Qarda

Merchant Processing Agreement

TERMS AND CONDITIONS

These Merchant Processing Terms and Conditions ("**MPTC**") govern the relationship among the parties identified in the Merchant Account Application to which these MPTC are incorporated by reference (the "**Application**"). These MPTC, the Application, and all applicable network or Services addenda together constitute the "**Agreement**."

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1 Parties.

The parties to this Agreement are FIRST PACIFIC BANK, a California state-chartered bank and Member FDIC, unless the Application identifies a different acquiring bank ("**Bank**") whose address is 11988 El Camino Real, Ste. 150, San Diego, CA 92130, Qarda, Inc, a Delaware corporation whose address is 29100 Northwestern Hwy, Suite 305, Southfield, MI 48034 ("**ISO**" or "**Processor**") and the merchant entity identified in the Application ("**Merchant**"). Bank and ISO are collectively referred to as "**Servicers**" and individually as "**Servicer**." Either Bank or ISO shall have the authority to exercise rights belonging to "Servicer" hereunder. ISO acts as Bank's exclusive agent for purposes of this Agreement. This Agreement becomes effective upon Bank and ISO acceptance of the Application. By either Merchant's signature on the Application or Merchant's processing a Transaction (including a test Transaction) with Processor, Merchant affirmatively accepts and agrees to be bound by this Agreement.

2 Definitions.

The following terms have the meanings set forth below. Other capitalized terms are defined where they first appear in this Agreement.

"Applicable Law" means all applicable federal, state, and local laws, rules, regulations, and executive orders, including without limitation Network Rules.

"Application" means the Merchant Processing Application completed and signed by Merchant, together with all sections, schedules, addenda, and the Confirmation Page thereto.

"Authorization" means an affirmative response from an Issuer confirming that a Transaction is within the Cardholder's available credit or funds and that the Card has not been reported lost or stolen.

"Bank" has the meaning set forth in Section 1.

"Business Day" means any day other than Saturday, Sunday, or a day on which banks in New York, New York are authorized or required by law to be closed.

"Card" means any Visa, Mastercard, American Express, or Discover credit card, debit card, prepaid card, stored-value card, gift card, or other payment credential (in physical, digital, tokenized, or mobile form) accepted under a Card Network program.

"Card Information" means all information related to a Cardholder or Card obtained by Merchant in connection with a Transaction, including, without limitation, customer names, addresses, zip codes, card numbers, expiration dates, security codes, PIN numbers, credit limits, or account balances.

"Card Network" means Visa U.S.A., Inc. ("**Visa**"), Mastercard International Incorporated ("**Mastercard**"), American Express Related Services ("**American Express**" or "**AMEX**"), Discover Financial Services LLC ("**Discover**"), and any other payment network whose products Merchant is approved to accept under the Application.

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

"Chargeback" means a Transaction that Bank or a Card Network returns to Merchant as disputed, invalid, or otherwise subject to reversal under Network Rules. Merchant is responsible for payment to ISO for all Chargebacks.

"Confirmation Page" means the final page of the Application bearing Merchant's signature, which identifies the parties, incorporates the MPTC and network addenda by reference, and constitutes part of the Agreement.

"Data Incident" means any actual or suspected unauthorized access to, use of, disclosure of, or alteration of Transaction data or Card Information, whether a single event, a continuous course of events, or a series of related events.

"Equipment" means any terminals, hardware, software, or other systems approved by Bank for processing Transactions.

"Event of Default" has the meaning set forth in Section 5.4.

"Excessive Chargebacks" means: (a) a Chargeback-to-sale ratio equal to or greater than 1% in any calendar month; or (b) more than five Chargebacks processed in any single calendar month.

"**Factoring**" means submission of Authorization request and/or sales drafts by a merchant for Card sales in cash advances transacted by another business. Factoring is prohibited.

"Fees" means all charges, assessments, penalties, and costs payable by Merchant under this Agreement and the Application, including Merchant Discount Fees, Transaction Fees, Authorization Fees, and all other fees identified in the Application. Fees do not include the face value of Transactions or settlement funds payable to Merchant.

"Full Recourse Transactions" means mail-order, telephone-order, e-commerce, pre-authorized recurring, and all other card-not-present Transactions.

"Improper Transactions" means any fraudulent, deceptive, or non-bona fide transactions; money laundering; Factoring; or any transaction submitted in violation of Network Rules or Applicable Law.

"ISO" has the meaning set forth in Section 2.

"Issuer" means a Card Network member that issues Cards to Cardholders.

"Merchant" has the meaning set forth in Section 1.

"Merchant Statement" means the itemized monthly statement of all charges and credits to the Operating Account provided by Bank to Merchant.

"Network Rules" means all bylaws, rules, operating regulations, technical specifications, and program standards issued or adopted by any Card Network, as amended from time to time, including the Payment Card Industry Data Security Standard ("**PCI-DSS**"). Network Rules are incorporated into this Agreement by reference.

"Operating Account" means the demand deposit account maintained by Merchant, at Bank or another Bank-approved financial institution, through which settlement funds are credited and debits are processed.

"Pre-Authorized Recurring Order Transaction" means a Transaction pre-authorized by the Cardholder for future delivery of goods or performance of services, without requiring individual Cardholder approval for each subsequent charge.

"Reserve Account" means the non-interest-bearing account established and controlled by Bank, funded from Merchant's settlement funds or Operating Account, as described in Section 6.

"Servicer(s)" has the meaning set forth in Section 1.

"Services" means the card transaction processing services described in the Application, as amended from time to time by Bank in its sole discretion.

"Transaction" means the actual or attempted acceptance of a Card for the purchase, lease, or use of goods or services from Merchant, whether approved, declined, or processed as a forced sale, and includes credits, returns, and adjustments.

3 Services.

3.1 **Service Obligations**. During the Term, and subject to the terms of this Agreement: (a) Servicers will provide the Services to Merchant; and (b) ISO will use commercially reasonable efforts to provide Merchant with technical documentation, customer support, and authorization, settlement, and Chargeback processing and reporting, 24 hours per day, 7 days per week.

3.2 **Service Modifications**. Servicers may modify, add to, or discontinue any Service or Card type by providing written notice to Merchant. Merchant's continued submission of Transactions after such notice constitutes acceptance of the modification.

3.3 **Equipment**. Merchant must process all Transactions using Equipment approved by Servicers. Servicers may require Merchant to upgrade or replace Equipment at Merchant's expense. Merchant is solely responsible for the security and proper use of all Equipment.

3.4 **Authorization**. Merchant must obtain Authorization for each Transaction in the manner and using the procedures Servicers determine. Servicers' issuance of an Authorization does not guarantee Merchant's right to receive or retain funds, does not waive any Chargeback rights, and does not constitute Servicers' approval of the underlying transaction.

3.5 **Transaction Submission**. Merchant must not submit a Transaction to Servicers until Merchant has completed its obligations to the Cardholder in connection with the Transaction or has obtained Cardholder consent for a Pre-Authorized Recurring Order Transaction.

3.6 **Volume and Channel Certification**. Merchant certifies the Monthly Volume, Average Ticket, High Ticket, and channel mix (Card-Present vs. Card-Not-Present) disclosed in the Application. Material variances may result in withheld or delayed settlement, reserve or funding caps, re-underwriting, or termination. If Merchant is approved for Card-Present processing only, Card-Not-Present activity equal to or exceeding 20% of monthly volume may result in immediate funding holds, reserves, and suspension pending CNP underwriting approval. CNP transactions must be processed only via the Business Website identified in Section 1 of the Application, or any site notified to ISO in advance.

4 Fees and Settlement.

4.1 **Fees.** Merchant must pay all Fees in the amounts specified in the Application or as otherwise set forth herein, as the same may be amended from time to time pursuant to this Agreement. Discount Rates are in addition to interchange, dues/assessments, and other card-brand pass-throughs. Non-qualifying transactions may downgrade and incur additional charges. All pass-throughs are billed at brand-published cost and may change; updates appear on the Merchant Statement.

