RESOLUTION NO. 23-01

A RESOLUTION AUTHORIZING ACCEPTANCE OF CREDIT CARDS AND ADOPTING A CREDIT CARD ACCEPTANCE POLICY BY THE BOARD OF TRUSTEES OF THE WARRENVILLE FIRE PROTECTION DISTRICT

WHEREAS, the Warrenville Fire Protection District ("the District") is a fire protection district duly organized under the laws of the State of Illinois (70 ILCS 705/1 *et seq.*); and

WHEREAS, the Board of Trustees of the District ("the Board") has full power to pass all necessary ordinances and rules and regulations for the proper management and conduct of the business of the Board of Trustees and for carrying into effect the objects for which the District was formed pursuant to Section 6 of the Fire Protection District Act (70 ILCS 705/6); and

WHEREAS, the Board has determined that it would be beneficial to the administration of District business to begin accepting payment of funds for properly authorized District purposes by acceptance of credit cards; and

WHEREAS, the District's acceptance of credit cards is conditional on compliance with the Local Governmental Acceptance of Credit Cards Act (50 ILCS 345/1); and

WHEREAS, the District has complied with the necessary publication and public hearing requirements prescribed by the Act, and after the public hearing, the Board has confirmed that the acceptance of credit card payments for authorized obligations is in the best interests of the District and the residents and corporate citizens of the District.

NOW, THEREFORE, Be It Resolved by the Board of Trustees of the Warrenville Fire Protection District, DuPage County, Illinois as follows:

Section One: That the Board of Trustees hereby authorizes its Fire Chief and administrative staff to take appropriate action to allow the District to accept credit cards as set forth in the Local Governmental Acceptance of Credit Cards Act.

Section Two: The Board of Trustees hereby amends its Rules and Regulations by adding a "District Acceptance of Credit Cards" policy, a copy of which is attached to this Resolution as **Exhibit One** and made a part hereof.

Section Three: The Fire Chief or his designee is hereby instructed to add this new policy to the Board of Trustees Rules and Regulations. The new policy attached hereto as **Exhibit One** is made effective upon the adoption and execution of this Resolution.

Section Four: The Board hereby approves the Merchant Application and Agreement with BMO Harris Bank, Paya Inc., and/or other financial institutions to offer credit card processing services for the District. A copy of the Agreement is attached to this Resolution as **Exhibit Two**.

Section Five: This Resolution shall supersede any ordinances, resolutions, or motions, or parts of ordinances, resolutions, or motions in conflict with any part herein, and any such ordinances, resolutions, motions, or parts thereof, are hereby repealed.

Section Six: If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any of the remaining provisions of this Resolution.

ADOPTED this 18th day of January, 2023, by a roll call vote as follows:

AYES: Carstens, Perkins, Pertell, Price, Rogers

NAYS: NONE

ABSENT: NONE

Kathleen Perkins
President, Board of Trustees

ATTEST:

Jeffrey Carstens
Secretary, Board of Trustees

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

SECRETARY'S CERTIFICATE

I, Jeffrey Carstens, the duly qualified and acting Secretary of the Board of Trustees of the Warrenville Fire Protection District, DuPage County, Illinois, do hereby certify that attached hereto is a true and correct copy of a Resolution entitled:

RESOLUTION NO. 23-01

A RESOLUTION AUTHORIZING ACCEPTANCE OF CREDIT CARDS AND ADOPTING A CREDIT CARD ACCEPTANCE POLICY BY THE BOARD OF TRUSTEES OF THE WARRENVILLE FIRE PROTECTION DISTRICT

which Resolution was duly adopted by said Board of Trustees at a meeting held on the 18th day of January, 2023.

I do further certify that a quorum of said Board of Trustees was present at said meeting, and that the Board of Trustees complied with all the requirements of the Illinois Open Meetings Act.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2023.

Jeffrey Carstens
Secretary, Board of Trustees

EXHIBIT ONE

DISTRICT ACCEPTANCE OF CREDIT CARDS POLICY

Purpose

The District accepts credit cards for payment of goods and services under controlled conditions to protect against the exposure and possible theft of personal cardholder information. The District will take every effort to comply with all Payment Card Industry (PCI) Data Security Standards requirements in its processing of credit card payments.

Use and Storage of Credit Card Information

The District and its employees will establish procedures for safeguarding cardholder information and ensure that this information is secured. Among the processes utilized by the District in its acceptance of credit cards are the following:

a. Cardholder information (account numbers, expiration date, PIN and card-validation code) will not be stored in any District computer or e-mail account.

b. Cardholder information will not be transferred in an insecure manner such as e-mail or unsecured fax.

c. Any paper receipts kept by the District to document receipt of payment shall have all digits except the last four blacked out. All paper receipts containing credit cardholder information must be kept in a securely locked file or safe. Only those employees who are responsible for processing credit card transactions will have access to this locked file.

d. Any credit card transactions that are disposed of pursuant to Illinois law for the destruction of public records must be shredded prior to disposal.

e. The District must determine that any third-party vendor utilized for credit card services is PCI-compliant and certified.

Exhibit Two

paya™

12120 Sunset Hills Road, Suite 500
Reston, VA 20190

MERCHANT PROCESSING APPLICATION

Referral: Sage 50 US Edition - No RP

Lead Source: None

Paya, Inc. is a registered ISO/MSP of BMO Harris Bank N.A. ®

Settlement Bank:	BMO Harris Bank N.A.	Auth Network:	Visanet/TSYS	Settle Network:	Vital
Office:	Sage Cross Sell	Office Phone:	8002610240	Application ID:	293598
Application Date:	1/5/2023 12:00:00 AM	Contractor Name:	Anthony Tyree	Association:	Sage 50

General Information

Type of Ownership:	Government (Fed,St,Local)	Business Open	1/1/1900	Existing MID:	
Legal Business Name:	WARRENVILLE FIRE PROTECTION DISTRICT			Business Name:	WARRENVILLE FIRE PROTECTION DISTRICT
Mailing/Billing Address:	3S472 Batavia Road			Location Address:	3S472 Batavia Road
City:	WARRENVILLE	State:	IL Zip 60555	City:	WARRENVILLE State IL Zip 60555
Phone:	(630) 393-1381	Fax:	(630) 393-1381	Phone:	(630) 393-1381 Fax (630) 393-1381
Contact:	AMBER NADEAU	Email:	admin@warrenvillefire.com	Customer Service Number:	(630) 393-1381
D & B:				Web Site:	www.warrenvillefire.com
Number of Locations:					

Tax Information

Name (as it appears on your Federal Tax Return): WARRENVILLE FIRE PROTECTION DISTRICT

Federal Tax ID: 362815250 State Filed: IL Type of Ownership: Government (Fed,St,Local)

☐ I CERTIFY THAT I AM A FOREIGN ENTITY / NON-RESIDENT ALIEN

☒ I CERTIFY THAT I AM PROVIDING AUTHORIZATION FOR THE ELECTRONIC ISSUANCE OF IRS FORM 1099

Owner/Officer 1	**0 %**	**Owner/Officer 2**	**0 %**
Name:		Name:	
Title:		Title:	
Address:		Address:	
City:	State: IL	City:	State:
Zip:	Phone:	Zip:	Phone:
Email:		Email:	
SSN:	DOB:	SSN:	DOB:

Disclosure

Member Bank (Acquirer) Information

Acquirer Name:	BMO Harris Bank N.A
Acquirer Address:	150 N. Martindale Rd Suite 900
Acquirer City:	Schaumburg
Acquirer State, Zip:	IL, 60173
Acquirer Phone:	(847) 240-6600

Merchant Information

Merchant Name:	WARRENVILLE FIRE PROTECTION DISTRICT
Merchant Address:	3S472 Batavia Road
Merchant City:	WARRENVILLE
Merchant State, Zip:	IL, 60555
Merchant Phone:	(630) 393-1381

Important Member Bank (Acquirer) Responsibilites

1. A Discover/Visa/MasterCard/American Express Member is the only entity approved to extend acceptance of Discover/Visa/MasterCard/American Express products directly to a merchant.
2. A Discover/Visa/MasterCard/American Express Member must be a principal (signer) to your Merchant Agreement.
3. The Discover/Visa/MasterCard/American Express Member is responsible for educating Merchant on the pertinent Discover/Visa/MasterCard/American Express Operating Regulations with which the Merchant must comply.
4. The Discover/Visa/MasterCard/American Express Member is responsible for and must provide settlement funds to the merchant.
5. The Discover/Visa/MasterCard/American Express Member is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilites

1. Ensure compliance with cardholder data security and storage requirements
2. Maintain fraud and chargeback rates below the thresholds.
3. Review and Understand the terms of the Merchant Agreement
4. Comply with Discover/Visa/MasterCard Operating Regulations.

THE RESPONSIBILITIES LISTED ABOVE DO NOT SUPERCEDE TERMS OF THE MERCHANT AGREEMENT AND ARE PROVIDED TO ENSURE THE MERCHANT UNDERSTANDS SOME IMPORTANT OBLIGATIONS OF EACH PARTY AND THAT THE DISCOVER/VISA/MASTERCARD MEMBER (ACQUIRER) IS THE ULTIMATE AUTHORITY SHOULD THE MERCHANT HAVE ANY PROBLEMS.

X _____ _____ _____

MERCHANT SIGNATURE | MERCHANT PRINTED NAME & TITLE | DATED

PLEASE NOTE The complete Merchant Agreement includes this application and the terms and conditions on eight (8) additional pages.

BMO Harris Bank

paya™

Underwriting Profile

Type Of Business:	MOTO	Seasonal:	False	Seasonal High Months:	
Business Description:	TOOLS AND INSPECTIONS				
Return Policy:	Other			Days Until Product Delivery:	1

		Method of Sales		% of Products Sold	
Monthly Volume:	$10,000.00				
Average Ticket:	$200.00	Card Present Swiped	0%	Consumer Sales	50%
Highest Ticket:	$3,500.00	Card Present keyed	0%	Business Sales	50%
Discount Paid:	Monthly	Card Not Present	100%	Government Sales	0%

Billing Questionnaire

Please explain your billing / delivery policy:

☐ Full payment upfront with 0 days until product / service delivery.

☐ Partial payment required up front with 0.00 % and within 0 days until final product / service delivery.

☒ Payment received after product / service is provided.

If product / service delivery requires recurring billing, please explain available billing options:

☐ Monthly ☐ Quarterly ☐ Semi-Annually ☐ Annually

Is any part of your business outsourced to a third-party ?

☐ YES ☒ NO If YES, please explain :

Authorization to ACH (Checking accounts only . Must include voided business check for each account)

Bank Name:		Phone:		City:		State: VA	Zip:
Depository	Routing #:	Account #:		Fees	Routing #:	Account #:	

Interchange

☐ Cost Plus (CP) ☐ Interchange at pass-through (IPT) ☒ FANF CP/CNP (Varies*)

* FANF CP and FANF CNP are based on prior month's Visa CNP volume, number of locations processing Visa and Tax ID. For further information on the FANF and MSP Network Fee, please go to www.merchantnetworkfee.com.

