



Merchant Processing Agreement

These Terms and Conditions of the Merchant Agreement are entered into by and between Evolve Bank and Trust, an Arkansas state-chartered bank ("Bank"); CardFlex, Inc. dba Cliq ("ISO," or collectively with Bank referred to as the "Service Providers"); and the undersigned ("Merchant") as of the date of acceptance by Service Providers (the "Effective Date"). By entering into the Merchant Application, these Terms and Conditions, and any associated exhibits and attachments as amended from time to time (collectively defined as the "Agreement"), Merchant agrees to comply with and be subject to the Rules as defined below. Merchant acknowledges that it has the sole responsibility to obtain the Rules and updates thereto. Any violations of the Rules by Merchant shall constitute a material breach of this Agreement.

RECITALS

WHEREAS, Merchant is in the business of selling goods or providing services to its customers; and

WHEREAS, Bank (i) provides Disbursement and/or Purchase sponsorship for Merchant into the Card Networks; (ii) Bank conducts Settlement for Merchant Purchases and Disbursements; and, (iii) Bank either itself or through binding contractual arrangements with third party merchant service providers and/or processors (such as ISO), or through affiliates provides processing services and other services described in this Agreement.

ARTICLE I – DEFINITIONS

- 1.1. "ACH" means the Automated Clearing House paperless entry system operated by the Federal Reserve.
- 1.2. "Authorization" shall mean an affirmative response by or on behalf of an Issuer, to affect a Purchase, that a Purchase is within the Cardholder's available purchasing limit and that the Cardholder has not reported the Card lost or stolen. A Purchase must still be done to capture the Cardholder's funds.
- 1.3. "AVS" (Address Verification System) means the system whose access is provided by Bank that allows verification of the Cardholder's ZIP code and billing address while requesting authorizations for Transactions or during a request for address verification only.
- 1.4. "Bank Account" means a demand deposit account at Bank, or other approved financial institution, maintained by Merchant, as set forth in Section 5.3, for the crediting of Purchase proceeds and the debiting of Disbursements, fees and charges pursuant to this Agreement. The name of the financial institution, routing number and account number will be listed in the Merchant Application.
- 1.5. "Business Day" shall mean any day other than: (i) Saturday or Sunday; (ii) A day on which banking institutions in Arkansas are authorized by law or executive order to be closed (and on which Bank is in fact closed); or (iii) A day on which the Federal Reserve Bank is closed.
- 1.6. "Card" means (i) a valid debit, credit, and/or prepaid debit card in the form issued under license from Visa U.S.A. Inc., Visa International, Inc., MasterCard International Incorporated, Discover Network, or American Express® Travel Related Services Company Inc. (AXP); or (ii) any other valid debit and/or prepaid debit card accepted by Merchant and facilitated by Bank.
- 1.7. "Card Issuer" means the financial institution or company which has provided a Card to the Cardholder.
- 1.8. "Card Network" means VISA, Mastercard, Discover, American Express, STAR, NYCE, PULSE, Maestro, Accel, CULIANCE and other networks that route Transactions to Card Issuers as may be added or eliminated from time to time by Bank at their sole discretion.
- 1.9. "Card-Not-Present" means mail order, telephone order, e-commerce (Internet/mobile) order, or other transactions that are not Card-Present transactions.
- 1.10. "Card-Present" means a Transaction in which the Card and Cardholder are present at Merchant location and Card is swiped through, or inserted into, a terminal, register or other device, capturing the Card information encoded on the magnetic strip.
- 1.11. "Cardholder" means the person who purports to be the person in whose name the Card is issued.
- 1.12. "Chargeback" means the procedure by which the value of a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer.
- 1.13. "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.
- 1.14. "CVV2" means a three or four-digit numeric code on a Card allowing Merchant to verify Cardholder's possession of Card if passed in a Purchase or Authorization.
- 1.15. "Data" means all messages, images, files, data and other information transmitted from a Party to the other Parties.
- 1.16. "Disbursement" shall mean the payment to a customer by Merchant using the customer's Card to receive the funds, through the use of a Card Network. Bank performs a subsequent Settlement to debit the Merchant Bank Account and pay the appropriate Card Network.