4.2 **Debit Authority**. Merchant authorizes Servicers to debit all Fees and other amounts owed under this Agreement from the Operating

Account or Reserve Account at any time Servicers deem appropriate, via the ACH network or manual debit. Merchant waives all claims for loss or damage arising from any such debit made in good faith.

4.3 **Settlement**. Servicers will credit the Operating Account daily for the net amount of settled Transactions, after deducting all Fees, Chargebacks, adjustments, and other amounts owed by Merchant. All credits are provisional and subject to revocation until the underlying Transaction is final and no longer subject to Chargeback. Servicers may withhold settlement of any Transaction it reasonably determines represents unacceptable risk until the Transaction is verified as legitimate. Merchant acknowledges and agrees that neither ISO nor Bank shall have any liability or responsibility for delays in the transmission of funds or the failure of Merchant to receive funds where that delay or failure is in any way attributable to Merchant or any third party, including third-party banks, depository institutions, or the Card Networks. Notwithstanding anything to the contrary, Bank will have no obligation to pay Merchant funds for any Transaction if Bank has not received its corresponding payment from the Card Networks. Merchant acknowledges that interchange and other fees, charges, and assessments imposed by the Card Networks are determined by the Card Networks. ISO and Bank cannot guarantee any interchange rate and have no obligation to minimize or secure the lowest interchange rate, fees, charges, or assessments for any Transaction. Merchant assumes full liability for the difference between any applied interchange rate and the interchange rate projected or assumed by ISO at the time of any Transaction.

4.4 **Reconciliation**. Merchant must reconcile each settled Transaction within 15 days of submission.

4.5 **Set-off and Billing**. In addition to any other right or remedy, Bank and ISO may set off any amounts owed to them against any funds, accounts, or property of Merchant in their possession or under their control. All amounts Merchant owes to Servicers, for any reason, may be charged to the Operating Account or Reserve Account, recouped by adjustment to credits due Merchant, or set off against any account or property Bank holds for or on behalf of Merchant.

4.6 **Fee Amendments**. Fees may be amended at any time by Processor and/or Bank, with or without notice, as a result of amendments or changes made by the Card Networks or parties other than Processor or Bank. In addition, Processor or Bank may amend, revise, change, or supplement the Fees by giving Merchant thirty (30) days' notice of any such amendment, revision, change, or supplementation; provided, however, that Merchant may terminate this Agreement, without penalty or any obligation to pay the Early Termination Fee, in response to such amendment, revision, change, or supplementation (not attributable to the Card Networks or other third parties) by providing Processor 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.

4.7 **Late Payments, Collections, and Legal Process Fees.** If Merchant does not pay Bank or ISO all Fees and any other amounts due under this Agreement within 30 days of the date of the Merchant Statement or other statement setting forth the amount due, Bank or ISO may, in their sole discretion, charge Merchant interest for such time that the amount and all accrued interest remain outstanding at the lesser of (1) 12% APR, or (2) the maximum rate permitted by Applicable Law. Furthermore, Bank and ISO may debit Merchant's Operating Account, Reserve Account, or settlement funds for the following: (a) A fee for investigation and/or Chargeback costs related to this Agreement, or for costs related to collection activities in an amount no less than $100.00; and (b) Costs or expenses associated with responding to any subpoena, garnishment, levy, or other legal process associated with Merchant's account in an amount no less than $150.00.

5 Term and Termination.

5.1 **Term**. This Agreement is effective on the date Bank and ISO accept the Application and remains in effect for an initial term of three (3) years ("**Initial Term**"). After the Initial Term, this Agreement automatically renews for successive renewal terms of the same length (each, a "**Renewal Term**"; the Initial Term together with all Renewal Terms, the "**Term**"), unless any party provides written notice of non-renewal at least 90 days before expiration of the then-current term.

5.2 **Termination by Bank or ISO**. Bank or ISO may terminate this Agreement upon 30 days' written notice to Merchant. Bank or ISO may also terminate this Agreement immediately upon written notice to Merchant upon the occurrence of any Event of Default.

5.3 **Termination by Merchant**. Merchant may terminate this Agreement: (a) at the end of the then-current term upon 90 days' written notice; or (b) upon 30 days' written notice if Bank amends Application fees to increase rates or Fees, other than as a direct pass-through from a Card Network or third-party processor. Cancellation must be initiated via the cancellation process identified in the Application or on ISO's website; Merchant must complete the designated cancellation form, sign it, and submit it to the general mailbox identified by ISO.

5.4 **Events of Default**. Each of the following constitutes an "**Event of Default**": (a) Merchant engages in, or is suspected by Bank in good faith of engaging in, fraud, money laundering, or any Improper Transaction; (b) Merchant breaches any representation, warranty, or covenant in this Agreement, or any information in the Application is incorrect, incomplete, or misleading; (c) Merchant's Chargebacks are Excessive; (d) Merchant's activity threatens a loss of goodwill to Bank, ISO, or any Card Network, or creates a risk of material harm to any Card Network, in the reasonable determination of Bank or ISO; (e) A petition is filed by or against Merchant under any bankruptcy or insolvency law; (f) Merchant fails to maintain sufficient funds in the Operating Account to cover amounts due under this Agreement; (g) Merchant fails to provide financial statements or information requested under Section 14 within the required timeframe; (h) Any

Card Network demands or recommends termination of this Agreement; (i) Any insurance policy covering Transactions or Chargebacks is cancelled or terminated for any reason; or (j) Merchant's percentage of error Transactions or retrieval requests is, in the opinion of Bank or ISO, excessive.

5.5 **Effect of Termination**. Upon termination: (a) all obligations of Merchant incurred during the Term survive; (b) Merchant must immediately cease submitting Transactions; (c) Bank may place Merchant on each Card Network's terminated merchant file; and (d) Merchant must immediately remove all Card Network marks from all locations and materials. Bank and ISO may selectively terminate processing at individual Merchant locations without terminating the entire Agreement. All credits to the Operating Account and other payments to Merchant are provisional and subject to Bank's and ISO's rights hereunder.

5.6 **Early Termination Fee**. If (a) Merchant terminates this Agreement before the expiration of the Initial Term or any Renewal Term, (b) Merchant discontinues submitting Transactions during such period, or (c) Bank or ISO terminates this Agreement for breach by Merchant or upon the occurrence of an Event of Default under Section 5.4, then, in each case, Merchant must pay to ISO an Early Termination Fee ("**ETF**") as liquidated damages, and not as a penalty. Notwithstanding the foregoing, the ETF shall not apply where Bank or ISO terminates this Agreement for convenience under Section 5.2. The ETF is set forth in the Other Fees section of the Application. The ETF is expressly payable to ISO as identified in the Application. ISO may deduct the ETF from any settlement funds or other amounts payable to Merchant. The ETF shall not exceed the maximum amount permitted under Applicable Law. The parties acknowledge that actual damages from early termination are extremely difficult to quantify and that the ETF represents a reasonable estimate of underwritten, onboarding, and servicing costs and expected margin for the unexpired term. Notwithstanding the foregoing, if Merchant processes more than $5,000,000 in gross transaction volume in the most recent twelve (12) month period at the time of termination (or has an annualized run rate projected to equal $5,000,000 if processing for less than 12 months), the ETF shall be calculated as liquidated damages equal to Merchant's average monthly Fees for the three (3) calendar months that Merchant's revenue was highest during the preceding twelve (12) months, multiplied by the number of months remaining in the Term.

5.7 **Bankruptcy**. The parties acknowledge and agree that Servicers extend financial accommodations to Merchant within the meaning of 11 U.S.C. Section 365(c)(2). Merchant's right to receive any amounts from Bank is expressly subject and subordinate to Servicers' Chargeback, recoupment, setoff, lien, and security interest rights. If Merchant becomes a debtor in any bankruptcy proceeding, Merchant unconditionally and irrevocably waives any right to oppose, defend against, or challenge any motion filed by Servicers for relief from the automatic stay of 11 U.S.C. Section 362(a) to enforce its rights under this Agreement. Merchant must notify Bank and ISO in writing within five (5) Business Days after any bankruptcy filing by or against Merchant.

