term of this Agreement; (b) Acquirer, in its sole discretion, determines that Sponsored Merchant or any affiliated entity or individual is violating the Operating Rules or Applicable Law or is engaging in suspicious, wrongful, fraudulent or deceptive conduct or other conduct creating a risk of harm or loss to Acquirer or the Payment Networks (and Pay Factory may also suspend Services or decline to process particular Transactions, with or without notice, during the investigation of any such alleged conduct); (c) Sponsored Merchant, any guarantor, or any affiliated entity or individual becomes involved in voluntary or involuntary bankruptcy or insolvency proceedings; (d) Acquirer deems Sponsored Merchant to be financially insecure; (e) Sponsored Merchant materially alters its business; (f) there is a material change in Sponsored Merchant's processing activity, either from historical processing activity or the activity projected in the Sponsored Merchant Application; (g) Acquirer receives direction from any Payment Network to terminate this Agreement; (h) Acquirer, in its reasonable discretion, determines that circumstances otherwise warrant immediate termination or suspension; (i) any Payment Network takes any of the Adverse Registration Actions or limits this Agreement pursuant to the Operating Rules thereof; (j) any of Processing Agreements are terminated; or (k) Pay Factory has determined it is required to terminate this Agreement by any of the Processing Agreements or Operating Rules. Furthermore, Pay Factory may terminate this Agreement at any time upon thirty (30) days' written notice.

5.4. This Agreement shall automatically terminate to the extent required by the Operating Rules.

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

5.6. All Sponsored Merchant obligations with respect to Transactions processed under this Agreement shall survive any termination, including, without limitation, the obligation to pay refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Acquirer or the Payment Networks.

6. Exclusivity

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

7. Procedures for Transactions

7.1. Within forty-eight (48) hours (or any shorter period mandated by the Operating Rules) after the completion of a Transaction Sponsored Merchant believes to be authorized by a Cardholder, Sponsored Merchant shall submit all Transaction Information therefor to Pay Factory for processing along with any other information that may reasonably be requested in connection with a Transaction, in such form as Pay Factory may specify from time to time. Sponsored Merchant understands that failure to submit such Transactions on a timely basis may (a) compromise Sponsored Merchant's ability to be paid for the Transaction(s), and/or (b) result in increased fees associated with the Transaction(s) (such as higher interchange fees), and Sponsored Merchant agrees to pay any such fees if assessed.

7.2. Sponsored Merchant shall not submit for processing any Transaction: (a) that does not involve Sponsored Merchant, or (b) that does not originate from an interaction between Sponsored Merchant and a Cardholder intending to make a purchase from Sponsored Merchant; or (c) for which Sponsored Merchant does not receive an authorization code from us; or (d) that results in a transaction outside of Sponsored Merchant's normal course of business as reflected on the Sponsored Merchant Application. For the avoidance of doubt and without limiting the foregoing, Sponsored Merchant may not receive payment on behalf of or, unless authorized by law, redirect payments to another party. Pay Factory reserves the right to refuse to process any Transaction if there is reason for Acquirer to believe that it has been submitted in violation of this Agreement.

7.3. Acquirer may impose a cap, either per transaction or on an aggregate basis, on the dollar amount of the Transactions it will process for Sponsored Merchant that aligns with the Sponsored Merchant's sales volume, as indicated on the Sponsored Merchant Application.

8. Settlement

8.1. Except as elsewhere provided herein, after receiving funds for approved Transactions from any Payment Network, Pay Factory will provisionally fund, or shall direct Processor and/or Bank to provisionally fund, Sponsored Merchant's Settlement Account, minus (a) refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Acquirer; and (b) any amounts authorized to be retained under Sections 22 or 23 of this Agreement. Failure to subtract such amounts does not relieve Sponsored Merchant of liability or responsibility for the same, and Sponsored Merchant agrees to pay all such amounts to Acquirer immediately upon receipt of invoice and without deduction or offset. Prior to such funding, Pay Factory, Processor, or Bank, as applicable, may maintain funds associated with Sponsored Merchants' transactions in a commingled account, and Sponsored Merchant shall have no right to such account, the funds therein, or interest, if any, obtained thereon.

8.2. For each approved Transaction for which Bank and/or Processor intends, or is required by the Processing Agreements, to fund the Settlement Account, Sponsored Merchant hereby irrevocably authorizes Pay Factory to deliver instructions to Bank and/or Processor with regard to the amount and timing of payments to be made to the Settlement Account, including, without limitation, instructions to (a)

withhold from settlement funds any amount that Acquirer determines are entitled to be withheld hereunder (including amounts in respect of Pay Factory's fees) and (b) pay remaining settlement funds, if any, to the Settlement Account.

8.3. Sponsored Merchant must maintain a Settlement Account at a bank or depository institution acceptable to Acquirer for credits and debits related to Transactions, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Acquirer or the Payment Networks. Sponsored Merchant authorizes Acquirer to initiate debit and credit entries to the Settlement Account, including through the ACH settlement process or via wire transfer, and agrees that Acquirer may debit the Settlement Account for any amounts owed hereunder to Acquirer to which Acquirer may otherwise be entitled for any reason. Such authorization shall remain in place until the later of termination of this Agreement or Sponsored Merchant's satisfaction of all obligations to Acquirer hereunder, as reasonably determined by Acquirer. Sponsored Merchant may change the Settlement Account only as provided in Section 21 of this Agreement. Sponsored Merchant shall maintain sufficient funds in the Settlement Account to prevent the occurrence of insufficient funds, and shall be solely liable for all fees, costs, and overdrafts associated with the Settlement Account.