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- 1.17. "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, or inserting a card into, a terminal and electronically printing a Sales Draft.
- 1.18. "Merchant Application" shall mean the accompanying Merchant information disclosure form, signed by Merchant, and titled Merchant Application.
- 1.19. "Merchant Statement" shall mean an itemized daily and monthly statement of all charges and credits to the Bank Account.
- 1.20. "Purchase" means the exchange of goods or services from Merchant to a customer in exchange for payment. Customer makes payment to Merchant with a Card through the use of a Card Network for collection. Bank performs a subsequent Settlement to deposit funds to the Merchant Bank Account, using Bank reports, after receiving payment from the appropriate Card Network.
- 1.21. "Recurring Transaction" shall mean Transactions which have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
- 1.22. "Reserve Account" has the meaning set forth in Section 5.4.
- 1.23. "Reversal" shall mean the reversing of a completed Transaction.
- 1.24. "Rules" means all rules, regulations, and laws as respectfully amended from time to time of (i) the Card Networks; (ii) any national, federal, state, or local jurisdiction in which Merchant operates; and (iii) the Electronic Transaction Association.
- 1.25. "Sales Draft" means a receipt of acknowledgement provided to the Cardholder subsequent to a Transaction, which is a binding contract between Merchant and the Cardholder.
- 1.26. "Services" shall mean the processing services including Disbursements, Purchases, Address Verification, Reversals, Voids, Authorization, Chargeback processing, Settlement, Program setup, periodic reports, and ongoing support provided by Bank under this Agreement.
- 1.27. "Settlement" means Bank reports, (i) crediting the Bank Account after receiving proceeds for Purchases from the Card Networks and (ii) debiting the Bank Account and paying the Card Networks for past Disbursements.
- 1.28. "Telemarketing" means soliciting a prospective customer by a person ("Telemarketer") to buy products or services over the phone.
- 1.29. "Token" means a unique code that can be used to submit subsequent Service requests to a given Card in lieu of the Card number.
- 1.30. "Transaction" shall mean a Disbursement or Purchase transaction.
- 1.31. "Void" shall mean the elimination of a prior Authorization.

ARTICLE II - MERCHANT REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS. BANK REPRESENTATIONS

2.1. **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; (b) Merchant may impose a minimum Purchase amount on all credit cards (not debit cards); however, it must not exceed \$10. Merchant may not impose a maximum Purchase amount unless Merchant maintains compliance with applicable Rules and is a federal agency or institution of higher education; (c) Merchant shall not require any Cardholder to pay any part of any fee imposed upon Merchant by this Agreement; however, if Merchant maintains compliance with applicable Rules and provides 30 days' written notice to Service Providers, Merchant may assess a surcharge, convenience fee, cash discount, or service fee; (d) Merchant shall not accept a Card as payment (other than a mail, internet, mobile application, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit cardholder verification.

2.2. **Card Acceptance.** (a) Merchant has the option of limiting its card acceptance to any or all of the following card types: Visa prepaid debit, Visa signature debit, Visa credit (as applicable Rules may allow), MasterCard prepaid debit, MasterCard signature debit, MasterCard credit (as applicable Rules may allow), Discover Network prepaid debit, Discover Network signature debit, Discover credit (as applicable Rules may allow), and American Express credit (as applicable Rules may allow). Merchant's Services will initially be set up to accept all debit and prepaid card types. To add credit cards or limit Merchant's acceptance, Merchant may contact Service Providers and if allowed by the Rules such instructions will be implemented without unreasonable delay by Service Providers. (b) When accepting a Card, Merchant will follow the steps provided by Service Providers, and will: (i) Determine in good faith and to the best of its ability that the Card is valid on its face; (ii) Check the effective date (if any) and the expiration date of the Card, and, if physical card is presented, examine any card security features (such as a hologram) included on the Card; (iii) Obtain Authorization before completing any Transaction; (iv) Use commercially reasonable processes to determine the identity of the customer (including any applicable OFAC screening as indicated in the Merchant Application) and where Authorization is obtained, warrant the customer owns the Authorized Card; (v) Where applicable, enter a description of the goods sold or services provided and the price thereof (including any applicable taxes); (vi) Obtain the Cardholder's electronic or physical signature on the Sales Draft, when required according to the