6 Operating Account and Reserve Account.

6.1 **Operating Account**. Before accepting any Cards, Merchant must establish an Operating Account at Bank or at a Bank-approved financial institution. Merchant authorizes Servicers to debit all amounts owed by Merchant under this Agreement or any other agreement between Merchant and Bank or ISO from the Operating Account at any time Servicers deems appropriate, via the ACH network or manual debit. Merchant waives any and all claims for loss or damage arising out of any such charges or debits. If Merchant intends to change its Operating Account, it must give no fewer than thirty (30) days' prior written notice to Processor and execute any forms required by Processor in connection with the change. Failure to provide the notice or the applicable executed forms required in this Section may result in the inability of Servicer to settle Transaction proceeds to Merchant and may result in the misdirection or loss of the same. Merchant shall bear sole responsibility for any such loss and shall have no right of recovery against Processor or Bank associated with such misdirection or loss.

6.2 **Reserve Account Establishment**. Bank may, at any time from execution through any post-termination period, establish a non-interest-bearing Reserve Account in such amount as Bank and/or ISO determines in its sole discretion. Bank or ISO may immediately establish and fund a Reserve Account upon: (a) identifying elevated risk in Merchant's Transaction patterns; (b) suspecting fraud or Improper Transactions; (c) the occurrence of Excessive Chargebacks; (d) an Event of Default; or (e) any other circumstance in which Bank or ISO determines in good faith that a reserve is necessary to protect Bank, ISO, or any Card Network. Servicers may fund the Reserve Account by: (i) deducting amounts from settlements due to Merchant; (ii) debiting the Operating Account; (iii) debiting any other Merchant account at Bank; or (iv) demanding payment from Merchant, which Merchant must make within 10 Business Days.

6.3 **Post-Termination Holding**. Upon termination or expiration of this Agreement, Bank will hold funds in the Reserve Account for not less than 270 days (or 9 months) after the later of: (a) the date this Agreement terminates; or (b) the date of the last Transaction processed under this Agreement. Bank will release Reserve Account funds to Merchant after the holding period only upon confirmation by both Servicers that they are no longer at risk from prior Merchant activity. Bank may release funds earlier, with ISO's written consent, based on its assessment of residual risk. Bank will inform Merchant in writing of any charges debited from the Reserve Account during the post-termination holding period.

6.4 **Use of Reserve Account**. Bank may withdraw funds from the Reserve Account at any time to offset any indebtedness of Merchant to Bank or ISO arising under this Agreement or any other agreement, including Chargebacks, Fees, indemnified losses, fines, and assessments. Only Bank, with ISO's agreement, may authorize the release of funds from the Reserve Account to any party other than Bank.

6.5 **No Interest**. Unless required by Applicable Law, Merchant is not entitled to interest on funds held in the Reserve Account.

7 Security Interest.

7.1 **First-Priority Security Interest (Bank**). As security for all of Merchant's obligations under this Agreement, Merchant grants Bank a first-priority security interest in: (a) all funds held in the Operating Account and Reserve Account; and (b) all inventory with respect to which a Transaction has occurred but has not yet been fulfilled (collectively, "**Collateral**"). Merchant will execute and deliver to Bank any documents Bank reasonably requests to perfect this security interest and will pay all associated filing costs. Bank is authorized to file financing statements relating to the Collateral without Merchant's signature where permitted by Applicable Law. Merchant irrevocably appoints Bank as its attorney-in-fact to execute all documents necessary or desirable to perfect this security interest. This power of attorney is coupled with an interest and is irrevocable while any obligations of Merchant to Bank remain outstanding.

7.2 **Second-Priority Security Interest** (**ISO)**. As security for all of Merchant's obligations to ISO under this Agreement, Merchant grants ISO a second-priority security interest in the Collateral on the same terms described in Section 7.1. Merchant will execute and deliver to ISO any documents ISO reasonably requests to perfect this security interest and will pay all associated filing costs. ISO is authorized to file financing statements relating to the Collateral without Merchant's signature were permitted by Applicable Law. Merchant irrevocably appoints ISO as its attorney-in-fact to execute all documents necessary or desirable to perfect this security interest. This power of attorney is coupled with an interest and is irrevocable while any obligations of Merchant to ISO remain outstanding.

7.3 **Priority**. ISO agrees that the second-priority security interest is and will at all times remain subject and inferior in priority to the first-priority security interest. All documents filed by ISO or Merchant to perfect the second-priority security interest must be prepared in a manner that ensures the priority and superiority of the first-priority security interest. ISO will immediately file any documents and statements reasonably requested by Bank to ensure the priority of the first-priority security interest relative to the second-priority security interest.

8 Prohibited and Improper Transactions.

8.1 **Prohibited Transactions**. Merchant must not: (a) Submit any Improper Transaction; (b) Establish a minimum transaction amount on debit cards, or a minimum credit card transaction amount above $10.00, or any maximum dollar transaction amount; (c) Obtain multiple Authorizations for amounts less than the total sale; (d) Submit a Transaction that does not arise from a bona fide, arm's-length sale between Merchant and a Cardholder for the goods or services described in the Application; (e) Process a Transaction using Merchant's own Card or any Card to which Merchant has access, for Merchant's own benefit; (f) Re-process any Transaction previously charged back to Bank; (g) Issue a credit Transaction without a preceding debit of at least equal value, or without a sufficient balance in the Operating Account to cover the credit; (h) Disburse cash to a Cardholder except as expressly permitted by Network Rules (e.g., Visa Cash-Back Services); (i) Accept a Card to collect or refinance any debt considered uncollectable, or in connection with a collection agency engagement; (j) Impose any surcharge on Cardholders except to the extent expressly permitted by, and in strict compliance with, Applicable Law and Network Rules, including all applicable dual-pricing and cash-discount program requirements; (k) Add any tax to a Transaction unless Applicable Law expressly permits Merchant to impose the tax, in which case the tax must be included in the Transaction amount and not collected separately; (l) Store magnetic stripe data, CVV2/CVC2, track data, or any full primary account number beyond what is strictly necessary to complete Authorization; (m) Sell, transfer, or disclose any Cardholder or Transaction data to third parties, including in connection with a business failure, insolvency event, or cessation of operations; or (n) Engage in any other transaction or conduct prohibited by Network Rules or Applicable Law.

8.2 **Consequences of Improper Transactions**. If Merchant engages in any Improper Transaction: (a) all funds then held in the Reserve Account become the exclusive property of ISO as liquidated damages, in addition to any other rights and remedies available to Bank and ISO under this Agreement or Applicable Law; and (b) Bank or ISO may immediately terminate this Agreement.

8.3 **Third-Party Processors**. Merchant may use a third-party processor as its agent for Transaction delivery for clearing and settlement only if: (a) Merchant has identified the third-party processor to Bank in writing in advance; (b) Bank agrees to settle Visa Transactions only as delivered by that processor to VisaNet; and (c) Merchant assumes full responsibility for that processor's compliance with Applicable Law. Merchant must notify Bank of any third party with access to Cardholder data.

9 Chargebacks.

9.1 **Full Recourse**. Bank's acceptance of a Transaction does not release Merchant from liability. All Full Recourse Transactions are with full recourse to Merchant. In addition, Bank may charge back any Transaction under the following circumstances: (a) No prior Authorization was obtained, the Authorization number does not appear in Bank's electronic records, or the Transaction was submitted 30 or more days after the purchase date; (b) The Card was cancelled or expired at the time of the Transaction; (c) A Cardholder disputes or denies authorizing the Transaction; (d) Required Transaction information was not submitted or required procedures were not followed; (e) The Transaction was processed by a party other than Merchant; (f) The Transaction violates this Agreement or Applicable Law; (g) An Issuer charges back the Transaction for any reason; (h) A Cardholder asserts a setoff, counterclaim, or dispute in connection with the Transaction; or (i) Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

9.2 **Chargeback Mechanics**. If Bank charges back a Transaction, Bank may, without prior notice to Merchant: (a) debit the amount from the Operating Account or Reserve Account; (b) recoup it by adjustment to credits due Merchant; and/or (c) set it off against any account or property Bank holds for Merchant. If Merchant disagrees with a Chargeback, Merchant must notify Bank in writing within 10 days and provide documentation that the dispute has been resolved to the Cardholder's satisfaction or proof that a credit has been issued. Disputes on charges, debits, funding, or statement entries must be raised within these timeframes or may be waived. Bank may provisionally credit or debit during review; final adjustments post after completion.