8.4. Sponsored Merchant acknowledges and agrees that: (a) Pay Factory, Processor, and Bank shall have no liability or responsibility for delays in the transmission or deposit of funds or the failure of Sponsored Merchant to receive funds where that delay or failure is in any way attributable to Sponsored Merchant or any third party, including third-party banks, depository institutions, or the Payment Networks; (b) time periods set forth in Pay Factory's marketing material, brochures, collateral and/or similar materials are estimates only; (c) any fixed timelines with respect to the same are subject to the other terms hereof; (d) Pay Factory shall not be liable or responsible for any delays in the transmission or deposit of funds due or the failure of Sponsored Merchant to receive funds where that delay or failure is in any way attributable to Processor or Bank; and (e) subject to any dispute resolution mechanisms established a Payment Network, a Cardholder's obligation to make payment to Sponsored Merchant in connection with any Transaction shall be deemed satisfied upon authorization and acceptance of the Transaction and shall not be affected by any delay in receipt, or failure to receive, settlement proceeds associated with such Transaction from Acquirer.

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

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

9. Marks and Intellectual Property

9.1. Sponsored Merchant shall display the Payment Networks' respective logos, marks, advertising and promotional materials only in

accordance with the Operating Rules and shall cease displaying such logos, marks, advertising and promotional materials in accordance with the Operating Rules, including upon termination of this Agreement or at the direction of any Payment Network. Sponsored Merchant acknowledges that all such logos, marks, advertising and promotional materials used by any Payment Network are the sole and exclusive property of such Payment Network, which ownership Sponsored Merchant agrees not to challenge, and that such Payment Network may prohibit Sponsored Merchant's use thereof at any time and for any reason, with or without notice. Further, from time to time, Pay Factory may provide Sponsored Merchant with materials that include Pay Factory's name, logo, trademarks, and/or service marks. Sponsored Merchant shall only use such materials as expressly permitted by Pay Factory, and shall return to Pay Factory such materials upon the termination of this Agreement for any reason or upon Pay Factory's earlier request at any time. Sponsored Merchant shall not at any time represent, directly or by implication, that its goods or services are endorsed, sponsored, or guaranteed by Acquirer or any Payment Network. This Agreement shall not confer on Sponsored Merchant any license or proprietary rights regarding any patent, trademark, copyright, trade secret, and/or intellectual property of Acquirer or any Payment Network.

9.2. Acquirer may require any changes to Sponsored Merchant's website or otherwise that Pay Factory deems necessary or appropriate to ensure that Sponsored Merchant remains in compliance with the Operating Rules governing the use of the intellectual property described in Section 9.1.

9.3. All of Pay Factory's computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to the Services are and will remain the sole and exclusive property of the Pay Factory. Pay Factory shall own all rights, title, and interest, including all intellectual property rights, in and to any refinements or improvements to the same, even when such refinements or improvements result from Sponsored Merchant's request.

10. Data Security

10.1. Sponsored Merchant acknowledges that it is its responsibility to abide, and agrees to abide, by all Security Standards, including PCI DSS, and to provide proof of compliance to Acquirer or any Payment Networks as required or upon request, including, without limitation, by attestation or an examination of Sponsored Merchant's systems to validate such compliance. The costs of any such attestation or examination shall be Sponsored Merchant's sole responsibility.

10.2. Without in any way limiting the obligations imposed by the preceding paragraph, Sponsored Merchant will (a) secure and keep confidential Cardholder information, Card Information and Transaction Information including without limitation magnetic stripe and CVV2 data, in strict compliance with the Security Standards and Applicable Law, and will not use, disclose, or distribute any such information except as permitted by the Security Standards or Applicable Law and, further, may not disclose or distribute such information to any third party other than a third-party service provider described in Section 10.3; and (b) maintain systems and media containing any Cardholder information, Card

Information or Transaction Information in a secure manner that prevents unauthorized access to or disclosure of any such information.

10.3. To the extent Sponsored Merchant uses any third party to process, store, receive, transmit, and/or otherwise have access to Cardholder information, Card Information, and/or Transaction Information, Sponsored Merchant assumes full responsibility and liability for such third-party's compliance with this Agreement, the Security Standards, and Applicable Law. Pay Factory, Processor, and Bank shall have no liability for the acts or omissions of such third parties, which shall be the sole responsibility and liability of Sponsored Merchant. Sponsored Merchant further agrees to notify Pay Factory of the identity of all such third parties and to ensure that such third parties are properly registered, if required to be so, with the Payment Networks and are compliant with all applicable Security Standards. Acquirer further reserves the right to require any such third parties to undergo testing, approval, and certification by Acquirer, and to terminate any such third parties' access to or ability to integrate with any of Acquirer's respective systems at any time.

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

10.5. Sponsored Merchant acknowledges that failure to comply with the Security Standards or the occurrence of any Data Compromise Event on its systems or those of any third party referenced in Section 10.3 may result in liability assessments (sometimes referred to as "penalties" or "fines") by the Payment Networks, legal liability, and expenses (including consultant, examiner, and/or attorney fees). Without limiting Sponsored Merchant's liabilities under any other provision hereof, Sponsored Merchant agrees to fully indemnify Pay Factory, Processor, and Bank and their respective officers, directors, employees, and agents, and to hold them harmless from any such costs, liability assessments, legal liabilities, and expenses, as well as from the costs and fees associated with any claims or demands made by Cardholders, card issuers, Payment Networks, governmental agencies, or any third parties associated with Sponsored Merchant's actual or alleged failure, or the actual or alleged failure of any third party referenced in Section 10.3, to comply with the Security Standards or the occurrence of any Data Compromise Event.

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

11. Authorized Users

11.1. To the extent Sponsored Merchant is granted electronic access to any of Acquirer's systems or portals, Sponsored Merchant shall be

responsible for (a) ensuring that only authorized users of such systems or portals access the same; (b) keeping all logins, user names, and passwords confidential; and (c) promptly notifying Pay Factory of any unauthorized access of such logins, user names, or passwords; and (d) all actions taken by anyone using such access, logins, user names, or passwords, even if such actions were not authorized by Sponsored Merchant.