Accept?	Card Type	Qualified Rate	Discount Per Item	Qualification Exceptions (If applicable) Qualified Rate Plus
☒	Visa	2.850 %	Bankcard = 0.000	Bankcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00, APF = 0.000%
			Check Card = 0.000	Checkcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00
☒	MasterCard	2.850 %	Bankcard = 0.000	Bankcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00, NABU = 0.000%
			Check Card = 0.000	Checkcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00
☒	Discover	2.850 %	Bankcard = 0.000	Bankcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00
			Check Card = 0.000	Checkcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00
☒	AMEX	2.850 %	Bankcard = 0.000	Bankcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00
			Check Card = 0.000	Checkcard : Rate 1 = 0.000% + $0.00, Rate 2 = 0.000% + $0.00, Rate 3 = 0.000% + $0.00, Int'lNonStd = 0.000% + $0.00, Bus = 0.000% + $0.00
☒	Debit	0 %	Bankcard =	Interchange At Pass Through
			Check Card =	

☐ By checking this box merchant opts out of receiving future commercial marketing communications from American Express.

* Note that you may continue to receive marketing communications while American Express updates its records to reflect your choice. Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express

Authorization Fees (Charged By Processor)

Type	Per Item Fee	
Visa/MasterCard	Auth: $0.00	AVS Fee : $ 0.000
American Express	Auth: $0.00	
Discover	Auth: $0.00	
JCB	Auth: $0.00	
Pin Debit	Auth: $0.00	
EBT	Auth: $0.00	

Other Entitlements

Card Type	Status	Account
American Express	New	
Discover	New	
Carte Blanche	None	
JCB	None	

PLEASE NOTE The complete Merchant Agreement includes this application and the terms and conditions on eight (8) additional pages.

BMO Harris Bank

paya

Startup Fees

Description	Qty	Price
Sage 50	1	0.00
Standard Shipping/1-3 Day	1	0.00
WELCOME KIT	1	0.00
Total:	3	0.00

Monthly Fees

Fee Description	Amount

Miscellaneous Fees (Charged By Processor)

Fee Description	Amount
Acquirer Processing Fee for Visa	0.0000
Network Access & Brand Usage for MasterCard	0.0000
Data Integrity Fee for Visa	0.0000
Chargeback	25.0000
Signature Plan %	2.8500
Network Fee for Amex	0.0000
Complimentary Online Reporting	0.0000

Collection of Startup Fees will be via ACH - Merchant drafted by Paya, Inc.

Equipment

Terminal/Software Type	Terminal Program
Sage 50	VAR / STAGE

Certification and Agreement

By signing below, the merchant named: (1) certifies to Paya, Inc. that he/she is authorized to sign this agreement; (2) certifies that all information and documents submitted in connection with this application are true and complete; (3) authorizes Bank, Paya, Inc. and/or their respective agent to verify any of the information given, including credit references, and to obtain credit reports (including a spouse if in a community property state); (4) has read, agreed to, and acknowledges receipt of the terms and conditions of the merchant processing agreement, attached hereto and incorporated herein by reference. The terms and conditions and this application constitute the entire integrated merchant processing agreement by and between merchant, Paya, Inc. and bank; (5) agrees that merchant and each transaction submitted to bank will be bound by the agreement in its entirety; and (6) agrees that merchant will submit transactions to bank only in accordance with the information in this application and will immediately inform Paya, Inc. in writing at the address above if any information in this application changes. The agreement will become effective only when signed by bank and Paya, Inc. Merchant further acknowledges that, as used in this paragraph, "bank" means the banking institution indicated by appropriate mark in one of the check boxes located at the top of the first page of this document.

By signing below, I represent that the information I have provided on the Application is complete and accurate and I authorize American Express Travel Related Services Company, Inc (American Express) to verify the information on this Application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express Card Acceptance("Terms and Conditions") will be sent to such business entity along with a Welcome Letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this day , _____

Merchant:

By: X _____ By: _____

Merchant Principal or Corporate Officer *Merchant Principal or Corporate Officer*

_____ _____

Print Name *Print Name*

Accepted by Bank: By: _____

Accepted by Paya, Inc.: By: _____

Personal Guaranty

In consideration of Bank and Paya, Inc.'s acceptance of the Agreement, the undersigned Guarantor (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of Merchant to Bank and Paya, Inc. under the Agreement, and payment of all sums due thereunder, and in the event of default, hereby waives notice of default and agrees to indemnify Bank and Paya, Inc. for all funds due from Merchant pursuant to the terms of the Agreement. This is a guaranty of payment and performance and not of collection, and in no case will Paya, Inc. be required to attempt collection from Company or pursue any other remedy or action before collection from Guarantor. Guarantor waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant and all other rights and defenses available to Guarantor under applicable law, including California Civil Code Sections 2787 to 2856, inclusive (or any similar suretyship laws), and further waives any and all rights, defenses or notices arising by reason of any modification or change in the terms of the Agreement whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance thereunder is due, and / or any change in any interest or discount rate or fee thereunder. Guarantor confirms that Guarantor, collectively or individually, is an officer or shareholder to the Merchant and party to the Agreement, and unconditionally and specifically authorizes Bank, or its authorized agent, to debit any overdue fees, costs, chargebacks, fines, penalties, expenses or obligations under the Agreement and / or any contractual relationship with Bank or Paya, Inc. from any personal checking account or other account owned or controlled by Guarantor, and further to report any default hereunder on Guarantor's personal Credit Bureau Report. Guarantor agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of Bank or Paya, Inc. in connection with the enforcement of this Guaranty. Guarantor further acknowledges that, as used in this paragraph, "Bank" means the banking institution indicated by appropriate mark in one of the check boxes located at the top of the first page of this document.

X

_____ Date _____ _____ Date _____

Signature An Individual *Signature* An Individual

_____ _____

Print Name *Print Name*

*** EARLY TERMINATION: If Company cancels this Agreement during the term or any agreed upon extension term, applicable early termination fees shall be due Paya, Inc.. See Article V Section 5.01 of the attached terms and conditions for additional details.*

PLEASE NOTE The complete Merchant Agreement includes this application and the terms and conditions on eight (8) additional pages.

BMO Harris Bank paya

Site Inspection Information (To be completed by Sales Rep)

I HAVE PERSONALLY CONDUCTED A SITE INSPECTION FOR THIS MERCHANT, VISUALLY INSPECTED THE MERCHANT'S INVENTORY (IF APPLICABLE) AND REPRESENT THE INFORMATION IN THIS MERCHANT APPLICATION IS ACCURATE AND COMPLETE

Location Type: ☐ Retail Store ☐ Office ☐ Industrial ☐ Residence ☐ Trade ☐ Other (describe)

Merchant: ☐ Owns ☐ Lease Business

SALES REPRESENTATIVE - SIGNATURE

SALES REPRESENTATIVE PRINTED NAME & TITLE

DATED

PLEASE NOTE The complete Merchant Agreement includes this application and the terms and conditions on eight (8) additional pages.

BMO Harris Bank

paya

Merchant Credit Card Processing Agreement

Amendment

(Month-to-Month)

THIS AMENDMENT ("Amendment") is effective _____ ("Effective Date") and hereby amends the Merchant Agreement ("Agreement") dated _____ between **PAYA INC**, and Warrenville Fire Protection District ("Merchant"). Capitalized terms used, but not otherwise defined, herein shall have the same meanings assigned to those terms in the Agreement.

WHEREAS, by virtue of this Amendment the parties desire to amend the Agreement to modify the Term and remove the Early Termination Fee.

NOW, THEREFORE in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 5.01(a) AND 5.01(c) of the Terms and Conditions are amended as follows:

ARTICLE V – TERMINATION AND EFFECT OF TERMINATION

1. **Section 5.01(a) shall be deleted in its entirety and replaced with the following: "(a) This Agreement shall become effective upon acceptance by Bank ("Effective Date"). The initial term of this Agreement shall be for a period of one (1) month beginning on the Effective Date ("Initial Term") and will renew for additional successive one (1) month terms ("Renewal Term") unless terminated as set forth below:"**

2. **Section 5.01(c) shall be deleted in its entirety and replaced with the following: "(c) Upon termination of this Agreement, during the Initial Term or any Renewal Term, Merchant shall have an ongoing obligation to pay any fees, fines, third party costs or penalties which PAYA INC. may be assessed due to Merchant's breach of this Agreement. All rights and**

obligations of the parties existing as of the effective time of termination will survive termination;"

This Amendment, together with the Agreement and any exhibits, schedules, attachments, appendices and amendments thereto, constitute the entire agreement between the parties with respect to the subject matter hereof, supersede any other oral and written representations, understandings or agreements relating to the subject matter hereof, and may not be amended except by written agreement signed by the parties. In the event of any inconsistency between this Amendment and the Agreement, the terms and conditions of this Amendment shall govern and control.

If any provision of this Amendment is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Amendment, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision, which conforms to applicable law and embodies as closely as possible the original intent of the parties.

Except as modified by this Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, each acting with proper authority, have executed this Amendment as of the Effective Date

SIGNATURE AND ACCEPTANCE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MERCHANT	PAYA INC.
X _____	_____
AUTHORIZED SIGNER (MERCHANT)	AUTHORIZED SIGNER (PAYA INC.)
X _____	_____
SIGNER'S NAME (PLEASE PRINT)	SIGNER'S NAME (PLEASE PRINT)
X _____	_____
SIGNER'S TITLE (PLEASE PRINT)	SIGNER'S TITLE (PLEASE PRINT)

TERMS AND CONDITIONS OF MERCHANT AGREEMENT

These are the Terms and Conditions of Merchant Agreement referred to in the Application for Merchant Account and Agreement – Bankcard & ACH/Check Services ("**Application**") by and between Paya, Inc. ("**Paya**"), BMO Harris N.A. ("**Bank**"), and the applicant ("**Merchant**") who has submitted the executed Application.

ARTICLE I – ADDITIONAL DEFINITIONS

1.01 "Account" means a bank account maintained by Merchant as set forth in Section 6.10 for the crediting of collected funds and the debiting of fees and charges pursuant to this Agreement.

1.02 "ACH" means the Automated Clearing House paperless entry system operated by the Federal Reserve.

1.03 "Agreement" means the Application including the Schedule of Fees, these Terms and Conditions of Merchant Agreement with all exhibits and attachments, and any supplementary documents indicated herein, as amended from time to time, all of which constitute the Agreement.

1.04 "American Express" means American Express Travel Related Services Company, Inc.

1.05 "American Express Merchant Operating Guide" means the rules and regulations available at www.americanexpress.com/merchantopguide (or any successor or replacement website), as they may be amended from time to time by American Express.

1.06 "Authorization" means a computerized function or a direct phone call to a designated number to obtain credit approval for individual Transactions from the Card Issuer.