9.3 **Joint and Several Liability**. Merchant and each personal guarantor are strictly, jointly, and severally liable for all Chargebacks, related Fees, Card Network fines and assessments, and reasonable attorneys' fees and costs incurred by Bank or ISO in connection with collecting Chargeback amounts. If Bank or ISO takes legal action against Merchant for Chargebacks or amounts due, Merchant shall pay all costs and attorneys' fees incurred, whether or not suit is commenced.

9.4 **Excessive Chargebacks**. If Merchant exceeds the Excessive Chargebacks threshold in any calendar month, Bank or ISO may: (a) immediately terminate this Agreement; (b) impose additional reserve requirements; (c) assess penalty fees; and/or (d) report Merchant to the applicable Card Network monitoring program. Merchant must pay any applicable monthly chargeback violation fees identified in the Application within 30 days of Bank's written request.

9.5 **Provisional Credits**. All credits to the Operating Account are provisional and subject to revocation until the underlying Transaction is final and no longer subject to Chargeback. Failure to timely produce requested Transaction documentation, or delivery of an illegible copy, constitutes a waiver of Merchant's rights and may result in an irrevocable Chargeback for the full Transaction amount.

9.6 **Adjustments and Returns**. Merchant must maintain a fair return and exchange policy and promptly process credits for returned goods or cancelled services. Merchant may not make cash refunds for Card transactions; all credits must be issued to the original Card account. If total credit Transactions exceed total sales Transactions in any period, Merchant must pay the excess to Bank. If no refund or return will be given, Merchant must advise the Cardholder in writing, at the time of the Transaction, that the sale is final.

10 Network Rules and Brand Programs.

10.1 **Compliance**. Merchant must strictly comply with all Network Rules at all times. Network Rules are incorporated into this Agreement by reference and supersede this Agreement in the event of any conflict with respect to Card brand requirements. Merchant acknowledges that Network Rules change frequently and that Merchant bears sole responsibility for monitoring and implementing required changes. Network Rules are published at: Visa: https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf; Mastercard Rules available at: https://www.mastercard.com/us/en/business/support/rules.html; and American Express Merchant Operating Guide ("**MOG**") available at: https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf.

10.2 **American Express OptBlue Program**. If Merchant participates in the American Express OptBlue program, Merchant's acceptance of American Express Cards is governed by the American Express Network Rules, including the MOG identified in Section 10.1, and by the additional terms set forth in Section 21.

10.3 **Discover Global Network**. If Merchant is approved to accept Discover, Diners Club, or JCB, Merchant must comply with all Discover Global Network operating regulations. Depending on Merchant's authorization and settlement composition, Merchant may contract directly with Discover Network for certain services. The references to Discover Network in this Agreement may not apply if Merchant contracts directly with Discover.

10.4 **Surcharging and Dual Pricing**. If Merchant participates in a cash discount or dual pricing program, the Account Maint. Mo. identified in the Application applies and covers: (i) distribution of required customer-facing signage; (ii) receipt, menu, and shelf-display guidance; (iii) POS/terminal configuration support; and (iv) documentation updates when card-brand or legal requirements change. This fee is not a PCI non-compliance fee and does not transfer Merchant's compliance obligations. Except to the extent permitted by both Applicable Law and the Network Rules and as authorized in writing by Processor, 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. It is a material breach of this Agreement to assess surcharges in violation of Network Rules or Applicable Law. Merchant is advised to consult with its own legal counsel regarding the implementation of a surcharging program. Processor expressly disclaims any liability arising out of or relating to the implementation of any surcharge program by Merchant. If Merchant wishes to assess surcharges, as that term is used in the Network Rules of Visa and Mastercard, then Merchant must abide by the following requirements, which are contractual, and do not excuse or supersede compliance with Network Rules or Applicable Law:

10.4.1 At least 30 days prior to implementing any surcharge program, Merchant must inform Processor of the intent to surcharge;

10.4.2 Merchant may assess surcharges only on credit cards;

10.4.3 The surcharge may not be greater than 3% of the transaction value or the cost of card acceptance, whichever is lower;

10.4.4 The surcharge must be clearly and conspicuously disclosed at the point of sale and at the point of entry. For physical merchant outlets, the point of entry is where customers enter the store, and the point of sale is where the customer checks out or pays. For e-commerce transactions, the point of entry is the first page of your website that references the credit card brands accepted, and the point of entry is the checkout page. For mail order transactions, the point of entry is the first page of the catalog that references the card brands accepted, and point of sale is the mail order form.

10.4.5 The disclosure must (i) state that the surcharge is being assessed by Merchant on credit cards only, (ii) identify the amount of the surcharge; and (iii) state that the surcharge is not greater than the cost of accepting the card.

10.4.6 The Cardholder who has been notified of a surcharge must be given the opportunity to cancel the transaction prior to being assessed the surcharge and to pay by another means that does not result in a surcharge.

10.4.7 Merchant must not assess a surcharge in any jurisdiction that prohibits surcharging payment cards.

10.5 **Card Recovery**. Merchant must use commercially reasonable efforts to recover and retain any Card for which it receives cancellation, theft, or counterfeiting notices, whether delivered electronically, through the Authorization Center, or by any other means.

10.6 **Limited Acceptance (Visa).** Merchant may elect Limited Acceptance status under Visa Rules, accepting either (but not both) Visa Credit and Business Category Cards, or Visa Debit Category Cards, by completing the election on the Application. Failure to elect Limited Acceptance means Merchant accepts both categories.

10.7 **Card Acceptance Marks**. Merchant may display Card Network marks only as permitted by Network Rules. Upon termination of this Agreement or Merchant's acceptance of any Card Network, Merchant must immediately cease using and remove all applicable marks from all locations and materials.

11 Data Security and E-Commerce Disclosures.

11.1 **PCI-DSS and Security Program Compliance**. Merchant and all of its employees, agents, and third-party service providers must comply at all times with: (a) the Payment Card Industry Data Security Standard (**PCI-DSS**); (b) the Visa Cardholder Information Security Program (CISP); (c) the Mastercard Site Data Protection Program (SDP); (d) the American Express Data Security Requirements (DSR); and (e) all other applicable data security requirements under Network Rules. Merchant must use only PCI-compliant hardware, software, and service providers. Key obligations include: installing and maintaining a network firewall; applying security patches promptly; encrypting stored cardholder data and data transmitted across open networks; using and regularly updating anti-virus software; restricting access to cardholder data on a need-to-know basis; assigning unique IDs to each person with computer access to cardholder data; not using vendor-supplied default passwords or security parameters; tracking all access to cardholder data by unique ID; maintaining a written information-security policy covering employees and contractors; and restricting physical access to cardholder data. Merchant remains solely responsible for identifying and complying with all applicable security requirements. Merchant may be required to demonstrate compliance through third-party audits.

11.2 **PCI Validation.** Merchant must validate PCI DSS compliance (SAQ and, where applicable, quarterly scan) within 90 days of onboarding and annually thereafter. If Merchant fails to validate within such period, a monthly PCI non-compliance fee (as identified in the Application) will be charged each month thereafter until validation is achieved. Validation is completed at https://www.pciapply.com/pcicompliance. Merchant represents and warrants that any hardware or software used to process electronic transactions is PCI Secure Software Standard compliant.