11.2. Sponsored Merchant is responsible for the acts and omissions of its owners, employees, consultants, contractors, agents, officers, and directors, including any unauthorized access to or use of the Services. Without limiting the preceding sentence, such acts and omissions will be viewed as acts and omissions of Sponsored Merchant for purposes of determining if there has been a breach of this Agreement by Sponsored Merchant and the availability of any right or remedy related to such breach.

12. Pricing and Payment

12.1. Sponsored Merchant agrees to pay Processing Fees in the amounts specified in the fee schedule included in the Sponsored Merchant Application or as otherwise set forth herein, all as the same may be amended from time to time pursuant to this Agreement. The Processing Fees are qualified in all respects by the other terms of this Agreement, including the assumptions referenced herein.

12.2. Sponsored Merchant is responsible for payment of refunds, Chargebacks, Processing Fees, indemnified losses, assessments, fees and/or other amounts charged by or payable to Acquirer, the Payment Networks, and/or other parties related to or associated with Sponsored Merchant's use of the Services, its Transactions, and/or its processing activity (such fees and other amounts charged by or payable to any person other than Pay Factory, the "**Third-Party Charges**"). Acquirer may at any time, with or without notice, collect such amounts (a) pursuant to Section 8 of this Agreement; or (b) by demanding immediate payment; or (c) by debiting the Settlement Account or any Reserve Funds; or (d) by subtracting such amounts from future settlements.

12.3. The Processing Fees appearing on the Sponsored Merchant Application are based upon assumptions (a) regarding Sponsored Merchant's anticipated volume, average transaction size, card acceptance, and method of doing business and (b) that the rates and amounts of Third-Party Charges remain the same. If these assumptions prove inaccurate, Pay Factory may adjust Sponsored Merchant's Processing Fees without prior notice. Any such adjustments shall be in addition to, and not in lieu of, any other remedies available to Acquirer hereunder.

12.4. Processing Fees may be amended at any time by Acquirer, with or without notice, as a result of amendments or changes made by the Payment Networks or parties other than Pay Factory.

12.5. In addition, Acquirer may amend, revise, change, or supplement the Processing Fees by giving Sponsored Merchant thirty (30) days' notice of any such amendment, revision, change, or supplementation; provided, however, that Sponsored Merchant may terminate this Agreement, without penalty, in response to such amendment, revision, change, or supplementation (not attributable to the Payment Networks or other third parties) by providing Pay Factory with written notice between the date of receiving notice of the amendment, revision, change,

or supplementation and the effective date of such amendment, revision, change, or supplementation.

12.6. Sponsored Merchant agrees with, and represents and warrants to, Acquirer that such fee schedule constitutes an adequate Fee Disclosure for purposes of the Operating Rules and Applicable Law.

12.7. Sponsored Merchant acknowledges and agrees that it shall be solely responsible for, and the Processing Fees do not cover or include: (a) fines, loss allocations, liability assessments, penalties, and/or similar charges imposed on or assessed against Sponsored Merchant or Acquirer by third parties (including the Payment Networks) and/or (b) all communication expenses associated with its processing activity.

12.8. If Sponsored Merchant does not pay any refunds, Chargebacks, Processing Fees, indemnified losses, or other amounts payable to Acquirer or the Payment Networks when due, such amounts will accrue interest at the lesser of 1.5% per month or the highest amount permitted by applicable law.

13. Taxes

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

14. Chargebacks

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

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

14.3. If Acquirer, in its sole discretion, determines that Sponsored Merchant is experiencing excessive Chargebacks, then it may (i) with notice, increase the Processing Fees; (ii) without notice, establish or increase the Reserve Funds; (iii) without notice, suspend the Services; or (iv) without notice, terminate this Agreement.

14.4. Sponsored Merchant shall not ask or require that a Cardholder waive a right to dispute a transaction.

15. Indemnification

15.1. Sponsored Merchant shall indemnify and hold Pay Factory, Processor, and Bank, along with each of its or their respective agents, officers, directors, employees, and affiliates, harmless from and against any and all claims, demands, damages, judgments, liability assessments, fines, penalties, costs, and expenses (including reasonable attorneys' fees) suffered or incurred by any of them arising out of: (i) Sponsored Merchant's acts or omissions, or those of its owners, employees, consultants, contractors, agents, officers, and directors, whether or not those acts or omissions were authorized by Sponsored Merchant

(including, without limitation, any obligation of Pay Factory to indemnify Processor or Bank with respect to any such acts or omissions, whether such obligation arises under the Processing Agreements or otherwise); (ii) Sponsored Merchant's Transactions or use of the Services (including, without limitation, for refunds, Chargebacks, or liability assessments imposed by the Payment Networks); (iii) Sponsored Merchant's breach of this Agreement or violation of Applicable Law or Operating Rules; (iv) the state or configuration of Sponsored Merchant's equipment, including, without limitation, Sponsored Merchant's failure to maintain all point of sale equipment, download equipment, and point of sale software updates or to use EMV enabled equipment supported by Acquirer; and/or (v) Sponsored Merchant's use of third-party services or service providers, including gateways, value added resellers, and independent software vendors.

15.2. Without limiting the preceding subsection, in the event that Pay Factory, Processor, or Bank is named as a party to any claims, litigation, proceeding, arbitration, or other legal process commenced by a third party arising out of or relating to any act or omission by Sponsored Merchant, Sponsored Merchant shall indemnify, protect, and hold harmless Pay Factory, Processor, and Bank with respect to any and all liability associated with such claims, litigation, proceeding, arbitration, or other legal process, and shall pay all costs, expenses, and attorneys' fees incurred or paid in connection therewith.