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Rules, and, if physical card is presented, compare that signature to the signature on the Card; (vii) Deliver a true and completed copy of the Sales Draft to the Cardholder, which can be by email or other electronic means, at the time of delivery of the goods or completion of the services; (viii) Offer the Sales Draft or other transaction record to Service Providers for purchase according to Service Providers' procedures and the terms of this Agreement; (ix) Ensure that the Purchase or Disbursement is in full compliance with the provisions of the Rules of the applicable Card Network, as amended from time to time; and (x) Without limiting the generality of the foregoing, ensure that each Purchase, Disbursement, or other Transaction request that contains Card numbers submitted hereunder, and the handling, retention, disclosure and storage of information related thereto, will comply with the applicable Rules and regulations of Visa, MasterCard, Discover, American Express, other Card Networks, and Payment Card Industry (PCI) Data Security Standards. (c) Sales Draft shall contain the masked (e.g. last 4 digits) Card number (recorded from the card's magnetic stripe or chip, imprinted, or as entered electronically by cardholder); authorization and reference numbers; customer signature (physical or electronic); the card's expiration date; date of sale; amount of sale, including tax; and a description of goods/services. Merchant must keep copies of Sales Drafts for three (3) years.

2.3. Authorization. (a) Merchant will obtain a prior Authorization for all Purchases. If Authorization is denied, Merchant shall not complete the Transaction; (b) Merchant will not obtain or attempt to obtain Authorization for any amount not authorized by Cardholder; (c) 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 Chargebacks; (d) Merchant will not attempt to obtain Authorization on an expired Card.

2.4. Retention and Retrieval of Cards. If Card-Present Transaction then (a) Merchant shall use its commercially reasonable 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) This obligation does not authorize a breach of the peace or any injury to persons or property and Merchant will hold Service Providers harmless from any claim in connection with the retention or recovery of a Card.

2.5. Use of BIN. A Merchant that receives BIN information from Service Providers must not use such information for any reason other than to identify Card Network debit category products at the point of sale, unless expressly authorized in writing by Service Providers.

2.6. Compliance with Law, Visa Cardholder Information Security Program, 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 and with the Rules. Merchant shall be solely responsible for conforming its policies and procedures to the Rules and this Agreement. Merchant agrees to consult legal counsel regarding such compliance. If any federal, state or local government entity, including without limitation the Federal Trade Commission, files a complaint or launches a formal investigation involving Merchant related to any activities of Merchant under this Agreement, Merchant shall be responsible to Service Providers for any fines, fees and overhead and legal fees (including time spent by in-house counsel) required for Service Providers to complete their responsibilities and/or protect their respective interests under the proceedings at issue; (b) Merchant will not, under any circumstances, sell, transfer, or disclose any Cardholder's account number or any information relating to any Cardholder's account number or any Transactions or Credit Vouchers which may have been imprinted with any Card ("Sensitive Data") to any person other than Service Providers and their regulators, Merchant's service providers; Merchant's regulators, subcontractors, and agents who have a need to know such information to provide the services described in this Agreement; or as required by law. In the event of bankruptcy, insolvency, or other permanent suspension of business operations of Merchant or Service Providers, such Party will either: (i) return all Sensitive Data to the other Parties; or (ii) provide acceptable proof of destruction of all Sensitive Data to the other Parties. (c) Merchant hereby represents, warrants, and covenants that it is and will remain throughout the term of this Agreement in compliance with the Payment Card Industry ("PCI") Data Security Standard ("DSS"), the Cardholder Information Security Program ("CISP") instituted by Visa, the Discover Information Security Compliance (DISC), and the Site Data Protection Program ("SDP") instituted by MasterCard, in effect and as may be amended, supplemented, or replaced. Merchant will cause all of its service providers, subcontractors, and agents that accept, store, process, or transmit Cardholder data on behalf of Merchant to comply with the Rules, PCI, CISP, DISC, and SDP requirements at all times. Merchant will not require a Cardholder to complete a postcard or similar document that includes the Cardholder's account number, Card expiration date, signature, or any other Cardholder account data in plain view when mailed. Merchant will report any non-compliance immediately to Service Providers. Merchant shall notify and obtain written approval from Service Providers of its use of any third-party service providers, subcontractors, and/or agents that will have access to Cardholder Data. Merchant and Service Providers hereby agrees to pay any fines and penalties that may be assessed by the Card Networks as a