11.3 **Data Storage Prohibitions**. Merchant must not retain or store: (a) magnetic stripe data after a Transaction is authorized; (b) CVV2, CVC2, or any Card Verification Value; (c) full track data; or (d) any Card account number or personal information beyond what is strictly necessary and permitted by Network Rules. Merchant must store all media containing Cardholder names and account information in secure, access-restricted areas and render all records containing Cardholder account numbers unreadable before discarding. Upon business failure, insolvency, or cessation of operations, Merchant must not sell, transfer, or disclose any Cardholder or Transaction data to any third party, and must return the information to Bank and provide acceptable proof of destruction.

11.4 **Breach Notification**. Merchant must provide written notice to Bank and ISO within 24 hours of discovering any suspected or confirmed Data Incident. Merchant must cooperate fully with any forensic investigation and must comply with all applicable Network Rules regarding Data Incidents. Merchant must also comply with the requirements of the Visa Rules regarding suspected or confirmed losses, thefts, or compromises of information. If Merchant is undergoing a forensic investigation at the time the Application is submitted, Merchant must cooperate fully until the investigation is complete.

11.5 **E-Commerce Disclosures**. If Merchant accepts Cards through a website or other online channel, Merchant must prominently display on its website: (a) a consumer data privacy policy; (b) the security method used for transmission of payment data (e.g., SSL/TLS, 3-D Secure); (c) a full description of goods and services offered; (d) the merchant's permanent establishment address, including country; (e) customer service contact information (telephone number or email); (f) return, refund, and cancellation policy, displayed on the checkout screen or acknowledged via a click-to-accept or checkbox mechanism in the checkout flow; and (g) policy for delivery of multiple shipments. Merchant must not display the full Card account number to the Cardholder online.

11.6 **Recurring Payments**. Merchant must obtain written Cardholder consent for any Pre-Authorized Recurring Order Transaction and must provide clear, accessible cancellation rights. Merchant must not submit a recurring charge after a Cardholder has cancelled authorization.

12 Compliance with Applicable Law.

12.1 **General Compliance.** Merchant represents and warrants that it has obtained all regulatory approvals, certificates, and licenses necessary to operate its business and that it is and will remain in full compliance with Applicable Law throughout the Term. Merchant covenants to comply in full with all Applicable Law in connection with all actions it takes in connection with Transactions.

12.2 **Responsibility for Agents**. Merchant is responsible for the acts and omissions of all of its employees, agents, licensees, and affiliates in connection with this Agreement and any Transactions.

12.3 **Illegal Transactions**; **OFAC**. Merchant must not use its merchant account or the Services for any illegal transaction, including those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., and must not process Transactions for any person or entity on the OFAC Specially Designated Nationals and Blocked Persons List (www.treas.gov/ofac) or the U.S. Department of State's Terrorist Exclusion List (www.state.gov). Merchant must cooperate fully and provide all information reasonably requested by Servicers to facilitate Servicers' own regulatory compliance, including OFAC compliance. Merchant certifies, under penalties of perjury, that the TIN and legal filing name provided in the Application are correct.

12.4 **Taxes.** Each party is responsible for reporting and paying its own taxes. If Bank or ISO is required to pay any tax, interest, fine, or penalty owed by Merchant, such amount is immediately due and payable by Merchant. Merchant is responsible for collecting and remitting all applicable excise, sales, or use taxes on Transactions.

12.5 **TIN/EIN and Backup Withholding**. If Merchant fails to provide a correct TIN or the TIN does not match IRS records, a monthly Invalid TIN/EIN fee (as identified in the Application) will be charged until corrected. If the mismatch is not cured under IRS B-Notice procedures, federal law requires backup withholding at 24% on reportable payments no later than 30 Business Days after receipt of an IRS CP2100/CP2100A notice. See IRC Section 3406 and IRS CP2100/Pub. 1281 guidance.

13 Merchant Statements, Records, and Complaints.

13.1 **Merchant Statements**. ISO will provide a Merchant Statement at least monthly. Merchant shall be solely responsible for reviewing statements from ISO (including statements provided online) and for reporting to ISO in writing, within sixty (60) days of receipt of any statement from ISO, any problems or irregularities appearing on 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 Merchant actually processed during the period indicated by the statement. Statements provided online shall be deemed received the first day they are available online. MERCHANT ACKNOWLEDGES AND AGREES THAT ISO AND BANK SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE TO MERCHANT, AND SHALL HAVE NO OBLIGATION TO REIMBURSE MERCHANT, FOR ANY UNDERPAYMENT TO MERCHANT OR OTHER DISCREPANCY THAT IS NOT REPORTED TO PROCESSOR IN WRITING WITHIN SIXTY (60) DAYS OF MERCHANT'S RECEIPT OF THE APPLICABLE STATEMENT.

13.2 **Retention of Information**. Merchant must retain all Transaction records and complaint documentation for seven (7) years from the date of the Transaction or complaint. Upon Bank's request, Merchant must deliver requested records to Bank or ISO within five (5) Business Days. Failure to timely deliver records, or delivery of an illegible copy, constitutes a waiver of Merchant's rights and may result in an irrevocable Chargeback for the full Transaction amount.

13.3 **Customer Complaints**. Merchant must respond promptly to Cardholder inquiries and attempt to resolve all disputes. Merchant must maintain written records of all claims or defenses asserted by Cardholders, including: (a) Cardholder name; (b) Card account number; (c) date and time of dispute; (d) nature of the claim; and (e) actions taken to resolve the dispute. Merchant must provide this information to Bank within 10 Business Days of request.

13.4 **Confidentiality and Use of Data**. Merchant shall use Card Information solely to receive Services under this Agreement. Under no circumstances shall Merchant sell Card Information or use it for any purpose other than as expressly contemplated by this Agreement. Except in response to a validly served subpoena, Merchant will not provide Card Information to anyone except Processor, Bank, Card Networks, or Merchant's agents that have been approved by Processor and are properly registered with Card Networks for purposes of assisting Merchant in completing Transactions. Should Merchant receive a subpoena that encompasses Card Information, Merchant will notify Processor in writing of its receipt of such a subpoena as soon as practicable. Merchant agrees to keep confidential and not to disclose: (a) the terms and conditions of this Agreement; (b) the Fees; (c) Card Information; or (d) any other non-public information regarding any aspect of either Processor's or Bank's business made available to Merchant under the auspices of this Agreement ("Servicer Confidential Information"). Servicer 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. Should Merchant receive any Servicer Confidential Information belonging to Processor or Bank, 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. Merchant agrees to return to Processor or Bank, as applicable, any confidential information respectively belonging to those entities either upon the termination of this Agreement for any reason, or upon earlier request from either Processor or Bank. Merchant must keep confidential its merchant identification ("**MID**"), which is assigned to facilitate the provisions of Services to Merchant under this Agreement. As a security measure, Merchant may be requested to identify itself by its MID when contacting Processor. Any person correctly identifying Merchant's MID shall be presumed by Processor to have authority to make changes to Merchant's account. Merchant shall be solely liable for any damages it sustains as a result of the disclosure of Merchant's MID to any unauthorized persons. To the extent permitted by Applicable Law and the Network Rules, Merchant authorizes Processor and Bank to disclose information regarding Merchant to any third party who has asked for such information, and whom Processor or Bank determines has a legitimate business need to know such information to facilitate the purpose of this Agreement. Merchant authorizes Processor and Bank to disclose Card Information, Transaction information, and Merchant information to the Payment Networks. Merchant further authorizes Processor and Bank to provide information about Merchant in response to requests for such information from any government body or regulatory authority. Notwithstanding anything else in this Agreement, and without otherwise limiting Processor and/or Bank's use of such information, all Card Information, information related to Transactions or Cardholders, and information related to Merchant, may be used by the Payment Networks, Processor, Bank, and their respective affiliates and designees: (i) to provide Services; (ii) for administrative and monitoring purposes; (iii) to enhance or improve Processor and/or Bank's products or services; (iv) in the course of any sale or reorganization of Processor and/or Bank's business; (v) to comply with Applicable Law; and (vi) for disclosure to credit reporting agencies and other financial institutions.