16. Obligation to Report Statement Discrepancies

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

16.2. YOU ACKNOWLEDGE AND AGREE THAT NEITHER PAY FACTORY, PROCESSOR, NOR BANK SHALL BE LIABLE OR OTHERWISE RESPONSIBLE TO YOU, AND SHALL HAVE NO OBLIGATION TO REIMBURSE YOU, FOR ANY UNDERPAYMENT TO YOU OR OTHER DISCREPANCY THAT IS NOT REPORTED TO PAY FACTORY IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THE APPLICABLE STATEMENT.

16.3. Sponsored Merchant acknowledges and agrees that it shall reimburse Acquirer upon demand for any misdirected deposits, duplicate deposits, or inadvertent overpayments into any of Sponsored Merchant's bank accounts. In addition, Acquirer may deduct such amounts by ACH debit or other means from Sponsored Merchant's Settlement Account or the Reserve Funds.

17. Limitation of Liability and Disclaimer of Warranties

17.1. UNDER NO CIRCUMSTANCES SHALL ACQUIRER'S AGGREGATE FINANCIAL RESPONSIBILITY FOR ANY

BREACH, FAILURE OF PERFORMANCE, ACT, OR OMISSION UNDER THIS AGREEMENT EXCEED THE FEES OR CHARGES PAID TO PAY FACTORY BY CUSTOMER FOR THE TRANSACTION OR ACTIVITY THAT IS OR WAS THE SUBJECT OF THE ALLEGED BREACH, FAILURE OF PERFORMANCE, ACT, OR OMISSION.

17.2. IN NO EVENT SHALL PAY FACTORY, PROCESSOR, AND/OR BANK BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AGGREGATE AMOUNT OF FEES AND CHARGES PAID TO PAY FACTORY PURSUANT TO THIS AGREEMENT IN THE THREE (3) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM OF LIABILITY.

17.3. FOR PURPOSES OF THIS SECTION 17, FEES OR CHARGES OF THE PAYMENT NETWORKS OR OTHER THIRD PARTIES PASSED THROUGH TO CUSTOMER PURSUANT TO THIS AGREEMENT SHALL NOT BE INCLUDED IN THE CALCULATION OF FEES AND CHARGES PAID TO PAY FACTORY.

17.4. IN NO EVENT SHALL PAY FACTORY, PROCESSOR, OR BANK, OR ANY OF ITS OR THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOST PROFITS, LOSS OF REVENUE, OR CLAIMS BY SPONSORED MERCHANT OR ANY THIRD PARTY RELATIVE TO THE TRANSACTIONS OR ACTIVITIES HEREUNDER, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, PAY FACTORY, PROCESSOR, AND BANK SHALL NOT BE LIABLE FOR (A) THE DECLINE OF A TRANSACTION, EVEN IF SUCH DECLINE WAS WRONGFUL; (B) ANY LOSS CAUSED BY A TRANSACTION DOWNGRADE, REGARDLESS OF THE CAUSE; OR (C) THE FAILURE TO PROCESS, AUTHORIZE, OR CAPTURE A TRANSACTION.

17.5. PAY FACTORY, PROCESSOR, AND BANK MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PRODUCTS, EQUIPMENT AND/OR SERVICES PROVIDED HEREUNDER AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE SPECIFICALLY EXCLUDED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, USAGE, AND/OR TRADE.

17.6. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PAY FACTORY, PROCESSOR, AND BANK DO NOT GUARANTEE OR WARRANT THAT (A) THE SERVICES, EQUIPMENT, SOFTWARE, AND/OR PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THAT ANY SOFTWARE WILL BE VIRUS-, DEFECT-, OR ERROR-FREE; (C)

THAT A PRODUCT WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULTS; (D) THAT DATA, REPORTS, OR ANALYSES WILL BE FREE FROM ALL BUGS AND ERRORS; OR (E) THAT A PRODUCT WILL OPERATE WITHOUT INTERRUPTION.

18. Underwriting, Monitoring, and Auditing Rights

18.1. Sponsored Merchant, on behalf of itself and its principals and beneficial owners, acknowledges and agrees that either Acquirer or a Payment Network, as applicable, may request and obtain external reports, including background checks and credit reports from credit reporting agencies, in connection with the consideration of the Sponsored Merchant Application or at any time thereafter. Sponsored Merchant further acknowledges that its Sponsored Merchant Application may be rejected by either Acquirer or a Payment Network or both and that neither Acquirer nor a Payment Network shall have any liability associated with such rejection.

18.2. Sponsored Merchant agrees to promptly furnish Acquirer or Payment Network, as applicable, with information and documents reasonably necessary to evaluate Sponsored Merchant's financial condition and business practices upon request. Furthermore, with notice and during Sponsored Merchant's normal business hours, any of Acquirer's or a Payment Network's respective representatives, as applicable, may visit Sponsored Merchant's business premises to examine Sponsored Merchant's operations, activities, and/or books and records to the extent necessary to evaluate Sponsored Merchant's compliance with this Agreement or to the extent necessary for Pay Factory to meet its obligations under the Processing Agreements or for the Acquirer to meet its obligations under the Operating Rules or for a Payment Network to enforce the Operating Rules.

18.3. Sponsored Merchant agrees to provide Pay Factory advance written notice of any actual or anticipated (a) material change in Sponsored Merchant's products or services, business practices, or the manner in which Sponsored Merchant accepts Cards; (b) change to Sponsored Merchant's legal form, legal name, trade name, or mailing address; or (c) changes to anticipated Transaction amounts or volume.