1.07 "Card" means any account or evidence of an account issued to a Cardholder under license from a Payment Brand, any or representative or member of a Payment Brand, that Merchant accepts as payment from Cardholders for goods or services. Cards include, but are not limited to, credit and debit/check cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts and any other payment instrument with an embedded microcomputer EMV chip.

1.08 "Cardholder" (also referred to as "Card Member" in some Payment Brand materials) means the person whose name is embossed upon the face of the Card and who purports to be the person in whose name the Card is issued.

1.09 "Card Issuer" means the financial institution or company, which has provided a Card to the Cardholder.

1.10 "Chargeback" means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) returned to Bank by a Card Issuer.

1.11 "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.

1.12 "Debit Card" means a plastic card used to initiate a debit Transaction, used primarily to purchase goods or services and obtain cash, for which the Cardholder's bank account is debited by the issuer.

1.13 "Discount Fee" means a fee charged on all Transactions that is payable by Merchant to Paya for processing Merchant's Transactions.

1.14 "Discover" means DFS Services, LLC.

1.15 "EMV" means Europay, Mastercard and Visa.

1.16 "Imprint" means: (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.

1.17 "Mastercard" means Mastercard International Incorporated.

1.18 "Payment Brand" means any payment method accepted by Paya for processing, including, without limitation, Visa, Mastercard, Discover, American Express and other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers.

1.19 "PCI DSS" means the Payment Card Industry Data Security Standards available at http://www.pcisecuritystandards.org, as amended from time to time.

1.20 "Reserve Account" has the meaning set forth in Section 6.06.

1.21 "Rules" means the rules, regulations, and other requirements of any Payment Brand or related authority, including, without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association, as amended from time to time. "Rules" includes without limitation the Visa USA, Inc. Operating Regulations, Visa International Operating Regulations, Mastercard Rules, Discover Operating Regulations, and the American Express Merchant Operating Guide. Capitalized terms not defined herein shall have the meanings set forth in the Rules.

1.22 "Sales Draft" means the paper form approved in advance by Paya, whether such form is electronically or manually imprinted, evidencing a sale Transaction.

1.23 "Transaction" means any retail sale of goods or services, or credit for such, from Merchant for which the customer makes payment through the use of any Card and which is presented to Bank for collection.

1.24 "Visa" means Visa Inc.

1.25 "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction.

ARTICLE II - MERCHANT REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

2.01 Honoring Cards. (a) Merchant will accept, without discrimination, all valid Cards properly presented for payment for bona fide, legitimate business transactions arising out of Merchant's usual trade or business and for Transactions originated by Merchant; (b) U.S. retailers may require a minimum purchase amount on credit card Transactions. The minimum purchase amount must not exceed $10.00 (ten dollars) and does not apply to transactions made with a Debit Card. Maximum transactions amounts may be established by Federal agencies and institutions of higher learning; (c) Merchant shall not require any Cardholder to pay any part of any fee imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge as a condition of sale that is not also required from a customer paying cash. However, Merchant may offer discounts to customers for cash purchases. Merchant may also charge a service fee on Transactions if Merchant charges a service fee: (i) for all payment methods (check, credit card, etc.) or (ii) for a specific payment mode (telephone) and not for other payment modes (face-to-face); (d) Merchant shall not accept a Card as payment (other than to the extent permitted by this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an Imprint or otherwise use the physical Card to complete the Transaction. Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party. Merchant agrees that any such deposit shall be grounds for immediate termination. Merchant shall not obtain under any circumstance Authorization for, nor process a sale on, any Card that Merchant is authorized to use. Processing Merchant's own Card is grounds for immediate termination.

2.02 Card Acceptance. When accepting a Card for a face-to-face Transaction, Merchant will follow the steps provided by Bank and Paya, and will: (a) Examine the Card for the Cardholder's signature and if the Card is not signed, request identification to confirm that the Cardholder is the person he/she purports to be and determine in good faith and to the best of its ability that the Card is valid on its face; (b) Check the effective date (if any) and the expiration date of the Card, examine any card security features (such as a hologram) included on the Card; and (c) Obtain Authorization before completing any Transaction (where Authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder); (d) Unless the Sales Draft is electronically generated or is the result of an Internet, mail, telephone or preauthorized order, obtain an Imprint of the Card; (e) Enter a description of the goods or services sold and the price thereof (including any applicable taxes); (f) As required by the Rules, obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (g) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (h) Provide the Sales Draft to the Cardholder following the purchase; and (i) Legibly reproduce the Cardholder's name, account number, expiration date, and the Merchant's name and place of business if that information is not legibly imprinted on the Sales Draft. In addition, for Mastercard Transactions, Merchant will legibly reproduce the name of the Card Issuer as it appears on the face of the Card. Each Sales Draft presented to Bank for collection shall be genuine and will not be the result of any fraudulent Transaction or telemarketing sale and shall not be deposited on behalf of any business other than Merchant.

2.03 Authorization. (a) Merchant will obtain a prior Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will request a Voice Authorization from the designated authorization center, and will legibly print the authorization number on the Sales Draft; (b) Merchant will not obtain or attempt to obtain Authorization unless Merchant intends to submit a Transaction for the authorized amount; (c) Merchant will not divide a single Transaction between two or more Sales Drafts or two or more Cards; (d) Merchant will not attempt to obtain Authorization on an expired Card; (e) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale, that an Authorization is not a guarantee of payment, and that an Authorization will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired Card. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any Transaction; (f) Transactions will be deemed invalid on Cards that are expired, whether or not an Authorization has been obtained; (g) If Authorization is granted, Merchant shall print the Authorization number, or ensure that it appears legibly in the

appropriate location on the Sales Draft; and (h) If Authorization is denied, Merchant shall not complete the Transaction and shall follow any instructions from the authorization center; (i) Merchant shall not obtain or attempt to obtain Authorization for a Transaction that it knows or should have known to be either fraudulent or not authorized by the Cardholder.

2.04 Retention and Retrieval of Cards. (a) Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card upon receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe that the Card is counterfeit, fraudulent or stolen; (b) The obligation of Merchant imposed by this Section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property and Merchant will hold Bank and Paya harmless from any claim arising from any injury to person or property, or other breach of the peace in connection with the retention or recovery of a Card.

2.05 Compliance with Law; Payment Card Industry Data Security Standards; Non-Disclosure and Storage of Cardholder and Transaction Information Requirements. (a) Merchant confirms that it is, and shall be, in full compliance during the term of this Agreement with all laws, statutes and federal and/or state regulations, as well as the Rules as may be applicable to Merchant, its business and any Transaction (b) Internet Merchants shall, at a minimum, include the following information and processes on their Internet sites, (i) prominent display of Merchant's name as "merchant" and as the name that will appear on the Cardholder statement, (ii) a complete description of goods or services offered; (iii) delivery standards including method and time for delivery; (iv) terms and conditions of purchase, and export or legal descriptions; (v) return/refund policy described in reasonable detail; (vi) opportunity to view and confirm order before order submission; (vii) secure method for payment data transmission; (viii) currency of transaction provided (USD); (ix) disclosure of Merchant's outlets to country of origin; (x) display of card association or payment network logos; (xi) clear disclosure of Merchant's privacy policy; (xii) alternate Merchant contact info options; and (xiii) display of web hosting company contact information; (c) Merchant hereby certifies that it (and any outside agent or contractor that it may utilize to submit Transactions to Paya) complies and will comply with the PCI DSS and Merchant hereby agrees to pay any fines and penalties that may be assessed by a Payment Brand as a result of Merchant's noncompliance with the requirements of PCI DSS), any data breaches, or by its failure to accurately validate its compliance. Merchant will review and monitor the PCI DSS and other related Rules in order to determine the timeframes and mandates for compliance under PCI DSS. The foregoing is an ongoing obligation during the term of this Agreement and as this Agreement may be renewed. Merchant acknowledges and understands that Merchant may be prohibited from participating in Payment Brand programs if it is determined that Merchant is non-compliant. The following lists certain (but not all) of the current PCI DSS requirements, all of which Merchant shall comply with, if applicable: (i) install and maintain a working network firewall to protect data accessible via the Internet; (ii) keep security patches up-to-date; (iii) encrypt stored data; (iv) encrypt data sent across networks; (v) use and regularly update anti-virus software; (vi) restrict access to data to business "need to know;" (vii) assign a unique ID to each person with computer access to data; (viii) do not use vendor supplied defaults for system passwords and other security parameters; (ix) track access data by unique ID; (x) maintain a policy that addresses information security for employees and contractors; and (xi) restrict physical access to Cardholder information. Merchant shall notify Paya if it utilizes any third party that provides payment related services, directly or indirectly and/or stores transmits, or processes Cardholder data and Merchant is responsible ensuring compliance of any such third parties with PCI DSS. **(d)** To the extent Merchant is required under the Rules, or Merchant otherwise elects, to utilize EMV chip-capable terminals, all EMV chip-capable terminals used by Merchant must appear on the EMV co-approved terminal list maintained by the Payment Brands. **(e)** In the event of the failure, including bankruptcy, insolvency, or other suspension of Merchant's business operations, Merchant shall not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Transaction information to third parties. Merchant and/or its agent shall either return this information to Paya or provide Paya with acceptable proof of destruction of this information. **(f)** If Merchant is undergoing a forensic investigation regarding PCI DSS compliance at the time Merchant executes this Agreement, then Merchant shall fully cooperate with the investigation until completed. Paya warrants that it complies with the applicable required PCI DSS regulations and that Paya is a PCI DSS Validated Service Provider.

2.06 Returns and Adjustments. (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. If applicable, Merchant agrees to disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise and of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms); (b) Such disclosures must be made on all copies of Sales Drafts in letters approximately ¼ inches high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale; (c) If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Merchant shall not refund cash to a Cardholder who paid for the item by Card; (d) Credits must be made to the same Card account number on which the original sale Transaction was processed.

2.07 Merchant's Business. **(a)** Merchant shall provide Bank and Paya with immediate notice of its intent to (i) transfer or sell any substantial part of its total assets, or liquidate; (ii) change the basic nature of its business, including selling any products or services not related to its current business; (iii) change fifty percent (50%) or more of the ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; or (v) alter in any way Merchant's approved monthly volume and average ticket; **(b)** Failure to provide notice as required above may be deemed a material breach and shall be sufficient grounds for termination of this Agreement, or, at Paya's option may result in Paya amending the terms of this Agreement, holding funds and/or altering the Merchant funding schedule if Paya and Bank deem it necessary to protect against financial loss. If any of the changes listed above occur, Bank and Paya shall have the option to amend the terms of this Agreement or immediately terminate this Agreement; **(c)** Merchant will immediately notify Paya, with a copy to Bank, of any bankruptcy, receivership, insolvency or similar action initiated by or against Merchant or any of its principals. Merchant will include Bank and Paya on the list of creditors filed with the Bankruptcy Court, whether or not a claim exists at the time of filing; **(d)** Merchant must notify Paya, with a copy to Bank, in writing of any changes to the information in the Application, including but not limited to: a change to Merchant's financial condition (within 3 days), any additional location or new business, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and the manner in which sales are completed. Merchant must also notify Paya in writing, with a copy to Bank, if Merchant sells or closes its business. Except for a change to the financial condition, Paya and Bank must receive all such notices 7 days prior to the change and otherwise upon request from Paya. Merchant is liable to Paya and Bank for all losses and expenses incurred by Paya and Bank arising out of Merchant's failure to report changes. Paya and Bank may immediately terminate this Agreement upon a change to the information in the Application, whether Paya and Bank independently discover such change or whether Merchant notifies Paya and Bank of such change.