14 Audits And Financial Information.

14.1 **Audit Rights**. Bank may audit Merchant's compliance with this Agreement at any time upon reasonable notice. Merchant must provide all information and records requested by Bank to complete such audit. Merchant may be required to comply with an audit to verify compliance with security procedures. Merchant agrees to provide ISO advance written notice of any actual or anticipated (i) material change in Merchant's products or services, business practices, or the manner in which Merchant accepts Cards; (ii) change to Merchant's legal name, trade name, or mailing address; or (iii) changes to anticipated Transaction amounts or volume.

14.2 **Credit Authorization**. Merchant authorizes Bank to obtain credit information about Merchant and its principals from any source, and agrees to execute separate credit authorization forms upon Bank's request.

14.3 **Financial Reporting**. Merchant must provide Bank and ISO with: (a) quarterly balance sheets and income statements during the Term; (b) annual financial statements within 120 days of each fiscal year end; and (c) any other financial information Bank reasonably requests. All information provided must be true, complete, and accurate. Failure to provide financial statements suitable to Bank and ISO on request constitutes an Event of Default under Section 5.4.

15 Limitation of Liability.

15.1 **Excluded Damages and No Warranties**. NEITHER BANK NOR ISO IS LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUE, OR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER BANK OR ISO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, NEITHER ISO NOR BANK SHALL 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. MERCHANT ACKNOWLEDGES THAT NEITHER BANK NOR ISO HAS PROVIDED ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, USAGE, OR TRADE, WITH RESPECT TO ANY EQUIPMENT OR SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ISO AND BANK DO NOT GUARANTEE OR WARRANT THAT (A) THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THAT ANY SOFTWARE WILL BE VIRUS-, DEFECT-, OR ERROR-FREE; OR (C) THAT DATA, REPORTS, OR ANALYSES WILL BE FREE FROM ALL BUGS AND ERRORS.

15.2 **Aggregate Liability Cap**. WITH THE EXCEPTION OF BANK'S OBLIGATION TO SETTLE THE FACE VALUE OF VALID TRANSACTIONS SUBJECT TO THE TERMS OF THIS AGREEMENT, THE AGGREGATE MAXIMUM LIABILITY OF EITHER BANK OR ISO (INDIVIDUALLY OR COLLECTIVELY) ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF $10,000 OR THE TOTAL FEES ACTUALLY PAID BY MERCHANT TO BANK FOR THE PARTICULAR SERVICES IN QUESTION DURING THE ONE (1) CALENDAR MONTH IMMEDIATELY PRECEDING THE DATE OF THE RELEVANT ACT OR OMISSION GIVING RISE TO THE CLAIM. FOR PURPOSES OF THIS SECTION 15.2, FEES OR CHARGES OF THE CARD NETWORKS OR OTHER THIRD PARTIES PASSED THROUGH TO MERCHANT PURSUANT TO THIS AGREEMENT SHALL NOT BE INCLUDED IN THE CALCULATION OF FEES AND CHARGES PAID TO BANK OR PROCESSOR.

15.3 **Specific Exclusions**. Bank and ISO are not liable for: (a) denial of credit to any person or Merchant's retention of any Card; (b) Transaction downgrades resulting from defective or faulty Equipment; (c) unavailability of Services due to third-party contract terminations; or (d) interruption or termination of Services for any reason except ISO's failure to repair or replace Equipment at Merchant's expense (in which case ISO's liability shall not exceed Fees collected for the delay period). If there are errors, omissions, interruptions, or delays resulting from Bank's or ISO's performance or failure to perform, Bank's and ISO's sole liability is to correct such errors if commercially reasonable.

15.4 **No Claims on Termination**. Merchant shall not make any claim against Bank or ISO on account of the termination of this Agreement by either of them, or either of their ceasing or suspending processing hereunder.

16 Indemnification.

16.1 **Merchant's Indemnification Obligation**. Merchant must indemnify, defend, and hold harmless Bank, ISO, and each of their respective affiliates, officers, directors, employees, and agents from and against all losses, claims, damages, liabilities, judgments, fines, penalties, Card Network assessments and fines (including card replacement costs and audit fees), and reasonable attorneys' fees and costs (whether or not an attorney is an employee of Bank or ISO) arising from or relating to:

1. Any breach by Merchant of this Agreement, including any representation, warranty, or covenant;
2. Any act or omission of Merchant, its affiliates, employees, agents, licensees, successors, or third-party processors;
3. Merchant's failure to comply with any Applicable Law, including in connection with surcharges, cash discounts, or dual pricing programs;
4. Any Improper Transaction or Excessive Chargebacks;
5. Any Data Incident or failure to comply with PCI-DSS or other data security requirements;
6. Any dispute concerning the quality, condition, delivery, or non-delivery of goods or services;
7. Any fraud or dishonesty by Merchant or its employees, agents, or assigns;
8. Any Full Recourse Transaction, unauthorized Transaction, or prohibited Transaction;
9. the state or configuration of Merchant’s equipment, including, without limitation, 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 Processor and/or Bank;
10. Merchant’s use of third-party services or service providers, including gateways, value added resellers, and independent software vendors;
11. any proceeding, litigation, or arbitration commenced by a third party arising out of or relating to any actual or alleged act or omission by Merchant;
12. any demands, investigations, or subpoenas (or similar process) received related to Merchant or its Transactions, whether initiated by regulators, law enforcement, civil litigants, or lienholders under the Uniform Commercial Code; and
13. All internal and third-party collection costs and attorneys' fees incurred by Bank or ISO in enforcing Merchant's obligations under this Agreement.

16.2 **ISO Enforcement Rights**. Without prejudice to the rights of Bank, but only with Bank's express prior written consent in each instance, ISO may enforce any of the rights of Bank under this Agreement.

17 Exclusivity.

Merchant must submit all Transactions exclusively to Bank for processing during the Term. If Merchant processes Transactions through any other processor without Bank's and ISO's prior written approval, such non-compliance constitutes an Event of Default under Section 5.4, entitling Bank or ISO to terminate this Agreement and collect the Early Termination Fee set forth in Section 5.6. Merchant must not create any affiliate for the purpose of circumventing this exclusivity obligation. Prior to Merchant exercising any right of termination or non-renewal under this Agreement, Merchant agrees that Bank and ISO shall have a right of first refusal before Merchant enters into an agreement with a third party for the Services. Except for term length, Merchant must allow Bank and ISO the opportunity to match terms and conditions that are substantially similar to those offered by the third party.

18 Governing Law and Dispute Resolution.

18.1 Governing Law. This Agreement is governed by the laws of the State of Michigan, without regard to its conflict-of-laws principles. The arbitrator shall apply Michigan substantive law and applicable statutes of limitations and shall honor claims of privilege recognized by law.

18.2 Non-Arbitration Venue. Any claim or dispute not subject to arbitration under Section 18.3 must be brought exclusively in the United States District Court for the Eastern District of Michigan or, only if there is no federal subject matter jurisdiction, in a state court of Michigan sitting in Oakland County. The parties irrevocably consent to personal jurisdiction and venue in such courts for any such claims.

18.3 **Arbitration**. Subject to Sections 18.6 and 18.7, any dispute or claim arising out of or relating to this Agreement, or the breach, termination, or validity thereof, must be resolved by individual, binding arbitration rather than in court. This arbitration provision is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. Sections 1 through 16 (“**FAA**”). Arbitration will be administered by the American Arbitration Association (“**AAA**”) under its Commercial Arbitration Rules, as in effect when the claim is filed. A single arbitrator will resolve all disputes. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to Section 5 of the FAA.

18.4 **Hearing Location and Format**. Any in-person arbitration hearing will take place in Michigan (or another venue reasonably proximate to ISO's principal place of business as identified in the Application), unless the parties elect to conduct the arbitration by video conference or other virtual means. Either party may elect to conduct the hearing virtually. For claims of $10,000 or less, any party may choose whether the arbitration is conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization.