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result of the other Party's noncompliance with the requirements of the Rules, PCI, CISP, DISC, and SDP any data breaches, or by its failure to accurately validate its compliance with those requirements. If Merchant or Service Providers suspect or experience a data breach that exposes or potentially exposes any Sensitive Data then the Party experiencing the breach will notify the other Parties in writing within twenty-four hours on learning of or suspecting such breach. If Merchant or Service Providers experience a data breach that exposes (or creates significant risk of exposing) any Sensitive Data, such Party shall be responsible to the other Parties for any fines, fees and overhead and legal fees (including time spent by in-house counsel) required for the non-breaching Parties to complete their responsibilities and protect their respective interests relative to the breach, including without limitation the cost of notifying affected Cardholder(s), press outlets and appropriate regulators. Merchant will provide an annual certification if requested by Service Providers (in a form acceptable to the same) certifying compliance with the data security provisions of this Agreement; (d) Merchant acknowledges and understands that Merchant may be prohibited from participating in Card Network programs if it is determined that Merchant is non-compliant.

2.7. Disbursements, Returns and Adjustments. (a) Merchant's policy for the exchange or return of goods sold and the adjustment or cancellation for services rendered shall be established and posted in accordance with the Rules, to the extent required. Merchant agrees to disclose its refund policy to the Cardholder before a Purchase is made along with any special conditions or circumstances that apply to the sale (e.g., late delivery, charges, or other noncredit terms); (b) 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 or if electronic Sales Draft then text not less than the size of the description 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. (d) Merchant shall not refund cash to a Cardholder who paid for the item by Card; (e) Credits must be made to the same Card account number on which the original Transaction was processed; (f) Disbursements and Credits may only be issued when the good and available funds in the Merchant's Bank Account is equal to or greater than the credit amount; (g) Any change in Merchant's return or cancellation policy must be submitted in writing to Service Providers not less than 14 days before the change being implemented.

2.8. Merchant's Business. (a) Merchant shall use commercially reasonable efforts to provide Service Providers with notice prior to (i) transferring or selling any substantial part of its total assets, or liquidating; (ii) changing the basic nature of its business, including selling any products or services not related to its current business; (iii) changing ownership or transferring control of its business; (iv) entering into any joint venture, partnership or similar business arrangement whereby more than 10% of Merchant's equity changes ownership to an entity not listed on the Merchant Application; (v) processing transactions through any URL not already disclosed to Service Providers as required under Section 2.16; or (vi) materially altering Merchant's approved monthly volume and average ticket. (b) Failure to provide notice as required above may be deemed a breach of this Agreement, or, at Service Providers' option may result in Service Providers amending the terms of this Agreement, including, but not limited to, permit holding funds and/or altering the Merchant funding schedule if Service Providers reasonably deem it necessary to protect against financial loss; (c) Merchant will immediately notify Service Providers of any bankruptcy, receivership, insolvency or similar action initiated by or against Merchant or any of its principals. Merchant will, to the extent permitted by applicable law, include Service Providers 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 Service Providers in writing of any material changes to the information in the Merchant Application or any additional retail locations using the Services. Merchant must also notify Service Providers in writing if Merchant sells or closes its business. Service Providers must receive all such notices seven days before the change or upon request. Merchant is liable to Service Providers for all losses and expenses incurred by Service Providers arising out of Merchant's failure to report changes. Service Providers may immediately terminate this Agreement upon a material change to the information in the Merchant Application.