2.08 Advertising. (a) Merchant will prominently display the promotional materials provided by Bank and Paya in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logotype ("**Marks**") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Bank and Paya and must be utilized in accordance with the Rules; (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease use and return any inventory to Bank or Paya upon any termination thereof; (c) Merchant shall not use any promotional materials or Marks associated with any Payment Brand in any way which implies that the Payment Brand endorses any goods or services other than Card services and Merchant shall not refer to any Payment Brand in stating eligibility for Merchant's products or services. Merchant's rights to use the Marks shall terminate with termination of this Agreement and Merchant will cease all use of the Marks upon notification by the applicable Card association to discontinue use. Merchant shall be fully liable to Bank and/or Paya for any and all loss, cost and expenses suffered or incurred by Bank and/or Paya, arising out of failure to return or destroy such materials following termination or Merchant's misuse of the Marks. If Merchant is a "Direct Mail Cardholder Solicitation Merchant," then Merchant acknowledges that the trademark 'Mastercard' and the corresponding logotype are the property of Mastercard International Incorporated (herein, "the *Corporation*"). Merchant shall not infringe upon the mark or logo, nor otherwise use the mark or logo in such a manner as to create the impression that Merchant's products or services are sponsored, produced, affiliated with, offered, or sold by this Corporation. Merchant shall not use the mark or logo on its stationery, letterhead, envelopes, or the like nor in its solicitation; provided, however, that Merchant may use one of the mark or logo in close proximity to the payment or enrollment space in the solicitation in a size not to exceed 1 1/4 inches in horizontal length if a logo is employed, or, if a mark is used, in type not to exceed the size of the type used in the major portion of the text on the same page; provided further that the legend, 'Accepted for Payment' must accompany the mark or logo used and must be the equivalent size of the mark or logo. In no case, however, shall Merchant use any of the logo on the front or first page of its solicitation. One truthful statement that Merchant is directing or limiting its offer to Mastercard cardholders may appear in the body of the solicitation, other than in close proximity to the payment or enrollment space, subject to the limitation that: (i). only the word mark may be used; (ii) the word mark may not (1) exceed in type size the size of any other type on the same page, (2) differ in color from the type used in the text (as differentiated from the titles) on the same page, (3) be as large or as prominent as the name of Merchant, (4) be the first item appearing on any page, nor (5) in any other way be the most prominent element of the page; (iii) Merchant's name and/or logo must appear prominently on the same page as the mark; and (iv) the following disclaimer must appear in close proximity to the mark on the same page and in an equal size and type of print: 'Mastercard International Incorporated is not affiliated in any way with Merchant and has not endorsed or sponsored this offer.' Merchant further agrees to submit its first direct mail solicitation(s), prior to mailing, to the Mastercard Law Department, to be reviewed only for compliance with this Corporation's trademark rules and shall furthermore not distribute in any manner

such solicitations until Merchant shall have obtained the Corporation's written approval of the manner in which it uses Mastercard mark and logo on such solicitations. Merchant shall likewise, upon request, submit to the Corporation any amended solicitations prior to mailing.

2.09 Representations and Warranties of Merchant. Merchant represents and warrants to Bank and Paya at the time of execution and during the term of this Agreement that: **(a)** All information contained in the Application or any other documents delivered to Bank and/or Paya in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers; **(b)** Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and does not and will not violate any provisions of federal or state law or regulation, or conflict with any other agreement to which Merchant is subject; **(c)** Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; **(d)** There is no action, suit or proceeding now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; **(e)** Merchant has performed and will perform all of its obligations to the Cardholder in connection with the Transaction evidenced by each Sales Draft; **(f)** Unless Merchant notifies Paya in writing (either on the Application or otherwise), **no other processing relationship exists** between Merchant and another bankcard processing institution, for this, or any other business run or owned by Merchant; **(g)** With respect to all Transactions that Merchant requests Paya and Bank to originate, Merchant continuously represents and warrants to Bank and Paya that: (i) Each Cardholder has authorized the debiting and/or crediting of its account; (ii) Each entry is for an amount the Cardholder has agreed to; and (iii) Each entry is in all other respects properly authorized; and **(h)** Merchant will not sell, purchase, provide or exchange any Cardholder's account name or number information in any form to any third party except to Bank or to Paya or pursuant to written government request, and then only upon prior notice to Paya given in sufficient time to permit Paya to file a protective motion.

2.10 Merchant Processing. Merchant will tender to Paya for processing all of Merchant's Transactions from all Merchant locations. Merchant will not use the services of any bank, corporation, or person other than Paya for Authorization or processing of Transactions during the term of this Agreement unless Merchant notifies Paya in writing and receives written approval from Paya prior to processing with another institution.

2.11 Additional Requirements for T&E Merchants. If Merchant is a Travel and Entertainment (T&E) merchant providing lodging the terms of this Section shall apply. Merchant must inform Cardholder of the following regarding reservations as applicable: (a) total obligation, (b) reserved rate and the Transaction amount, (c) exact name and location of lodging company, (d) that accommodations will be held for the number of nights paid for, and (e) Merchant's cancellation policy. Merchant must determine the T&E Advance Deposit Transaction amount, not to exceed the cost of the intended length of stay, not to exceed 14 nights lodging. Deposit amounts must be applied to the total obligation. Merchant must provide a confirmation code, an advance deposit amount, cancellation policy and the actual date that cancellation privileges expire. Merchant must advise the Cardholder that it will hold accommodations according to the reservation and provide written confirmation of a Cardholder reservation if requested. Merchant must advise the Cardholder that it will retain the entire T&E Advance Deposit Transaction amount or the amount specified in Merchant's stated policy if the Cardholder does not check in by check-out time the day following the last night of lodging used to determine the deposit or cancel the reservation within the specified time frame. Merchant must complete a Transaction receipt with the following information: (i) advance deposit amount, (ii) the words "Advance Deposit" on the Transaction receipt signature line, (iii) confirmation code, (iv) scheduled check in, and (v) date and time that cancellation privileges (if any) expire without forfeiture. Merchant must mail the Cardholder a Transaction receipt copy within 3 days from the Transaction Date. Merchant shall mail to the Cardholder a Transaction receipt for cancellations within 3 days of the Transaction date. If the reserved accommodations are unavailable, Merchant must, at no charge, provide a complete refund of any deposit, comparable accommodations at an alternative establishment for the number of reserved nights not to exceed 14 or until the reserved accommodation become available, and transportation and two 3-minute telephone calls to the alternative establishment. Any Central Reservation Service must have a written contract with the lodging establishment executed by an officer of the hotel and must accept full responsibility for resolving Cardholder problems related to T&E Advance Deposit Service. The Rules include additional requirement for T&E merchants that provide car rentals or cruises.

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK; RESERVE ACCOUNTS; TYPES OF TRANSACTIONS

3.01 Acceptance. Bank and Paya shall accept from Merchant all valid Sales Drafts deposited by Merchant and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to the terms of this Agreement and the Rules. Bank shall only provisionally credit the value of collected Sales Drafts to the Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, penalties, late submission charges and items for which Bank did not receive final payment. Settlement of funds will be in United States Dollars. Bank and Paya may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (**a**) the Transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement; (**b**) the Cardholder disputes his liability to Bank for any reason, including but not limited to those Chargeback rights enumerated in the Rules; or (**c**) the Transaction giving rise to the Sales Draft was not directly between Merchant and the Cardholder. Bank will offset from payments due to Merchant, any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by Bank and Paya. Merchant shall regularly and promptly review all statements of account, banking statements, and other communications sent to Merchant and shall immediately notify Paya if any discrepancy exists between Merchant's records and those provided by Paya, the Merchant's bank, or with respect to any transfer that Merchant believes was not authorized by Merchant or Cardholder. If Merchant fails to notify Paya in writing within fourteen (14) calendar days after the date that Paya mails or otherwise provides a statement of account or other report of activity to Merchant, Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer. The foregoing does not limit in any way Merchant's liability for any breach of this Agreement.

3.02 Endorsement. The presentment of Sales Drafts for collection and payment is Merchant's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with Bank's and Paya's acceptance procedures, and shall constitute an endorsement by Merchant to Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Sec. 365, as amended from time to time. Merchant acknowledges that its obligation to Bank and Paya for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Account.

3.03 Transmission Method. If Merchant utilizes electronic authorization and/or data capture services, Merchant will enter the data related to a sales or credit Transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the Transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet Paya's and Bank's requirements for processing Transactions. Information regarding a sales or credit Transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to Paya or its agent(s) in the form Paya from time to time specifies, or as required under the Rules. If Bank and Paya request a copy of a Sales Draft, credit voucher or other Transaction evidence, Merchant will provide it within 3 business days following the request. The means of transmission indicated in the Application shall be the exclusive means utilized by Merchant until Merchant has provided Paya with at least 30 days prior written notice, with a copy to Bank, of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to Paya.

3.04 Chargebacks. (a) Simultaneously with each Cardholder Transaction, a contingent and unmatured claim for Chargeback accrues against Merchant in favor of Paya and Bank if under the Rules, Paya or Bank is required, or has the right, to pay to any Payment Brand any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Merchant by Paya and Bank. Merchant agrees that it is fully liable to Bank and Paya for all Chargebacks, and that Bank and Paya are authorized to offset from incoming Transactions and to debit via ACH the Account, the Reserve Account, or any other account held at any other financial institution in the amount of any Chargeback. Merchant agrees to accept for Chargeback any sale for which the Cardholder disputes the validity of the sale according to the Rules; or Paya and Bank determine that Merchant has in any way failed to comply with the Rules, this Agreement or Paya's procedures, including but not limited to the following: (i) The Sales Draft is illegible, not signed by the Cardholder or has not been presented to Bank within the required time-frames; (ii) The Sales Draft does not contain the Imprint of a valid, un-expired Card; (iii) A valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iv) The Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated on one Card for a single sale; (v) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased; (vi) The price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment; (vii) The Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number; (viii) Paya and Bank believe, within their sole discretion, that Merchant has violated any provision of this Agreement; (ix) Paya determines that the Transaction record is fraudulent or that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees; (x) Merchant fails to provide a Sales Draft or legible copy thereof to Bank and Paya in accordance with this Agreement. (**b**) Merchant acknowledges that Paya and Bank shall have full recourse to charge back the amount of a Card sale for which the Cardholder disputes that he/she did not authorize the charge if (i) the Imprint of the Card or (ii) the signature of the Cardholder was not

obtained by Merchant; and (iii) Merchant shall not initiate a Transaction in an attempt to collect a Chargeback. Merchant shall be liable for all fees arising out of the Chargeback dispute processes under the Rules.