18.4. Sponsored Merchant agrees to provide Acquirer or a Payment Network, as applicable, with all "know your customer" information that it reasonably requests from time to time, including, without limitation, any information (a) necessary to meet a person's obligations under, *inter alia*, United States anti-terrorism or anti-money laundering laws or (b) Pay Factory is required to diligence, obtain and/or verify under any of the Processing Agreements or under the Operating Rules (including the names and country of domicile of each of the Sponsored Merchant's principals and reports of all Transactions). Sponsored Merchant shall provide such information within twenty-four (24) hours of a request for the same. Without limiting the foregoing, Sponsored Merchant shall, on an ongoing basis (and at least quarterly), provide Pay Factory with each of its office addresses, uniform resource locaters, "doing business as" names, as well as complete descriptions of all goods and services provided by such Sponsored Merchant.

19. Reporting

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

20. Relationship of the Parties

Sponsored Merchant designates Acquirer as its agent to receive payments for Transactions processed pursuant to this Agreement. Pay Factory, Processor, and/or Bank, however, shall not be considered a partner or fiduciary to Sponsored Merchant, and nothing in this Agreement or the rendition of Services related to this Agreement shall be deemed to create a joint venture, partnership, and/or fiduciary relationship between or among the parties. Rather, the relationship among the parties to this Agreement is an arm's length commercial relationship.

21. Updates to Settlement Account

If Sponsored Merchant intends to change its Settlement Account, it must give no fewer than fifteen (15) days' prior written notice to Pay Factory and receive Pay Factory written approval of the change. Failure to provide the notice and obtain the approval required in this Section may result in Acquirer's inability to settle Transaction proceeds to Sponsored Merchant, and may result in the misdirection or loss of the same. Sponsored Merchant shall bear sole responsibility for any such loss and shall have no right of recovery against Pay Factory, Processor, and/or Bank associated with such misdirection or loss.

22. Reserve Account and Security Interest

22.1. Pay Factory, Processor, and/or Bank may at any time, whether at the inception of this Agreement or thereafter (including at the time of termination of this Agreement), require the establishment of Reserve Funds to satisfy Sponsored Merchant's current or anticipated obligations hereunder, including, without limitation, its obligations with respect to refunds, Chargebacks, Processing Fees, indemnified losses, and/or other amounts payable to Acquirer and/or the Payment Networks. Further, at any time during the term of this Agreement or at its termination, Pay Factory, Processor, and/or Bank may increase the amount of Reserve Funds established as described herein. All decisions relating to whether to establish one or more Reserve Funds, set the amount of, or increase the Reserve Funds will be in Pay Factory, Processor, and/or Bank's discretion.

22.2. At the discretion of Acquirer, Reserve Funds may be funded by (i) debiting the amount of Transactions that would otherwise be payable to Sponsored Merchant under this Agreement; (ii) demanding funds from Sponsored Merchant; or (iii) debiting the Settlement Account. If Pay Factory, Processor, and/or Bank makes a demand for funds pursuant to this Section 22.2, Sponsored Merchant shall transfer the amount of funds demanded within eight (8) business hours of receipt of such demand.

22.3. Reserve Funds may be used at any time to satisfy Sponsored Merchant's obligations to Acquirer under this Agreement, including, without limitation, refunds, Chargebacks, Processing Fees, indemnified losses, and other amounts payable to Acquirer and/or the Payment Networks.

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

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

22.6. Without in any way limiting the foregoing, and merely as an additional form of security, Sponsored Merchant hereby further grants Pay Factory a security interest in (a) the Reserve Funds; and (b) the proceeds associated with any Transaction. Pay Factory may enforce its security interest(s) without notice or demand. The security interest(s) granted under this Agreement will continue after termination of this Agreement until Sponsored Merchant satisfies all its obligations to Acquirer. Sponsored Merchant further agrees to execute and deliver such instruments and documents as may be reasonably requested to confirm and perfect the security interest(s) granted by this Agreement.

23. Holdback Rights

In addition to any of the other rights granted to Acquirer hereunder, in the event that Acquirer, at any time during the term of this Agreement, determines in its commercially reasonable discretion that it may be prudent or necessary to do so (a) as a result of any unusual, suspicious, or risk-exposing activity (including, without limitation, money laundering, invalid sales transactions, counterfeit transactions, altered or duplicate transactions, activity related to a suspected Data Compromise Event or other breach of Security Standards, or excessive Chargebacks) or (b) to enable Pay Factory or Processor to exercise its rights under, and in accordance with, any of the Processing Agreements, then Acquirer may, without notice, hold funds otherwise payable to Sponsored Merchant for such period as Acquirer, in its commercially reasonable discretion, deems necessary, to provide security against liability for such activity, plus other costs or liabilities reasonably anticipated to be due to Acquirer related to the same. To the extent (i) the investigation conducted by Acquirer with respect to the unusual, suspicious, or risk-exposing activity determines that such activity is reasonably likely to result in amounts being due from Sponsored Merchant to Acquirer, and (ii) Acquirer requires the establishment, replenishment, or increase of one or more Reserve Funds in connection therewith, then the funds held pursuant to this Section 23 may be used to fund such Reserve Funds.

24. Equipment

24.1. Pay Factory, Processor, and Bank make no representations or warranties regarding the compatibility of third-party products and services with Acquirer's systems. To the extent that Sponsored Merchant uses any third-party gateway or similar software, services, and/or hardware to connect to Acquirer's respective systems, Sponsored Merchant understands that a separate agreement may be required with the third-party provider in order to obtain such software, services, or hardware, and additional fees may be charged by the third-party provider in addition to the fees charged by Acquirer.

24.2. Sponsored Merchant shall be responsible for any fines, penalties, claims, demands, or new or increased fees (including interchange) that result from Sponsored Merchant's (a) use of value added reseller, independent software vendor, gateway, point of sale systems, or any other software, hardware, or service not provided by us; (b) failure to maintain the most current version of software that has been certified by Pay Factory, Processor, and Bank as being compatible with the their respective systems; or (c) misuse of software that has been certified as compatible with Acquirer's respective systems. Notwithstanding anything in this Section 24.2, Sponsored Merchant shall not use any third-party point of sale systems, or any other device or method used for the purpose of obtaining credit or debiting a designated account (including any Card), without the prior written consent of Pay Factory.