2.9. Advertising. (a) Merchant is prohibited from using the Program Marks, as defined below, other than as expressly authorized in the Rules or as approved in writing by Service Providers. Program Marks mean the brands, emblems, trademarks, servicemarks, trade dress and/or logos that identify Cards, Card Associations and Service Providers. Merchant shall not use the Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored, endorsed or guaranteed by the owners of the Program Marks; (b) Merchant shall immediately cease use and return or securely destroy any materials containing or displaying Program Marks to Service Providers upon any termination of the Agreement; (c) Merchant shall be fully liable to Service Providers for any and all losses, costs, and expenses suffered or incurred by Service Providers arising out of Merchant's failure to comply with this section.

2.10. Merchant's Agreements and Covenants.

- (a) **Personal Information.** Merchant may not impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide the delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different from that of the

Cardholder. Merchant must not contact Cardholders except as required and permitted by the Rules or in accordance with Merchant's normal business in the delivery of goods or services.

- (b) **Cash Payments.** Merchant shall not receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.
- (c) **Cash Advances.** (i) Merchant shall not transmit any over-the-counter ("OTC") cash advance transaction either on Merchant's Card or the Card of any other party; (ii) Merchant shall not process a cash advance or other form of credit Transaction on any Card that the Merchant owns or controls. Merchant agrees that any such conduct shall be a material breach of the Agreement
- (d) **Duplicate Transactions.** Merchant shall not submit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any resulting Chargebacks.
- (e) **Fraudulent Transactions.** Merchant shall not accept or submit any fraudulent Transaction and may not present for processing or credit, directly or indirectly, a Transaction which originated with any other source than Merchants' legitimate customers.
- (f) **Telemarketing.** Merchant shall not submit any Transaction solicited by a Telemarketer absent prior written approval from Service Providers. For purposes of this agreement, "Telemarketing" does not include collecting past due amounts over the phone.
- (g) **Collection of Pre-Existing Debt.** Unless approved by Service Providers in writing, Merchant shall not present any Purchase representing the refinancing of an existing obligation of a Cardholder including, but not limited to obligations: (i) previously owed to Merchant; (ii) arising from the dishonor of a Cardholder's personal check; and/or (iii) representing the collection of delinquent accounts on behalf of third parties; provided if Merchant is a lender or loan servicer or provider of non-recourse advances then nothing herein shall limit Merchant's right to present Purchases that comprise payments by Cardholders of amounts due to Merchant in its capacity as a lender or servicer of loans or provider of non-recourse advances, subject to Merchant's compliance with the Consumer Lending Addendum attached hereto as Exhibit A.
- (h) **Multiple Transaction Records: Partial Consideration.** All products and services purchased in a single transaction must be included in one total amount on a Sales Draft or other Purchase record with these exceptions: (i) If the Purchase record and receipt reflects only the portion of the purchase to be paid by means of a Card; (ii) If Merchant individually bills the products or services in separate Purchases to the same Card, in accordance with the acceptance procedures.
- (i) **Non-Imprint Transactions.** Merchant acts solely at its own risk with respect to any and all non-Imprint Transactions and waives the right to dispute Chargebacks arising from a failure to provide Service Providers with an Imprinted draft. Merchant further assumes any and all other risks attendant to such non-imprint Transactions.
- (j) **Revocation of Authority.** Merchant shall cease the initiation of Card activity immediately upon receipt of actual or constructive notice of a customer's termination or revocation of Merchant's authorization to do so.
- (k) **Identifying Numbers.** Merchant agrees that Merchant shall have sole responsibility and full liability related to providing Service Providers accurate Cardholder information.
- (l) **Notice of Erroneous/Unauthorized Transfers.** Merchant shall regularly and promptly review all statements of account related to its Bank Account and Reserve Account. Merchant agrees to immediately notify Service Providers of any discrepancy between Merchant's records and those provided by Service Providers, the Merchant's bank, or with respect to any transfer that Merchant believes was not authorized by Merchant or customer. If Merchant fails to notify Service Providers in writing within 30 calendar days after the date that Service Providers mail (electronic delivery or paper) or provide a statement of account or other report to Merchant, Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer.