3.05 Processing Limits. Merchant's "**Approved Monthly Volume**" for sales drafts is that monthly volume set forth in the Application or as otherwise set forth in the Merchant account approval letter from Paya to Merchant or as may be later changed by Paya from time to time upon notice to Merchant. If Merchant exceeds the Approved Monthly Volume, either in the aggregate or with respect to any "method of sale": (i) Paya and Bank may suspend processing, hold the funds over the Approved Monthly Volume, and/or return all Sales Drafts evidencing funds over the Approved Monthly Volume to Merchant; and (ii) Merchant is subject to a 5% fee on all monies processed over the Approved Monthly Volume.

3.06 Additional Requirements for Acceptance of Debit Cards. Merchant may honor at the locations set forth on the Application debit cards ("**Debit Card**") serviced by the electronic funds transfer networks in connection with the sales ("**Debit Card Sale**") of merchandise or services to the holders of such Debit Cards ("**Debit Cardholders**"). Bank and/or Paya agree to accept from Merchant via electronic transmission documents evidencing such Debit Card Sales ("**Sales Transmittal**") and Adjustment Drafts (as defined below).

(a) Compliance; Authorization; Other Requirements. Merchant agrees to comply (and assume all liability for failure to comply) with the Rules of the Debit Card networks ("**Networks**") as amended from time to time. Any Authorization must be obtained immediately for every Debit Card Sale as directed by Bank and/or Paya ("**Authorization**"). When Authorization is obtained, Merchant will electronically print the authorization number on the Sales Transmittal. Merchant agrees that: (i) for each Debit Card Sale, the Debit Cardholder must enter his Personal Identification Number ("**PIN**") through a PIN pad located at the point of sale ("**POS**"); (ii) each PIN pad will be situated to permit Debit Cardholders to input their PINs without revealing them to other persons, including Merchant's personnel; (iii) Merchant will instruct personnel (a) that they may not ask any Debit Cardholder to disclose the PIN and (b) in the event that any of Merchant's personnel nevertheless becomes aware of any Debit Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person; (iv) the PIN message must be encrypted from the PIN pad to the POS terminal and from the POS terminal to the Network and back so that the PIN message will not be in the clear at any point in the Transaction; (v) Merchant will comply with any other requirements relating to PIN security as required by Bank or by any Network; (vi) for each Debit Card Sale a Transaction receipt in conformity with Regulation E of the Board of Governors of the Federal Reserve System will be made available to the Debit Cardholder; (vii) Merchant may not collect tax as a separate cash transaction; and (viii) POS terminals, including hardware and software, must be certified for use by Bank and by all of the Networks. POS terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. Merchants are responsible for compliance with all Rules regarding the use of POS terminals, regardless of whether such POS terminals are obtained through Bank or through Paya. Merchant will promptly initiate a refund to the customer (which may be made in cash, by an Adjustment Draft or with a check or cashier's check, as permitted by the Rules) whenever Merchant determines that a Debit Card Sale should be canceled or reversed. Merchant will cooperate with Bank and Paya, to resolve any alleged errors relating to Debit Card Sales. Merchant will maintain adequate records to assist in error resolution; records will be maintained for two years or the period required by the Rules, whichever is greater. Merchant will permit and will pay all expenses of periodic examination and audit of functions at such frequency, as Paya deems appropriate. Audits will meet Paya's standards, and the results will be made available to Paya. Merchant will not accept cash, checks or other negotiable items from any Debit Cardholder and forward a credit through any network (i.e., as a purported payment or deposit to an account maintained by the Debit Cardholder). Merchant will not forward through any network any Transaction or initiate any reversal of a Transaction that did not originate between Merchant and the Debit Cardholder.

(b) Prevention of Fraud. Merchant will fully cooperate with Paya and Bank in the event that Bank or Paya determines that there is a substantial risk of fraud arising from Merchant's access to the network. Merchant will take whatever actions Bank or Paya reasonably deem necessary in order to protect Paya and/or the Bank. Neither Paya, Bank nor any of their respective personnel will have any liability to Merchant for any action taken in good faith.

(c) Display of Network Trademark(s); Protection of Trade Secrets. In order to inform Debit Cardholders that Debit Card Sales may be transacted at Merchant's locations, Merchant will prominently display the trademark and/or service mark of each network at each location and will display signage of each network at the entrance, near all POS terminals and on the window of such location. All uses by Merchant of any trademark and/or service mark will comply with the applicable Rules. Merchant acknowledges and agrees that in displaying any such trademark and/or service mark, Merchant will be acting under Paya's and/or Bank's control and subject to approval by the applicable network. Merchant will not be deemed, under any circumstances, a licensee or sub-licensee of any trademark or service mark of any network, nor will Merchant otherwise be deemed to have or to acquire any right, title or interest in trademarks or service marks.

(d) Returns and Adjustments. Merchant will attempt to settle in good faith any dispute between it and a Debit Cardholder involving a Debit Card Sale. Merchant will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card Sales. Merchant will not make any cash refunds or payments for returns or adjustments on Debit Card Sales but will instead complete a form provided or approved by Bank ("**Adjustment Draft**"). The Sales Transmittal for any Debit Card Sale for which no refund or return will be accepted by Merchant must be clearly and conspicuously marked (including on the Debit Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.

(e) Presentation of Sales Transmittals and Adjustment Drafts. Merchant will electronically transmit to Bank all Sales Transmittals or Adjustment Drafts in a manner acceptable to Bank. Merchant will make a good faith effort to electronically transmit data within one banking business day after the Transaction date. Merchant will not extend the time of payment for or extend credit for any part of a Debit Card Sale. Merchant represents and warrants that the electronic transmission of each Sales Transmittal and Adjustment Draft will evidence a true record of the Debit Card Sale Transaction reflected on the document. Bank will process Debit Card Sales transmitted by Merchant, and Bank will promptly credit, debit or charge, as applicable, the appropriate amount to the Account. Within a reasonable time after the end of each calendar month, Bank will calculate the applicable amount of fees and other charges owed by Merchant, and Bank will debit the Account in the amount of such fees and other charges. The amount of such fees to be paid by Merchant are set forth **on Schedule of Fees in the Application**. Such fees may be amended at any time by Bank and/or Paya upon written notice to Merchant. Bank may refuse to accept or may revoke its acceptance of any Sales Transmittal or Adjustment Draft, and Bank may debit, charge or credit the Account in the corresponding amount, if: (i) the Debit Card was completed without prior Authorization; (ii) the Sales Transmittal or Adjustment Draft involved circumstances constituting a breach of any agreement, representation, or warranty by Merchant; (iii) the Debit Card Sale was in violation of applicable law, the Rules or regulations; (iv) the Debit Cardholder is Merchant, any partner of or shareholder in Merchant, or any affiliate, spouse or immediate family member of any of them; (v) the Debit Card Sale was not made in connection with the sale of goods or services by Merchant. Bank may refuse or revoke the acceptance of any Sales Transmittal or Adjustment of Sales Transmittal upon the occurrence of any of the following events, and Bank may charge, debit or credit the Account in the corresponding amount if: (a) Merchant defaults in paying when due any obligation to Bank or Paya; (b) any material adverse change in Merchant's financial condition occurs; (c) any deposit account at Bank or any of Merchant's property in the possession of Bank is garnished or attached; (d) Merchant assigns its assets generally for the benefit of creditors; (e) a proceeding is commenced by or against it under any bankruptcy, insolvency or similar law seeking an order to adjudicate it a bankrupt or insolvent or other relief, or seeking appointment of a receiver or similar official for Merchant or for any substantial part of Merchant's assets. Merchant will notify Bank and/or Paya in writing immediately upon becoming aware that any such event has occurred or is likely to occur. Bank will notify Merchant promptly of all Adjustment Drafts. Additionally, Bank will advise Merchant on each debit, charge and credit processed to the Account. Merchant authorizes Bank to charge debits arising from this Agreement against any credit due Merchant, whether or not such charges create overdrafts or a debit balance in the Account. Merchant agrees to pay Bank or Paya, as applicable, the full amount of any such overdraft or debit balance or to replenish the Account in an amount sufficient to permit the amount of the charge to be made, as applicable, promptly upon request. Merchant further authorizes Bank to suspend in a segregated account amounts which otherwise would be credited to the Account if Bank or Paya reasonably believe that the Sales Transmittals submitted by Merchant are fraudulent. Bank or Paya will notify Merchant of the suspension of such amounts within a reasonable time; provided, however, that such notice will not be required if the appropriate law enforcement agency has been notified of the suspected fraud.

ARTICLE IV – GATEWAY PROGRAMMING

4.01 Applicability to this Agreement. In addition to all the other provisions of this Agreement, the provisions of this Article IV shall apply if Merchant utilizes web services from Paya, including the Paya payments gateway, vault services, any application program interface, code samples, web services, integration specifications, and any offline components (collectively "**Web Services**").

4.02 Programming of Web Site. While Paya provides specific API's or programming scripts to Merchant or Merchant's Web site programmer(s), Merchant acknowledges that such sample programming scripts are insufficient in and of themselves to allow Merchant's Web site to function with the Web Services. Programming of Merchant's Web site and its functionality are the sole responsibility of Merchant.

4.03 Merchant's Programming Agent. Merchant has the sole responsibility to select and employ any competent programming agent to accomplish the programming required to make Merchant's Web site function correctly with the Web Services.

4.04 Fees Subject to Fluctuation. Fees for the electronic commerce payment system offered by Paya may be based on the number and/or volume of monthly transactions processed by the Merchant. Thus, notwithstanding anything to the contrary herein, the provisions of this Agreement which require notice prior to a change in fees shall not apply to any transactions or services covered by this Article 4.

4.05 Technical Support. Merchant shall be solely responsible for all technical support for Web site-related issues.

4.06 Shut Downs/Updates. Paya reserves the right, from time to time, without prior notice, to shut down and restart the Web Services for maintenance and/or Web Services upgrades or updates from time to time. Paya will use commercially reasonable efforts to keep service shut downs as brief as possible. Merchant must monitor updates and upgrades to the Web Services and update Merchant's Web site and programming accordingly.

4.07 Disclaimer. PAYA AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE WEB SERVICES OR ANY CONTENT STORED THEREIN. PAYA AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE WEB SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (B) THE WEB SERVICES WILL MEET MERCHANT'S REQUIREMENTS OR EXPECTATIONS. THE WEB SERVICES ARE PROVIDED ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY Paya AND ITS LICENSORS.