18.5 **Discovery; Appeals; Enforcement**. For claims of $100,000 or more, or claims including a request for injunctive relief: (a) each party is entitled to reasonable document and deposition discovery, including electronically stored information as approved by the arbitrator on a proportional basis, and at least five depositions per party; and (b) within 60 days of the initial award, either party may file a notice of appeal to a three-arbitrator panel administered by the AAA, which will reconsider de novo any aspect of the award requested, and whose decision is final and binding. The arbitrator shall have the power to award any relief that would have been available in court. If the losing party fails to satisfy or comply with an award or file a timely appeal, the prevailing party may seek judicial confirmation in any state or federal court where Merchant's headquarters or assets are located.

18.6 **Class Action Waiver**. MERCHANT AND GUARANTOR EXPRESSLY WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION, CONSOLIDATED ACTION, OR REPRESENTATIVE ACTION. ALL DISPUTES MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS ONLY. THE ARBITRATOR HAS NO AUTHORITY TO CONSOLIDATE CLAIMS OR ARBITRATE ANY CLAIM ON A CLASS OR REPRESENTATIVE BASIS. CLAIMS MAY NOT BE JOINED OR CONSOLIDATED UNLESS ALL PARTIES AGREE IN WRITING. THIS PROHIBITION PRECLUDES MERCHANT FROM PARTICIPATING IN ANY ACTION BY ANY TRADE ASSOCIATION OR OTHER ORGANIZATION AGAINST ISO OR BANK. IF ANY PART OF THIS WAIVER IS DEEMED UNENFORCEABLE, THE ENTIRE ARBITRATION PROVISION (OTHER THAN THIS SENTENCE) WILL NOT APPLY.

18.7 **Small Claims.** Bank or ISO will not elect arbitration for any claim that Merchant properly files as an individual action in a court of competent small-claims jurisdiction, so long as the claim is pending only in that court and seeks individual relief only.

18.8 **Equitable Relief**. Any party may seek emergency equitable relief in a court of competent jurisdiction prior to arbitration on the merits to preserve the status quo pending completion of such process. The party seeking enforcement of this arbitration provision shall be entitled to an award of all reasonable attorneys' fees and costs against the non-complying party.

19 Miscellaneous.

19.1 **Amendments.** ISO or Bank may amend, revise, change, or supplement this Agreement by giving Merchant thirty (30) days' notice of any such amendment, revision, change, or supplementation; provided, however, that Merchant may terminate this Agreement, without penalty or any obligation to pay the ETF specified in Section 5.6, in response to such amendment, revision, change, or supplementation (not attributable to changes to the Network Rules or Applicable Law) by providing Processor 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 Network Rules or Applicable Law may be made on less than thirty (30) days' notice and shall not be grounds for termination of this Agreement. No handwritten alterations or strike-outs to the MPTC will be accepted. Any change to the MPTC must appear in a Bank- or ISO-issued addendum or electronic amendment.

19.2 **Assignment.** Merchant may not assign this Agreement without Bank's prior written consent. Bank may assign this Agreement without restriction. Subject to the sponsorship agreement between Bank and ISO, ISO may assign this Agreement and cause Bank to assign this Agreement. Any assignment by Bank or ISO releases the assignor from further obligations under this Agreement.

19.3 **Notices**. All notices under this Agreement to either Bank or ISO must be in writing and delivered via hand delivery or via a carrier that provides a tracking number and/or other proof of delivery. Bank and/or Processor may provide Merchant with effective notice under this Agreement, including, without limitation, of any amendment to this Agreement or to Fees, by any of the following means: (a) via mail at the address designated in the Application (or such other address as Merchant may provide), including by statement messages appearing on any Merchant Statement; (b) electronically, through the Merchant portal, through electronically available processing statement(s), or through any other means of electronic communication maintained by Bank or ISO which Merchant may access; or (c) electronically, via any email address designated by Merchant. 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. Notices to the Bank or the ISO must be sent to the addresses listed below: Notices to Bank: First Pacific Bank, 11988 El Camino Real, Ste. 150, San Diego, CA 92130, Attn: Merchant Services. Notices to ISO are addressed to 29100 Northwestern Hwy, Suite 305, Southfield, MI 48034, Attn: Legal Department.

19.4 **Entire Agreement**. This Agreement, together with all network addenda and the Confirmation Page, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior written and oral agreements, representations, and understandings.

19.5 **Severability**. If any provision is held invalid or unenforceable in any jurisdiction, that provision is deemed modified to the minimum extent necessary to make it enforceable; the remainder of this Agreement continues in full force and effect.

19.6 **No Waiver**. No delay or failure by any party to exercise any right or remedy arising from any breach or default constitutes a waiver of that or any other right or remedy. All remedies afforded by this Agreement are cumulative.

19.7 **Force Majeure**. No party is liable for delays or failures in performance caused by events outside its reasonable control, including strikes, natural disasters, governmental actions, or acts of God.

19.8 **E-Sign Consent; Electronic Signatures**. This Agreement may be executed in counterparts. Electronic signatures, "click-to-agree" acceptances, and copies delivered by email or secure portal are deemed originals and have the same legal effect as original ink signatures. Furthermore, Merchant affirmatively consents to receive all communications, billing statements, tax documents, amendments, and legally required disclosures (collectively, "**Disclosures**") electronically. Merchant confirms it has the necessary hardware, software, and Internet access to receive, view, and download such Disclosures. Bank and ISO may deliver Disclosures via e-mail or by posting them to a designated secure web portal, which shall have the same legal effect as if provided in paper form, regardless of whether Merchant actually views them.

19.9 **Cooperation**. In their dealings with one another, each party agrees to act reasonably and in good faith and to cooperate fully to accomplish the transactions contemplated by this Agreement.

19.10 **Non-Disparagement**. During the Term and for two (2) years after termination, Merchant and its affiliates must not make any statement or take any action that disparages Bank, ISO, or their respective affiliates, officers, directors, employees, or agents, including through social media or any public platform.

19.11 **TCPA Consent**. Merchant consents to being contacted by ISO, its affiliates, and its subcontractors and agents using automatic telephone dialing systems at the telephone number(s) provided in the Application, including wireless numbers, even if on a Do Not Call list or if Merchant has previously requested not to be contacted for solicitation purposes. Merchant consents to receiving commercial electronic mail from ISO, its affiliates, and its third-party subcontractors and agents.

19.12 **FCRA Authorization**. Merchant, each Beneficial Owner, the Control Person, and any Authorized Signer/Guarantor authorize Bank and ISO to obtain consumer and commercial credit reports and conduct OFAC/sanctions screenings for underwriting, account review, servicing, fraud prevention, and collections, as permitted by law. This authorization is ongoing while Merchant has an agreement with Bank or ISO. All references, including banks and consumer reporting agencies, may release personal and business credit financial information to Bank, ISO, and their affiliates.

19.13 **Section 6050W / Form 1099**-K. Pursuant to IRC Section 6050W, Merchant will receive a Form 1099-K reporting gross Transaction amounts for each calendar year. To avoid backup withholding, Merchant must provide Bank and ISO with Merchant's correct legal name and TIN as they appear on Merchant's tax return.

19.14 **Financial Accommodations; Bankruptcy**. The parties agree that this Agreement constitutes a contract to extend financial accommodations to Merchant within the meaning of 11 U.S.C. Section 365(c)(2). The right of Merchant to receive any amounts due from Bank is expressly subject and subordinate to the Chargeback, recoupment, setoff, lien, and security interest rights being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

19.15 **Third-Party Leases and Providers**. Leases and third-party services (including POS systems, gateways, and software) are governed by separate agreements between Merchant and those providers. Bank and ISO are not a party to such agreements and are not responsible for third-party performance or warranties.

19.16 **Captions**. Section headings are for convenience of reference only and do not limit or define any provision of this Agreement.