2.11. Representations and Warranties of Merchant. Merchant represents and warrants to Service Providers at the time of execution and during the term of this Agreement that: (a) All information contained in the Merchant Application or any other documents delivered to Service Providers is true and complete in all material respects; (b) Merchant has the power to execute, deliver, and perform this Agreement; (c) 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; (d) 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; (e) There is no circumstance, 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; (f) Each Purchase presented to Service Providers for collection is genuine and is not the result of any fraudulent or prohibited Purchase and is not being deposited on behalf of any business other than Merchant. Further, Merchant warrants that each Purchase is the result of a bona fide direct purchase of goods or services by the Cardholder in the total amount stated on any Sales Draft; (g) Each Disbursement presented to Service Providers for payment to Cardholder is genuine and is not the result of any fraudulent, prohibited, or unlawful activity and is not being paid to



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Cardholder on behalf of any business other than Merchant; (h) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Transaction evidenced thereby; (i) Merchant has complied with this Agreement's procedures for accepting Cards, and the Transaction does not involve any element of credit or debit for any purpose other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset, or counter claim; (j) Any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Purchase has been accepted; and (k) For all Card Transactions that Merchant requests Service Providers to originate, Merchant continuously represents and warrants to Service Providers that: (i) Each Cardholder has authorized the debiting and/or crediting of its account; (ii) Each Transaction is for an amount the customer has agreed to; (iii) the Transaction amount does not contain tax amounts unless they are required by applicable law, in which case the tax amount must be included in the Transaction amount and not collected separately; and (iv) Each Transaction is in all other respects properly authorized.

2.12. Guarantors. If indicated as required on the Merchant Application then as a primary inducement to Service Providers to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Service Providers pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice. Guarantor(s) understands further that Service Providers may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by Service Providers or Merchant. Guarantor(s) hereby agrees that all rights, remedies, and recourses afforded to Service Providers by reason of this guarantee or otherwise are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefore shall arise, and are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse which Service Providers may have. Guarantor(s) hereby waive(s) presentment, notice of default or nonpayment, and protest and notice thereof, and consents to any modification or renewal of this Agreement or the guaranteed obligations. Guarantor(s) agree(s) to pay all costs, interest, and reasonable attorney's fees incurred by Service Providers in collecting any amounts hereby guaranteed, whether from Guarantor(s) or Merchant, and in otherwise enforcing any of the Guaranteed Obligations. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives, and assigns and may be enforced by or for the benefit of any successor of Service Providers. Guarantor(s) understand(s) that the inducement to Service Providers to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and affect even if the Guarantor(s) receive no additional benefit from the guaranty.

2.13. Monthly Volume, Average Ticket, and High Ticket. Merchant represents that the estimated monthly volume of Transactions ("Monthly Volume") and the estimated average Transaction dollar amount ("Average Ticket Amount") appearing on the Merchant Application are each good faith estimates and that there is a reasonable basis for each such estimate. Merchant acknowledges that any actual, material Monthly Volume or any actual, material Average Ticket Amount in excess of such estimates will cause Service Providers to review Merchant's file and may result in the delay of transmission of funds and interruption of service. Service Providers may withhold the payment of any amounts otherwise payable hereunder if the actual Monthly Volume and/or Average Ticket Amount materially exceed such estimates. Service Providers may impose a cap on the dollar amount of Transactions that it will process for Merchant. This limit may be changed by (a) Service Providers from time to time, upon notice to Merchant; or, (b) at request by Merchant with approval by Service Providers. If approved then notice will be provided promptly by Service Providers to Merchant. Such notice may be given orally or in writing. If Merchant exceeds the established limit, Service Providers may suspend processing, hold the funds over the cap, and/or return all Transactions evidencing funds over the cap to Merchant.