ARTICLE V - TERMINATION AND EFFECT OF TERMINATION

5.01 Term; Termination. **(a)** Paya Merchant Processing Account shall have an initial term of three (3) years and Paya Mobile Payments Account shall have an initial term of one (1) month (respectively the **"Initial Term"**) and shall commence on the earlier of (i) Paya's acceptance hereof (evidenced by the execution of the Agreement by Paya); (ii) the date of written notice from Paya that Merchant's application is approved for processing; or (iii) the date on which Merchant's first Transaction is processed, and (iv) shall automatically renew as follows: (1) Paya Merchant Processing Account shall renew for consecutive (2) year terms; and (2) Paya Mobile Payments Account shall renew on a month-to-month basis (respectively the **"Renewal Term"**), and unless terminated as set forth below; **(b)** This Agreement may be terminated by any party effective at the end of the Initial or any Renewal Term by providing written notice to the other parties of its intent not to renew no less than thirty (30) days prior to the expiration of the then-current term. Additionally, this Agreement may be terminated: (i) by Paya and Bank at any time with or without cause, and without prior notice, and (ii) by Merchant in the event of a material breach of the terms of this Agreement by Paya and Bank, provided Merchant provides Paya and Bank written notice of the alleged breach and the breach remains uncured for a period of 30 days following receipt of written notice by the breaching party. **(c)** Upon early termination of this Agreement by Merchant, or by Paya should Merchant breach any of the terms of this Agreement during the Initial Term or any Renewal Term, Merchant shall pay to Paya an early termination fee equal to (i) Paya Merchant Processing Account –twenty-five dollars ($25.00) for every month remaining in any such Term or Renewal Term for each Merchant location; (ii) Paya Mobile Payments Account - no early termination fee (respectively the **"Early Termination Fee"**). In addition to the Early Termination Fee, Merchant shall pay any fees, fines, third party costs or penalties which Paya may be assessed due to Merchant's breach of this Agreement and/or early termination. To the extent that applicable state law mandates lesser termination fees, the Early Termination Fee shall be the maximum allowed by applicable law. Merchant will not owe the Early Termination Fee if Merchant elects not to renew the Agreement upon the expiration of the then current term by providing written notice in accordance with this paragraph. All rights and obligations of the parties existing as of the effective time of termination will survive termination; **(d)** Within Paya's and Bank's sole discretion, if Merchant's or any of its principal(s)' business or personal credit deteriorates, if any significant circumstances exist that would create harm or loss to the goodwill of a card association or payment network system, or if any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank and Paya shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by Bank and Paya. Merchant agrees to notify Paya and/or Bank immediately of any bankruptcy, receivership, insolvency or similar action initiated by or against Merchant.

5.02 Effect of Termination. **(a)** In the event of termination for any reason, Merchant expressly authorizes Bank and Paya to withhold and discontinue the disbursement for all Cards and other payment Transactions of Merchant in the process of being collected and deposited; **(b)** Collected funds will be placed in the Reserve Account (defined below) until Merchant pays any equipment and processing cancellation fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, Bank reserves the right to require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. The Reserve Account shall be maintained a minimum of 270 days after the termination date and for any reasonable period thereafter, during which Cardholder disputes may remain valid under the Rules. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all other expenses, losses and damages have been paid will be disbursed to Merchant; **(c)** Merchant expressly acknowledges that the MATCH system and Early Termination File (collectively, the "MATCH") is a maintained by Mastercard and Visa and contains the business name and the names and identification of principals of Merchant which have been terminated for one or more of the reasons specified in the Rules. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized Transactions, excessive Chargebacks or highly suspect activity. Merchant acknowledges that Paya and Bank are required to report the business name of the Merchant and the names and identification of its principals to MATCH when Merchant is terminated for such reasons. Merchant consents to such reporting to the card associations and/or payment networks as applicable by Bank and Paya. Further, Merchant waives and will hold harmless Bank and Paya from any claims that Merchant may raise because of such reporting; **(d)** Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to Bank and Paya. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement; **(e)** Following termination, Merchant shall upon request provide Bank and Paya with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.

ARTICLE VI - ACCOUNTS; SECURITY INTERESTS; INDEMNIFICATION

6.01 Accounting Monitoring. **(a)** Merchant agrees that Paya and Bank may suspend, within their sole discretion, the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Paya and Bank will make good faith efforts to notify Merchant promptly. Paya and Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement; **(b)** In the event of unusual Transactions that have been "suspended" and cannot be verified as valid sales or have been verified as Cardholder disputes, Merchant agrees that a security processing fee not to exceed **110%** of the unusual Transaction(s) may be assessed; **(c)** Merchant's presentation to Paya and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. **"Excessive Activity"** refers to any period of two or more calendar months during which Merchant has a Chargeback ratio that exceeds 1% by number of Transactions or a Chargeback ratio that exceeds 1% by dollar volume. Merchant authorizes, upon the occurrence of Excessive Activity, Bank and Paya to take additional actions as either of them may deem necessary, including, but not limited to, suspension of processing privileges, increase of any fees that may be charged to Merchant and/or creation or maintenance of a Reserve Account in accordance with this Agreement.

6.02 Forms. Merchant shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by Paya and Bank, and Merchant shall not use forms provided by Bank and Paya other than in connection with Transactions without Paya's and Bank's prior written consent.

6.03 Records. In addition to any records routinely furnished to Paya and Bank under this Agreement, Merchant shall preserve a paper or electronic copy of all actual paper Sales Drafts, Credit Vouchers and Debit Card Sales and, if a mail, phone order or preauthorized order is involved, the Cardholder's signed authorization for the Transaction, for at least 3 years after the date Merchant presents the Transaction. If Records and/or data on Paya's system associated with Merchant are subpoenaed by legal process or otherwise, Paya shall produce such records in accordance with the subpoena without notice to Merchant.

6.04 Requests for Copies. Within 3 days of receipt of any written or verbal request by Bank and Paya, Merchant shall provide either the actual paper Sales Draft, Credit Voucher and/or Debit Card Sales or a legible copy thereof (in size comparable to the actual voucher or draft) and any other documentary evidence available to Merchant and reasonably requested by Bank or Paya to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

6.05 IRS Withholdings and Reporting. Section 6050W of the Internal Revenue Code ("Code") requires payment providers and third party payment networks, such as Paya, to report payment settlement amounts to the Internal Revenue Service ("IRS") for each Merchant processing through Paya. Merchant shall verify its identity by providing Paya with a Tax Identification Number ("TIN") such as a Social Security Number (SSN) or Employer Identification Number (EIN) for each Merchant Account. In the event Merchant fails to provide its TIN, Paya will place a restriction on Merchant's Account and may restrict the receipt of funds into Merchant's Account, or withhold a percentage

of payments deposited into Merchant's Account in order to satisfy the backup withholding requirements of the IRS.

6.06 Security Interests, Reserve Account, Recoupment and Set-Off. **(a)** This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to Bank and Paya a security interest in and lien upon: (i) the Account (as set forth in Section 6.10) and all funds at any time in the Account, whatever the source of such funds, (ii) the Reserve Account (as defined below) and all funds at any time in the Reserve Account, whatever the source of such funds, (iii) future Sales Drafts, (iv) all Merchant's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement; and (v) all Merchant deposit accounts now owned or hereafter acquired and the proceeds of all of the foregoing (collectively, the "Secured Assets"). Upon request of Bank and Paya, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant irrevocably authorizes bank to execute any financing statements or other documents necessary related to this security interest. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements between Merchant, Paya and Bank including, but not limited to, Merchant's obligation to pay any amounts due to Bank and Paya. With respect to such security interests and liens, Bank and Paya will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Bank and Paya written consent prior to granting a security interest of any kind in the Secured Assets to a third party; **(b)** Paya may establish and maintain a non-interest bearing account ("**Reserve Account**") in the name of Bank at any federally insured financial institution, with sums provided by Merchant that are sufficient to satisfy Merchant's current or future obligations as determined by Bank and Paya: (i) Bank and Paya shall have the right to initiate a debit to the Account or any other account at any institution to establish or maintain funds in the Reserve Account. Bank or Paya may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if they determine such action is reasonably necessary to protect their interests; (ii) Bank, on its own behalf or at Paya's request, may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and Bank or Paya. Paya or Bank may exercise their rights under this Agreement to collect any amounts due to Bank or Paya including, without limitation, rights of set-off and recoupment. Merchant shall have no right to withdraw funds or debit the Reserve Account. In the event of a bankruptcy proceeding, Bank and Paya may exercise their rights under this Agreement to debit the Reserve Account for amounts due Bank and Paya regardless of the pre-petition or post-petition nature of the amount due Bank and/or Paya. In the event of a bankruptcy proceeding, Merchant also agrees that it will not contest any Motion for Relief from the Automatic Stay, which Bank and Paya may file to debit the Reserve Account. As set forth in Section 5.02, funds in the Reserve Account will remain in the Reserve Account for a minimum of 270 days following termination. Bank will have sole control of the Reserve Account. In the event of a bankruptcy proceeding, Bank and Paya do not consent to the assumption of this Agreement. Nevertheless if this Agreement is assumed Merchant agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. Sec. 365, as amended from time to time, Merchant must establish or maintain a Reserve Account in an amount satisfactory to Bank and Paya; **(c)** Bank and Paya have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Account, and (ii) any other amounts Paya and Bank may owe Merchant under this Agreement or any other agreement; **(d)** The rights conferred upon Bank and Paya in this Section are not intended to be exclusive of each other or of any other rights and remedies of Bank and Paya under this Agreement, at law or in equity. Rather, each and every right of Bank and Paya at law or in equity will be cumulative and concurrent and in addition to every other right.

6.07 Third Parties. **(a)** Merchant may be using special services or software provided by a third party to assist Merchant in processing Transactions, including authorizations and settlements, or accounting functions. Merchant is responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure Merchant has and complies with any software updates. Paya and Bank have no responsibility for any transaction until that point in time Paya receives data about the transaction; **(b)** Merchant will notify Paya immediately if Merchant decides to use electronic authorization or data capture terminals or software provided by any entity other than Paya or its authorized designee ("third party terminals") to process Transactions. If Merchant elects to use third party software or terminals, Merchant agrees (i) the third party providing the software or terminals will be Merchant's agent in the delivery of Transactions to Bank via Visa Net or a similar data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Bank nor Paya will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a third party's software or terminal.

6.08 Modifications to Agreement. This Agreement is subject to amendment by Paya to conform to the Rules. Further, Paya and Bank may, from time to time, amend any provision of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by providing written notice, including electronic written notice, to Merchant of the amendment, and the amendment shall become effective unless Bank and Paya receive Merchant's notice of termination of this Agreement within 7 days. Amendments due to changes in a Payment Brand's fees, interchange, assessments, Rules or any law, regulation or judicial decision may become effective on such shorter period of time as Paya and Bank may specify if necessary to comply with the applicable Rule, law, regulation, decision or other change.