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

24.4. Equipment provided by Acquirer may only be used for purposes of this Agreement and the receipt of Services pursuant to this Agreement. Sponsored Merchant shall keep any such equipment in a good state of repair, normal wear and tear excepted, and shall follow all instructions regarding the use and maintenance thereof. Sponsored Merchant shall not, and shall not permit others to, alter, modify, and/or deface any such equipment or inscribe or etch anything thereon or attach or affix anything thereto. With respect to leased equipment, title to such equipment remains with the provider at all times, and Sponsored Merchant acquires no right, title, or interest in any such other than the right to use equipment to receive the Services for the period during which the provided thereof permits Sponsored Merchant to use the same. Sponsored Merchant must give Acquirer access to any such equipment at all times, and Acquirer may repair or replace any such equipment at any time. With regard to any equipment provided to Sponsored Merchant, Sponsored Merchant shall bear all risk of loss, damage, destruction, theft, and/or similar to such equipment from any cause whatsoever (each a "**Loss Event**") during the term hereof and until such equipment has been returned to the provider thereof. Sponsored Merchant shall return such equipment, at its risk and expense, upon the earlier of the expiration or termination hereof. Sponsored Merchant shall immediately notify Pay Factory upon the occurrence of any Loss Event. Sponsored Merchant shall not distribute, sell, transfer, share, sublease,

rent and/or give away any such equipment or any interest therein or use, or permit the use of, such equipment by or on any third party's behalf, except that Sponsored Merchant may allow its Cardholders to use equipment in the course of completing a Transaction.

25. Confidentiality and Use of Data

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

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

25.3. Sponsored Merchant agrees to keep confidential and not to disclose: (a) the terms and conditions of this Agreement; (b) the Processing Fees; (c) Card Information, Transaction Information, and Cardholder information; (d) any other non-public information regarding any aspect of Acquirer's respective businesses made available to, or encountered by, Sponsored Merchant under the auspices of this Agreement ("**Acquirer Confidential Information**"); or (e) other information Pay Factory is required to keep confidential. Acquirer Confidential Information shall include, but shall not be limited to, information regarding pricing techniques, fees, equipment, services, processes, procedures, marketing or business development plans, technical information, personnel information, and trade secrets.

25.4. Should Sponsored Merchant receive any Acquirer Confidential Information belonging to Acquirer, Sponsored Merchant agrees to protect such confidential information equally to its own confidential information and to take no less than reasonable care to prevent its misuse or disclosure. Sponsored Merchant agrees to return Acquirer's respective confidential information either upon the termination of this Agreement for any reason, or upon earlier request from Acquirer.

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

25.6. To the extent permitted by Applicable Law and the Operating Rules, Sponsored Merchant authorizes Acquirer to disclose information regarding Sponsored Merchant to any third party who has asked for such information, and whom Acquirer determines has a legitimate business need to know such information to facilitate the purpose of this Agreement, including without limitation, the Payment Networks.

Sponsored Merchant authorizes Acquirer to disclose Card Information to the Payment Networks as necessary to facilitate the provisions of Services under this Agreement. Sponsored Merchant further authorizes Acquirer to provide information about Sponsored Merchant in response to requests for such information from any government body or regulatory authority.

25.7. Notwithstanding anything else in this Agreement, and without otherwise limiting Acquirer's use of such information, all Card Information, information related to Transactions or Cardholders, and information related to Sponsored Merchant, may be used by Pay Factory, Processor, and/or Bank and its or their respective affiliates and designees: (a) to provide Services; (b) for administrative and monitoring purposes; (c) to enhance or improve any of Acquirer's products or services; (d) in the course of any sale or reorganization of any of Acquirer's respective business; (e) to comply with Applicable Laws; (f) for disclosure to credit reporting agencies and other financial institutions; and (g) as otherwise permitted by Applicable Laws.

26. Amendments and Waiver

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

26.2. Pay Factory will not be deemed to have waived any provision of this Agreement by failing to promptly enforce the same, and no waiver of any provision of this Agreement on one occasion shall constitute a waiver of any other provision of this Agreement or the same provision on any other occasion.

27. Notices; Electronic Notice

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

documents and notices electronically and agrees to maintain access to the Internet for so long as this Agreement is in effect and until all of its obligations hereunder have been satisfied in full. Notices delivered through any of the foregoing means shall include notice provided on statement messages appearing on periodic processing statements. Any withdrawal of consent to receive notices electronically may result in the immediate termination of access to the Services.

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

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

28.2. Without in any way limiting Section 30 (Arbitration), with respect to any action arising out of, relating to, or in connection with this Agreement, Sponsored Merchant and all individuals executing this Agreement in any capacity hereby consent to the exclusive jurisdiction of, and venue in, the federal and state courts located in the State of Georgia.

28.3. Each party agrees to provide the other prompt notice of any claim, controversy, or dispute arising under or related to this Agreement, and both parties agree to engage in good faith discussions to resolve the matter. If that fails to resolve the matter promptly, upon either party's election, the parties will participate in non-binding mediation before a mutually agreed mediator. Any controversy, claim, or dispute that is not resolved through the procedures set forth above within sixty (60) days following the initial notice (or such longer period as the parties may agree) will be resolved pursuant to arbitration pursuant to Section 30 of this Agreement.

28.4. Neither party may bring a claim more than two (2) years after the underlying cause of action first accrues.

29. Attorneys' Fees

Sponsored Merchant agrees to reimburse Pay Factory for all attorneys' fees or other costs incurred by it in enforcing any provision of this Agreement against Sponsored Merchant, or in obtaining any sums due under this Agreement from Sponsored Merchant, regardless of whether those fees are incurred in connection with a court proceeding, private dispute resolution, or outside a formal dispute resolution proceeding.