20 Personal Guaranty.

20.1 **Guaranty Obligation**. Each individual who executes the Application on behalf of Merchant (each, a "**Guarantor**") personally, unconditionally, and irrevocably guarantees to Bank and ISO, jointly and severally: (a) the prompt and complete payment in full of all amounts due and to become due from Merchant under this Agreement; and (b) the full and timely performance by Merchant of all other obligations under this Agreement, together with all costs, expenses, and attorneys' fees incurred by Bank or ISO in connection with any actions, inactions, or defaults of Merchant.

20.2 **Unconditional Nature**. This guaranty is general, absolute, and unconditional. Bank and ISO are not required to first proceed against Merchant, exhaust any remedy, or enforce any collateral before proceeding against any Guarantor. There are no conditions attached to the enforcement of this guaranty. This guaranty is a continuing guaranty and is not discharged by the death, incapacity, insolvency, or change in legal status of any Guarantor.

20.3 **Duration and Survival**. This guaranty: (a) remains in full force and effect until 180 days after receipt by Bank and ISO of written notice by Guarantor terminating or modifying the same; (b) survives the termination of this Agreement with respect to all obligations arising or incurred during the Term; (c) binds each Guarantor's heirs, administrators, representatives, and assigns; and (d) inures to the benefit of successors and assigns of Bank and ISO.

20.4 **No Release**. The termination of this Agreement or this guaranty does not release any Guarantor from liability for obligations incurred before the effective date of termination. No change in Guarantor's legal status or the relationship between Merchant and Guarantor affects this guaranty. Bank and ISO may, without notice or consent, extend, modify, or release Merchant's obligations, grant indulgences, or release collateral without releasing any Guarantor from liability. Guarantor further understands and agrees that Bank and ISO may, from time to time and without notice to Guarantor, renew or extend the Agreement, modify rates, limits, charges, and fees, or modify the amount or type of services provided to Merchant, all of which may increase the Guarantor's financial obligations under this Guaranty without releasing or discharging Guarantor from liability.

21 Participation in the American Express OptBlue® Program.

21.1 **Application of These Terms**. These terms apply additionally and specifically to Merchant's acceptance of American Express Cards under the American Express OptBlue program. Capitalized terms used but not defined in this Agreement have the meanings given in the American Express Network Rules. In the event of a conflict between this Section 21 and any other term of this Agreement, this Section 21 controls with respect to American Express Transactions only. Merchant is bound by the American Express Network Rules, including the MOG identified in Section 10.1, which is incorporated into this Agreement by reference.

21.2 **Settlement Authorization; Data Quality**. Merchant authorizes Servicers to submit American Express Transactions to, and to receive settlement on those Transactions from, American Express on Merchant's behalf. Merchant must ensure data quality and must process all Transaction data and Card Information promptly, accurately, and completely in accordance with the American Express Technical Specifications.

21.3 **Information Collection, Use, and Disclosure**. Merchant agrees that Servicers may disclose to American Express information regarding Merchant and its Transactions, and that American Express may use that information: (a) to perform its responsibilities in connection with American Express Card acceptance; (b) to promote American Express; (c) to perform analytics and create reports; and (d) for any other lawful business purpose, including commercial marketing communications within the parameters of the OptBlue program and important transactional or relationship communications. American Express may use the information about Merchant obtained in the Application at the time of setup to screen and monitor Merchant for American Express marketing and administrative purposes. American Express may send Merchant messages regarding American Express products, services, and resources; the contact methods and consents set forth in Section 19.11 apply to those communications.

21.4 **Marketing Opt-Out**. Merchant may opt out of receiving future commercial marketing communications from American Express by contacting ISO. Merchant may continue to receive marketing communications while American Express updates its records to reflect that choice. Opting out of commercial marketing communications does not preclude Merchant from receiving important transactional or relationship messages from American Express.

21.5 **Conversion of High Charge Volume Merchants**. Merchant may be converted from the OptBlue program to a direct Card acceptance relationship with American Express if and when it becomes a High Charge Volume Merchant. A **"High Charge Volume Merchant"** is an OptBlue merchant with either (a) more than $1,000,000 in Charge Volume in any rolling twelve-month period or (b) more than $100,000 in Charge Volume in any three consecutive months. If Merchant has multiple Establishments under the same taxpayer identification number, the Charge Volume of all such Establishments is aggregated for purposes of these thresholds, as determined by American Express in its sole discretion. By signing the Application, Merchant acknowledges and agrees that, upon conversion, (i) Merchant will be bound by American Express's then-current Card Acceptance Agreement and (ii) American Express will set the pricing and other fees payable by Merchant for Card acceptance. As used in this Section 21, **"Establishment"** means each location or website at or through which Merchant accepts American Express Cards.

21.6 **No Assignment; Bona Fide Charges**. Merchant may not assign to any third party any payments due to it under this Agreement. All indebtedness arising from Charges will be for bona fide sales of goods or services (or both) at Merchant's Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes. Notwithstanding the foregoing, Merchant may sell or assign future Transaction receivables to ISO, its affiliates, or any other cash-advance funding source that partners with ISO or its affiliates, without the consent of American Express.

21.7 **Third-Party Beneficiary**. American Express is a third-party beneficiary of this Section 21 and of the other terms of this Agreement applicable to American Express Card acceptance, with the right, but not the obligation, to enforce those terms against Merchant at its option.

21.8 **American Express Opt-Out**. Merchant may elect not to accept American Express Cards at any time, without penalty and without directly or indirectly affecting its right to accept any other Card or payment product.

21.9 **Termination of American Express Acceptance; American Express Rights**. Servicers may terminate Merchant's participation in American Express Card acceptance immediately upon written notice to Merchant: (a) if Merchant breaches any provision of this Section 21 or any other term of this Agreement applicable to American Express Card acceptance; (b) for cause or fraudulent or other activity; or (c) at American Express's request or for breach of the MOG. American Express may modify the terms of this Section 21, terminate Merchant's acceptance of American Express Transactions, and require an investigation of Merchant's American Express-related activity. Upon any termination of American Express Card acceptance, Merchant must immediately cease using and remove all American Express marks and branding in accordance with Sections 5.5 and 10.7.

21.10 **Refund Policy; No Cardholder Billing**. Merchant's refund policy for American Express Transactions must be at least as favorable as its refund policy for any other payment product, and the refund policy must be disclosed to the Cardholder at the time of purchase and in compliance with Applicable Law. Merchant may not bill or collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for the Chargeback, and Merchant otherwise has the right to do so.

21.11 **Acceptance at All Locations**. Merchant must accept American Express Cards as payment for goods and services (other than those prohibited by this Agreement or Applicable Law) at all of its business locations and websites, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of its business locations and websites under this Section 21.

21.12 **Establishment Closing**. If Merchant closes any Establishment, Merchant must: (a) notify ISO immediately; (b) convey its applicable policies to the Cardholder before completing the Transaction and print them on the receipt or Transaction record the Cardholder signs; (c) if Merchant does not provide refunds or exchanges, post notice that all sales are final (for example, at store entrances, at registers, and on its websites and catalogs); (d) clearly disclose its return and cancellation policies at the time of sale; and (e) for any Advance Payment Charge or Delayed Delivery Charge, either deliver the goods or services for which the Cardholder has been charged or issue a Credit for any portion not delivered.

21.13 **Data Security, Data Incidents, and Compliance with Law**. With respect to American Express Transactions, Merchant must comply with the American Express Data Security Requirements and the PCI-DSS as provided in Section 11, report any Data Incident as provided in Section 11.4, and comply with all Applicable Law relating to the conduct of its business as provided in Section 12. Merchant is responsible for being aware of and adhering to applicable privacy and data-protection laws and for providing adequate disclosures to Cardholders regarding the collection, use, and processing of personal data.

21.14 **Dispute Resolution**. Merchant and American Express may each elect to resolve any claim between them, or any claim against Servicers with respect to American Express Transactions, by individual binding arbitration on the terms set forth in Section 18.