6.09 Limitation of Liability; Indemnity. **(A)** THE LIABILITY, IF ANY, OF BANK AND PAYA UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF THE LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY MERCHANT TO PAYA AND BANK DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED, AND (II) ASSESSMENTS, CHARGEBACKS, AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH. IN THE EVENT MORE THAN ONE MONTH IS INVOLVED, THE AGGREGATE AMOUNT OF PAYA AND BANK'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL BANK, PAYA, NOR ITS OR THEIR OFFICERS, AGENTS, DIRECTORS, OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; **(B)** MERCHANT HEREBY AGREES TO INDEMNIFY AND HOLD BANK, Paya AND ITS AND/OR THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE "**INDEMNIFIED PARTIES**") HARMLESS FROM ANY CLAIM RELATING TO:, (I) ANY DISPUTE BETWEEN MERCHANT AND A CARDHOLDER WITH RESPECT TO THE ALLEGED OR ACTUAL FAILURE BY MERCHANT TO PROCESS A TRANSACTION AS REQUESTED BY SUCH CARDHOLDER OR TO PROVIDE PHYSICAL SECURITY AT OR NEAR ANY TERMINALS OR OTHER PREMISES OF MERCHANT, OR THE TRANSMISSION OR DISCLOSURE OF ANY INFORMATION BY OR THROUGH PAYA, (II) THE TRANSMISSION OF ANY INCORRECT OR INCOMPLETE INFORMATION TO A CUSTOMER OF ANY NETWORK MEMBER THROUGH THE NETWORK REGARDING AN ACCOUNT MAINTAINED BY SUCH CUSTOMER, OR THE DISCLOSURE THROUGH SUCH NETWORK TO ANY PARTY OF INFORMATION RELATING TO ANY SUCH ACCOUNT; AND (III) MERCHANT'S FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS AGREEMENT AND APPLICABLE LAWS, RULES AND/OR REGULATIONS, INCLUDING WITHOUT LIMITATION DISPUTES RESULTING FROM MERCHANT'S FAILURE TO PROVIDE A SALES TRANSMITTAL. MERCHANT FURTHER AGREES TO INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM ALL CLAIMS, LIABILITY AND EXPENSES ARISING OR RESULTING FROM ANY DISPUTE OR CLAIM MADE AGAINST BANK AND/OR Paya BY ANY THIRD PARTY ARISING OUT OF MERCHANT'S BREACH OF THIS AGREEMENT OR THE RULES. FURTHER, MERCHANT SHALL REIMBURSE BANK OR PAYA, AS THE CASE MAY BE, FOR ALL EXPENSES AND COSTS, INCLUDING ATTORNEY'S FEES, WITH REGARD TO THE FORGOING; **(C)** NEITHER BANK NOR Paya MAKE ANY OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY SERVICES IT PERFORMS IN ACCORDANCE WITH THIS AGREEMENT, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. PAYA AND BANK DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

6.10 Account. **(a)** Merchant will establish and maintain an account at Bank or at any federally insured financial institution ("**Account**") reasonably approved by Bank in the United States. Merchant will maintain sufficient funds in the Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Paya and/or Bank to debit the Account for Chargebacks, fees and any other penalties or amounts owed under this Agreement. Merchant must obtain prior written consent from Bank and Paya to change the Account. If Merchant does not obtain that consent, Paya or Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion; **(b)** Bank will deposit all Sales Drafts to the Account subject to Section 3.01 of this Agreement. Merchant authorizes Bank and Paya to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry; **(c)** Bank, in its sole discretion, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Bank and Paya and subject to all Chargebacks and other amounts owed to Bank and Paya under this Agreement; **(d)** Merchant shall promptly examine all statements relating to the Account, and immediately notify Paya and Bank in writing of any errors. Merchant's written notice must include: (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Paya and Bank within 60 days after Merchant received the periodic statement containing the asserted error and failure to provide such notice shall bar any claim of errors. MERCHANT MAY NOT MAKE ANY CLAIM AGAINST BANK OR Paya FOR ANY LOSS OR EXPENSE RELATING TO ANY ASSERTED ERROR FOR 60 DAYS IMMEDIATELY FOLLOWING RECEIPT OF MERCHANT'S WRITTEN NOTICE. During that 60 day period, Paya and Bank will be entitled

to investigate the asserted error, and Merchant will not incur any cost or expense in connection with the asserted error without notifying Paya; **(e)** Merchant will indemnify and hold Paya and Bank harmless for any action they take against the Account pursuant to this Section. Merchant will also indemnify and hold harmless the institution at which Merchant maintains the Account for acting in accordance with any instruction from Bank or Paya regarding the Account. This Section will survive termination of this Agreement; **(f)** Merchant authorizes Bank and Paya to initiate debit/credit entries to the Account, as the Account may be changed from time to time, and to any other account maintained by Merchant at any institution that is a receiving bank of ACH, all in accordance with this Agreement. In the event Merchant changes the Account, Merchant will notify Paya, with a copy to Bank, and this authorization will apply to the new Account. This authorization will be effective until both: (i) Paya and Bank have received written notification from Merchant terminating this authorization, and (ii) all obligations of Merchant to Paya and Bank have been paid in full. Merchant will provide to Paya and Bank a voided Account check, and will fill in the Account numbers on the Application.

6.11 Fees and Other Amounts Owed. (a) Merchant shall pay the fees and charges as set forth on the Schedule of Fees included on the Application, the provisions of which are incorporated herein by reference. Unless otherwise noted, Merchant shall pay all fees monthly, with the exception of the Discount Fee and/or interchange, which shall be paid either monthly or daily, as determined by Paya in its sole discretion. Merchant may choose, however, to pay the discount fee on a daily basis by notice to Paya. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. Bank and Paya shall have the right to change fees, including adding fees for additional services utilized by Merchant, in accordance with Section 6.08. Interchange Pass Through pricing ("IPT") as specified on Application is comprised of interchange, fees, dues, and assessments assessed by card association. Cost-Plus pricing ("CP") is comprised of IPT plus the Cost Plus Rate set forth on your Application, which is charged to each settled Card and Debit Card Transaction. Merchant may call Paya customer service with any questions regarding pricing, qualifications exceptions, and billing. Paya does not refund fees for returns; **(b)** Merchant will immediately pay Paya and Bank any amount incurred by Paya attributable to this Agreement or any other agreement between Merchant and Paya or any subsidiary or affiliate of Paya, including but not limited to equipment fees, Chargebacks, fines imposed by a third party, non-sufficient fund fees, and ACH debits that overdraw the Account, Reserve Account, or are otherwise dishonored. Merchant authorizes Paya and Bank to debit via ACH the Account, Reserve Account, any other account Merchant has with Paya, an affiliate or subsidiary of Paya, Bank or at any other financial institution for any amount Merchant owes under this Agreement or under any other contract, note, guaranty, or dealing of any kind now existing or later entered into between Merchant and Paya or any subsidiary or affiliate, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse Paya and Bank for the amount owed, Merchant will immediately pay Paya and Bank such amount.

6.12 Costs. Merchant will be liable for and will indemnify and reimburse Paya and Bank for all costs paid or incurred by Paya or Bank in the enforcement of this Agreement, including but not limited to attorneys' and investigators' fees, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

ARTICLE VII- MISCELLANEOUS

7.01 Waiver. Failure by Bank or Paya to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future. The waiving party must sign all waivers.

7.02 Notices. All notices and other communications required or permitted under this Agreement shall be deemed delivered when sent by e-mail or mailed, postage prepaid, addressed as follows:

If to Paya:	If to Bank:
Paya **303 Perimeter Center North Suite 600** **Atlanta, Georgia, 30346** **Attn: Chief Financial Officer**	**BMO Harris N.A.** **8500 Governor's Hill Dr** **Cincinnati, OH 45249** **Attn. Customer Service**

If to Merchant, at the address provided as the billing address and to the contact listed on the Application or e-mail. To the fullest extent permitted by applicable law, notices or other communications regarding the Company Services ("Communications") may be provided to Merchant electronically and Merchant agrees to receive all Communications from Company in electronic form. Electronic Communications may be delivered to Merchant's email address specified by Merchant), if Merchant has selected such method of notification. All Communications delivered by Company to Merchant in either electronic or paper format will be considered to be in "writing," and to have been received no later than five (5) business days after posting or dissemination, whether or not Merchant has received or retrieved the Communication. Company reserves the right but assumes no obligation to provide certain notices hereunder in paper format.

7.03 Choice of Law: Jurisdiction. This Agreement and all matter related thereto shall be construed in accordance with the laws of the State of Delaware **except those rules relating to conflicts of laws**. Any action or proceeding arising out of or related to this Agreement shall be brought only in a court located in located in Dover, Delaware. Each party expressly consents to the jurisdiction of such courts.

7.04 Entire Agreement: Assignability. This Agreement, including the Application, these Terms and Conditions of Merchant Application and any supplementary documents indicated herein, expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, may be modified only in writing executed by all parties. This Agreement may be assigned by Paya and Bank, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Bank and Paya. In the event, for whatever reason, Application does not meet standard underwriting criteria, and satisfies only sub-standard underwriting criteria, Merchant acknowledges the completed Application may be forwarded to an alternative Member processor for review and approval. If Merchant nevertheless assigns this Agreement without such consent, the Agreement will be binding on the assignee. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns. .

7.05 Credit and Financial Inquiries: Inspections. (a) Merchant authorizes Bank and Paya to make, at any time, any credit inquiries which either may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance subsequent to acceptance of this Agreement. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, partners, principal owners or officers. If requested to do so by Bank or Paya, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or Paya may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices; **(b)** Merchant may honor Cards only at locations approved by Paya and Bank. Additional locations may be added, subject to Paya and Bank's written approval. All current and future locations are bound by the terms and conditions of this Agreement. Either Merchant or Paya may delete any location by providing notice as provided in this Agreement; **(c)** Merchant agrees to permit Bank or Paya at any time from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this Section shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement; **(d)** Representatives of Bank or Paya may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any Transaction.

7.06 Marketing of Non-Bankcard Services by Paya. From time to time, Paya may offer to Merchant certain additional products and services which may or may not be related to the processing of Transactions. Merchant consents to receipt of promotional materials via email and fax regarding such other products and services.

7.07 Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse bank and/or Paya for all attorneys' fees and other costs and expenses paid or incurred by Bank and/or Paya in the enforcement of this Agreement, or in collecting any amounts due from merchant to Bank and/or Paya or resulting from any breach by Merchant of this Agreement.