30. Arbitration

30.1. ANY DISPUTE OR CLAIM ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT OR THE RELATIONSHIPS WHICH RESULT FROM THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT. ARBITRATION DOES NOT PROCEED BEFORE A JURY AND MAY INVOLVE MORE LIMITED DISCOVERY THAN A COURT PROCEEDING.

ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. Notwithstanding the foregoing, nothing in this Section prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

30.2. The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of the arbitration provisions of this Section. Arbitration will be administered by JAMS (www.jamsadr.com). For claims greater than \$250,000, the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply. For claims equal to or less than \$250,000, the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply. Unless the arbitrator(s) determine that justice or fairness require otherwise: (i) any arbitration will proceed in State of Georgia (although, for the convenience of the Sponsored Merchant or guarantor (as applicable), any party or its counsel may participate telephonically); (ii) the arbitrator(s) will oversee limited discovery, taking into account the amount in controversy and the parties' desire to keep proceedings cost-effective and efficient; and (iii) the claimant(s) and respondent(s) will bear the cost of arbitration, including the cost of any filing fee, equally, subject to the discretion of the arbitrator(s) to alternatively allocate costs pursuant to the applicable rules in any final award; provided, however, that for claims equal to or less than \$25,000, Sponsored Merchant and guarantor (if applicable) shall not be responsible to pay any case initiation or similar fee greater than that of the filing fee in the Georgia Supreme Court at the time arbitration is filed unless the arbitrator(s) determine that such claims are frivolous. The arbitrator(s) shall have no authority to award damages that are inconsistent with the limitations and exclusions set forth in this Agreement, nor will he, she, or they have authority to award sanctions of any type. Any decision rendered in such arbitration proceedings shall be final and binding on each of the parties to the arbitration and judgment may be entered thereon in any court of competent jurisdiction. The parties will maintain the confidential nature of the arbitration proceeding except as may be necessary to enforce any award or to comply with applicable law. If any part of this Section 30 is found invalid or unenforceable, the other parts of this Section 30 shall still apply.

30.3. CUSTOMER AND GUARANTOR (IF APPLICABLE) ACKNOWLEDGE AND AGREE THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS ACTION AND SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTIES. CUSTOMER AND GUARANTOR (IF APPLICABLE) FURTHER AGREE TO WAIVE, AND HEREBY WAIVE, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR TO LITIGATE OR ARBITRATE ON A CLASS-WIDE BASIS.

31. Continuing Guaranty

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

32. Remedies Cumulative

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

33. Assignment; Successor Responsibility

The Bank may assign this Agreement without Sponsored Merchant's consent. Processor may assign this Agreement to another transaction processor approved by Bank. Pay Factory may assign this Agreement to another payment facilitator or to Processor. Sponsored Merchant may not assign this Agreement without the express written consent of Pay Factory, except as otherwise provided in the Processing Agreements. For purposes of this Agreement, it shall be deemed an assignment by Sponsored Merchant of this Agreement to effectuate any sale or transfer of the equity interests of Sponsored Merchant's business such that the equity holders listed in the Sponsored Merchant Application collectively hold less than 50% of the equity interests after such sale or transfer. This Agreement will be binding on each party's successor(s) and/or permitted assigns.

34. Third Party Beneficiaries

Processor and Bank are third-party beneficiaries to this Agreement and may enforce the terms hereof, including those rights and privileges belonging to "Acquirer." The Payment Networks also may be a third-party beneficiary of this Agreement, and shall have the rights, but not any obligation, necessary to fully enforce the terms of this Agreement against the Sponsored Merchant. There are no other third party beneficiaries to this Agreement. Sponsored Merchant covenants that it is not a third-party beneficiary under any agreement with a Payment Network.

35. Force Majeure

Pay Factory, Processor, and/or Bank shall not be liable for any delay or inability to perform caused by acts of God, natural disasters, wars, acts of terrorism, civil disturbances, governmental actions, strikes,

telecommunications failures, equipment failures, network failures, or other causes beyond such person's reasonable control.

36. Entire Agreement; Severability

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

37. Survival

Termination of this Agreement shall not terminate the obligations and rights of the parties that, by their nature or their terms, are intended to survive or be perpetual of irrevocable. Such provisions, including, without limitation, Sections 1, 3.6, 4, 5.1, 5.6, 8 through 17, 19 through 25, 26.2, and 27 through 36 shall survive the expiration or termination of this Agreement.

38. Press Release

Pay Factory may issue press releases regarding the parties' relationship hereunder, after this Agreement becomes effective.

39. Electronic Signature

This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together constitute one and the same Agreement. Acquirer reserves the right to indicate acceptance of this Agreement other than through a signature. A signature or other indication of acceptance received electronically shall be legally binding for all purposes, shall have the same force and effect as a physical signature, and shall be legally sufficient to authenticate this Agreement.

40. Direct Agreement With Processor and Bank

Sponsored Merchant acknowledges that if Sponsored Merchant processes or is anticipated to process more than \$1,000,000 in Visa transactions and/or \$1,000,000 in Mastercard transactions in any twelve-month period, or such other amount as a Payment Network may proscribe ("Threshold Amount"), then Sponsored Merchant will be required to enter into a direct agreement with Processor and the applicable Payment Network. Sponsored Merchant agrees that by executing this Agreement and fulfilling such requirement Sponsored Merchant will have entered into such direct agreement with Processor and the applicable Payment Network and the terms and conditions of such direct agreement are provided for in Exhibit A.