7.08 American Express Card Acceptance. In addition to other applicable provisions of this Agreement, the following provisions apply to Merchant's acceptance of American Express Cards: **(a)** This Agreement governs Merchant's acceptance of American Express Cards under American Express's "OptBlue Program". If and when the Transactions submitted by American Express Cardholders exceed the charge volume eligibility criteria for the OptBlue Program, American Express may require Merchant to convert to a direct Card Acceptance Agreement with American Express. If this occurs, upon such conversion, (i) Merchant will be bound by American Express's then-current Card Acceptance Agreement; and (ii) American Express will determine the pricing and other fees payable by Merchant under the Card Acceptance Agreement; **(b)** Merchant's participation in the OptBlue Program is subject to the approval of American Express. Merchant authorizes Paya and/or its affiliates to submit Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant; **(c)** Merchant shall not assign to any third party any payments due to it for American Express Card Transactions, and all indebtedness arising from such Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future receivables to Paya, its affiliated

entities and/or any other cash advance funding source that partners with Paya or its affiliated entities; **(d)** American Express shall have third-party beneficiary rights, but not obligations, to enforce the terms of this Agreement applicable to American Express Card acceptance against Merchant; **(e)** Merchant may opt out of accepting American Express Cards under this Agreement by providing 30 days' notice to Paya without directly or indirectly affecting its rights to accept other Payment Brand Cards; **(f)** Except as provided in Section 7.08(g), Paya may disclose to American Express information regarding Merchant and Merchant's Transactions to American Express, and American Express may use such information to (i) perform its responsibilities in connection with American Express Card acceptance, (ii) promote American Express, (iii) perform analytics and create reports, and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of American Express Card acceptance, and to provide important transactional or relationship communications from American Express. American Express may also use such information about Merchant obtained in connection with this Agreement at the time of setup to screen and/or monitor Merchant in connection with American Express marketing and administrative purposes; **(g)** Merchant may opt-out of receiving American Express commercial marketing communications about products and services by selecting the opt-out option on its Application or subsequently by providing written notice to its primary relationship contact at Paya. Merchant may continue to receive such communications from American Express after opting out while American Express updates its records to reflect Merchant's opt-out choice; and **(h)** Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

7.09 Paya Specific Services. In addition to other applicable provisions of this Agreement, the following provisions apply to Merchant's acceptance of the services set forth below that are provided only by Paya:

(a) Paya Advanced Fraud Protection Service:

Definitions. The following definitions apply only to the Paya Advanced Fraud Protection Service:

"Business Day" means any day other than Saturday, Sunday, or any day designated as a U.S. banking holiday.

"Cardholder Data" shall have the same meaning as set forth by the PCI DSS Glossary

"Cardholder Communication" means the data exchanged between Merchant and a Cardholder when a Cardholder initiates a Transaction, which may include Personal Data.

"Delivered Data" means real-time risk opinions and report information delivered to Merchant by Paya in connection with the provision of the Fraud Mitigation Service.

"Indications" means the authorization code or risk control opinions generated by the System and returned to Merchant in response to a Risk Inquiry.

"Merchant Communications" means the data exchanged between Merchant and Paya and any Paya subcontractor for the benefit of a Merchant, associated with the provision of the Fraud Mitigation Service, which may include Personal Data.

"Personal Data" means: any personally identifiable information (including, without limitation, Cardholder Data) disclosed or otherwise provided to Paya by Merchant that, if compromised, could result in identity theft, or any more restrictive definition required by applicable law.

"RIS Update" means updated Transaction information transmitted by the Merchant to Paya through the Risk Inquiry System, which includes all required data elements.

"Risk Inquiry" means any Transaction initiated by Merchant or a Cardholder of Merchant in which the System is queried.

"Fraud Mitigation Service" means the fraud mitigation service offered as part of this Section.

"System" means the Paya interface through which Merchant initiates Risk Inquiries and RIS Updates, and through which Paya delivers risk replies and reports to Merchant.

(i) Merchant Obligations. Merchant will: (1) initiate a real-time Risk Inquiry through the Risk Inquiry System for every Transaction processed; (2) provide Paya with RIS Updates for all Risk Inquiries; (3) cancel all Transactions deemed as high risk by an Indication; (4) use all means available to Merchant to detect and prevent fraudulent Transactions, including those required under the Merchant Agreement, in addition to the Fraud Mitigation Service, and will not rely on the Fraud Mitigation Service as a fraud prevention guarantee.

(ii) Access to Cardholder Communications. (1) Merchant acknowledges and agrees that in order to provide the Fraud Mitigation Service, the System is required to access the contents of Cardholder Communications. Merchant expressly consents and grants Paya permission to access Cardholder Communications to the extent necessary to provide the Fraud Mitigation Service; (2) Merchant shall obtain, from any Cardholder initiating a Transaction for which Merchant requests a Risk Inquiry, all consents necessary for Paya to access the pertinent Cardholder Communication to which Cardholder is a party (each a "Cardholder Consent"). Merchant shall be solely liable for the legal adequacy of, the means used to obtain the Cardholder Consent and the failure to obtain such Cardholder Consent.

(iii) Payment Terms: (1) Fees. Merchant agrees to pay the fees set forth on the Application and Agreement for Merchant Account – Bank Card and/or Fee Schedule ("Fees"). All Fees owed by Merchant shall be billed and charged in accordance with the terms of the Merchant Agreement.

(iv) Ownership: (1) Intellectual Property. Except for the limited rights granted in this Agreement to receive Reports and Indications, Merchant does not receive nor is granted any licenses or rights in the Fraud Mitigation Service whether by implication, estoppel, or otherwise. Merchant agrees that it will not reverse-engineer, disassemble or decompile the Fraud Mitigation Service. Merchant will not give any third party, except Merchant's employees, access to the Fraud Mitigation Service without Paya's prior written consent.

(v) Personal Data. Personal Data submitted to Paya by Merchant may be converted by Paya to digest form to be used for statistical and/or fraud prevention purposes.

(vi) Upgrades and Additional Offerings. (1) Fraud Mitigation Service Modifications. Paya may modify the Fraud Mitigation Service, including by adding, modifying or removing features at any time during the Term in its sole discretion. Paya may also impose limits on certain features or restrict Merchant's access to parts of the Fraud Mitigation Service without notice or liability to Merchant; (2) Fraud Mitigation Service Maintenance. Should Paya (or Paya's vendors) need to perform maintenance on Paya's hardware or systems relating to the Fraud Mitigation Service, Paya will attempt to do so in a manner designed to not unreasonably interfere with Merchant's use of the Fraud Mitigation Service. Should a critical maintenance situation arise, Paya may be required to and shall perform emergency maintenance at any time. During scheduled and emergency maintenance periods, the Fraud Mitigation Services may not be available. Merchant agrees to cooperate with Paya during scheduled and emergency maintenance periods by providing reasonable assistance; (3) Quality Assurance Monitoring. For quality assurance, Paya may monitor or record telephone calls Merchant makes to Paya in connection with the Fraud Mitigation Service.

(vii) Merchant Warranties: Merchant represents and warrants to Paya that: (1) Merchant shall not rely solely on its use of the Fraud Mitigation Service to comply with any laws, government regulations Rules or the Merchant Agreement; and (2) Merchant has and will comply with all laws and regulations Rules applicable to the Transactions relative to the Fraud Mitigation Service, and all laws relating to the collection, processing, sharing and disclosure of Personal Data (including, without limitation, in the United States and the European Union);

(viii) Indemnification. (1) Merchant Indemnification. Merchant will defend, indemnify and hold harmless Paya and Paya's providers, officers, directors, agents, subsidiaries, subcontractors, vendors, and employees from any and all claims, lawsuits, demands, damages, costs, fines, fees or other expenses, (including reasonable attorneys' fees) resulting from or in any way related to Merchant's use of the Fraud Mitigation Service, including but not limited to: (a) Merchant's breach of any representation or warranty contained herein or arising by operation of law, (b) Merchant's violation of the rights of a third party relating to Merchant's use of the Fraud Mitigation Service, (c) the reliability, accuracy, or legitimacy of data submitted by Merchant to Paya, or (d) any third party claim resulting from Merchant's use of the Fraud Mitigation Service.

(ix) Limitation of Liability. (1) In addition to the limitations of liability set forth in the Merchant Agreement, Paya will have no liability for any reversals, refunds, fraud losses or chargebacks incurred by a Merchant as a result of reliance upon an Indication or the Fraud Mitigation Service; (2) In the event of a Fraud Mitigation Service failure, Paya's sole responsibility shall be to correct the failure of the system. Paya shall not be liable for any resulting damages whatsoever, whether direct or indirect, foreseeable or unforeseeable, consequential, punitive or otherwise, claims to which are hereby specifically and expressly waived by Merchant (3) IN NO EVENT SHALL PAYA'S LIABILITY TO MERCHANT FOR DAMAGES HEREUNDER FOR ANY CAUSE WHATSOEVER, AT LAW OR IN EQUITY, EXCEED THE AMOUNT PAID BY MERCHANT FOR USE OF THE FRAUD MITIGATION SERVICES DURING THE MONTH IMMEDIATELY PRECEDING THE DATE OF THE EVENT WHICH GAVE RISE TO THE LOSS OR INJURY. IN NO EVENT WILL Paya BE LIABLE FOR ANY LOST PROFITS OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES ARISING OUT OF THIS AGREEMENT OR MERCHANT'S USE OR INABILITY TO USE THE FRAUD MITIGATION SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF PAYA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (4) THIS DISCLAIMER OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OR OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF,

OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTIOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION; and (5) Use of non-personally identifiable information. Merchant agrees that Paya may disclose or use any data or information relating to Fraud Mitigation Service, or information in its aggregate form that Paya acquires in the course of providing the Fraud Mitigation Service, but only if the information does not contain any personally identifiable information.

(x) Term; Termination. The Fraud Mitigation Service will commence on the Effective Date of the Agreement and will continue for Term of the Agreement or until such time as Paya discontinues the Fraud Mitigation Service. (1) Effect of Termination. Upon termination, all rights and obligations hereunder shall cease except Merchant's obligation to pay the applicable fees and provide defense and indemnification for any claim arising out of Fraud Mitigation Service performed by Paya up to and including the Effective Date of termination. Merchant will not be entitled to a refund of any fees paid by Merchant in connection with the Fraud Mitigation Service prior to termination.

(xi) Use of Subcontractors. Paya expressly reserves the right to perform any and all of the Fraud Mitigation Service provided under this Addendum through subcontractors and vendors.

7.10 Signature. Merchant represents and warrants that the person executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person is authorized to execute any documents and to take any action on behalf of Merchant, which may be required by Paya now or in the future. Merchant will execute a separate Entity Certification, as set out below, if requested to do so by Paya and Bank.

7.11 Force Majeure. The delay or inability of party to perform its obligations hereunder when required (other than Merchant's payment obligations) if caused by events of Force Majeure, as defined herein, shall not constitute a breach or default and shall not subject such party to liability to any other party so long as such Force Majeure event exists. Force Majeure events shall include, without limitation, civil disturbances, epidemics, natural disasters, wars, acts of terrorism, acts of God, economic downturn and all other such events outside the control of the parties that make it impossible for one party to comply with its obligations hereunder.

7.12 General. If any provision of this Agreement is illegal or unenforceable, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Merchant is responsible for its employees' actions while in its employ. The parties do not intend to confer any benefits on any person or entity other than Merchant, Bank and Paya. Article I, Sections 3.02, 3.04, Article V, Article VI, Article VII and any other provision that by their nature should survive termination will survive expiration or termination of this Agreement.