Exhibit A - Direct Agreement with Processor and Bank

This MERCHANT SERVICES AGREEMENT FOR SPONSORED MERCHANTS ("Direct Agreement") is made among WORLDPAY, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank, Fifth Third Bank, N.A., located in Cincinnati, Ohio 45263 (collectively "Acquirer") and ("Sponsored Merchant") in connection with the agreement between Sponsored Merchant and Pay Factory, Inc. ("Provider"). Acquirer will provide Sponsored Merchant with certain payment processing services ("Services") in accordance with the terms of this Direct Agreement. In

consideration of Sponsored Merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Payment Networks"), Sponsored Merchant is required to comply with the Operating Rules as they pertain to applicable credit and debit card payments. In addition, if Sponsored Merchant meets certain requirements under the Operating Rules or a Payment Network or the Operating Rules otherwise require, Sponsored Merchant may be required to enter into a direct relationship with an entity that is a member of the Payment Networks. By executing this Direct Agreement, Sponsored Merchant has fulfilled such requirement. However, Acquirer understands that Sponsored Merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sponsored Merchant for all or part of Sponsored Merchant's obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. Certain Sponsored Merchant Responsibilities. Sponsored Merchant agrees to comply, and to cause third parties acting as Sponsored Merchant's agent ("Agents") to comply, with the Payment Network's and other payment network's by-laws, Operating Rules and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Payment Networks or payment networks (collectively "Operating Rules"). Sponsored Merchant may review the VISA, MasterCard, and Discover websites for a copy of the Visa, MasterCard and Discover regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Sponsored Merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Without limiting the foregoing, Sponsored Merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sponsored Merchant's software providers and/or equipment providers.

If appropriately indicated in Sponsored Merchant's agreement with Provider, Sponsored Merchant may be a limited-acceptance merchant, which means that Sponsored Merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Rules and applicable law as they may relate to limited acceptance. Sponsored Merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance,

including but not limited to policing the card type(s) accepted at the point of sale.

Sponsored Merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sponsored Merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sponsored Merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

Sponsored Merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sponsored Merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sponsored Merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Sponsored Merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

2. Sponsored Merchant Prohibitions. Sponsored Merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Sponsored Merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sponsored Merchant, v) disburse funds in the form of cash unless Sponsored Merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sponsored Merchant), or Sponsored Merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sponsored Merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check. Sponsored Merchant further agrees that, under no circumstance, will Sponsored Merchant store cardholder data in violation of the Laws or the Operating Rules including but not limited to the storage of track-2 data. Neither Sponsored Merchant nor

its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

3. Settlement. Upon receipt of Sponsored Merchant's sales data for card transactions, Acquirer will process Sponsored Merchant's sales data to facilitate the funds transfer between the various Payment Networks and Sponsored Merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sponsored Merchant, either directly to the Sponsored Merchant-Owned Designated Account or through Provider to an account designated by Provider ("Provider Designated Account"), at Acquirer's discretion, for such card transactions. Sponsored Merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sponsored Merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sponsored Merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sponsored Merchant's designated demand deposit account ("Sponsored Merchant-Owned Designated Account") upon receipt of such account information from Sponsored Merchant or Provider, or if Acquirer deposits settlement funds into the Sponsored Merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sponsored Merchant or Provider.

4. Term and Termination. This Direct Agreement shall be binding upon Sponsored Merchant upon Sponsored Merchant's execution. The term of this Direct Agreement shall begin, and the terms of the Direct Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Direct Agreement by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sponsored Merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Direct Agreement without notice if (i) Sponsored Merchant or Provider fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sponsored Merchant or Provider may be a violation of the Operating Rules or any Laws, (iii) Acquirer believes that Sponsored Merchant has violated or is likely to violate the Operating Rules or the Laws, (iv) Acquirer determines Sponsored Merchant poses a financial or regulatory risk to Acquirer or a Payment Network, (v) Acquirer's agreement with Provider terminates, (vi) any Payment Network deregisters Provider, (vii) Acquirer ceases to be a member of the Payment Networks or fails to have the required licenses, or (viii) Acquirer is required to do so by any of the Payment Networks.

5. Limits of Liability. Sponsored Merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Direct Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice

shall be deemed an acceptance by Sponsored Merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS DIRECT AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sponsored Merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Direct Agreement. In the event that Sponsored Merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Direct Agreement, Sponsored Merchant shall proceed against Provider and not against Acquirer, unless otherwise specifically set forth in the Operating Rules. In no event shall Acquirer have any liability to Sponsored Merchant with respect to this Direct Agreement or the Services. Sponsored Merchant acknowledges Acquirer is only providing this Direct Agreement to assist in Provider's processing relationship with Sponsored Merchant, that Acquirer is not liable for any action or failure to act by Provider, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sponsored Merchant by Provider. If Provider is unable to provide its services to Sponsored Merchant in connection with this Direct Agreement and Acquirer elects to provide those services directly, Sponsored Merchant acknowledges and agrees that the provisions of this Direct Agreement will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sponsored Merchant, will govern Acquirer's relationship with Sponsored Merchant. If Provider subsequently provides its services to Sponsored Merchant in connection with this Direct Agreement, Acquirer will cease to provide such services after receipt of notice from Provider and this Direct Agreement will govern Acquirer's relationship with Sponsored Merchant.

6. Miscellaneous. This Direct Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Direct Agreement may not be assigned by Sponsored Merchant without the prior written consent of Acquirer. This Direct Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Direct Agreement is for the benefit of, and may be enforced only by, Acquirer and Sponsored Merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Direct Agreement upon notice to Sponsored Merchant in accordance with Acquirer's standard operating procedure. If any provision of this Direct Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Direct Agreement will be construed as if such provision is not contained in the Direct Agreement "Member Bank" as used in this Direct Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Direct Agreement. As of the commencement of this Direct Agreement, Member Bank shall be Fifth

Third Bank, N.A., located in Cincinnati, Ohio 45263. The Member Bank is a party to this Direct Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sponsored Merchant.