2.14. Monthly Processing Commitment. Merchant agrees to submit the Monthly Processing Commitment as stated in the attached Fee Schedule, unless an exception is approved in writing by Service Providers. If Merchant does not meet the Monthly Processing Commitment for any month, Merchant shall be immediately liable to Service Providers for the Purchase and Disbursements fees, less Card Network interchange, that would have otherwise been assessed on the Transaction volume shortfall to the Monthly Processing Commitment.

2.15. Web Processing. Merchant shall disclose to Service Providers all URLs for which merchant processes transactions or otherwise accepts payments at the time of executing this Agreement, upon request, and before processing through any URL not previously disclosed.

2.16. Bank's Business; Contractors; Affiliates. (a) Bank shall use commercially reasonable efforts to provide Merchant with notice prior to transferring or selling any substantial part of its total assets, or liquidating; and (b) Bank will notify Merchant in writing if Bank sells or closes its business and will use commercially reasonable efforts to provide Merchant such notices seven days before the change. Merchant acknowledges and agrees that certain Bank services provided, and obligations performed pursuant to this



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Agreement, including without limitation processing services and/or other merchant services, may be provided by third parties under a separate contract entered with Bank. Such services may also be provided currently or in the future by affiliates or subsidiaries of Bank. Bank may delegate such services to third party providers, affiliates, and/or subsidiaries ("Providers") in its discretion and from time to time. Bank covenants that Providers will be qualified and required to provide services in accordance with the terms of this Agreement and industry standards and will be duly sponsored and otherwise authorized to perform their respective functions by the Card Networks. Bank is responsible for all obligations undertaken in this Agreement performed by Providers.

2.17. Representations and Warranties of Bank. Bank represents and warrants to Merchant at the time of execution and during the term of this Agreement that: (a) Bank has the power to execute, deliver, and perform this Agreement; (b) 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 Bank is subject; (c) Bank 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; and, (d) There is no circumstance, to Bank's knowledge, threatened by or against or affecting Bank which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.

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

3.1 Acceptance. (a) Service Providers shall accept from Merchant all valid Transactions submitted by Merchant and shall present the same to the appropriate Card Issuers for (i) collection against Cardholder accounts if Purchase, or (ii) if Disbursement then deposit to Cardholder accounts, with corresponding collection from Merchant. All presentment and assignment of Transactions, collection therefore and re-assignment or rejection of Transactions are subject to the terms of this Agreement and the Rules; (b) Service Providers shall only provisionally credit the value of collected Purchases to the Bank Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, penalties, late submission charges, reserve deposits, and items for which Service Providers did not receive final payment. Settlement of funds will be in United States Dollars; (c) Service Providers may refuse to accept any Transaction or revoke its prior acceptance in the following circumstances: (i) the Transaction was not made in compliance with any terms of this Agreement; (ii) the Cardholder disputes his liability to Service Providers for any reason; or (iii) the Transaction was not directly between Merchant and the Cardholder. Merchant will pay Service Providers, as appropriate, any amount previously credited to Merchant for a Transaction not accepted or later revoked by Service Providers; (d) Merchant hereby gives its written permission, as required by Section 6, that Service Providers may disclose detailed information about Transactions, individually and in the aggregate, and other information relating to Merchant to third parties that, in Service Providers's reasonable discretion, require the information to facilitate the services described in this Agreement, or as requested by regulatory authorities.

3.2 Endorsement. The processing of Purchases from Cardholders is Merchant's agreement to sell and assign its right, title and interest in each Purchase completed in conformity with Service Providers' acceptance procedures and shall constitute an endorsement by Merchant to Service Providers of such Purchases. Merchant hereby authorizes Service Providers 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 Service Providers for all amounts owed under this Agreement arise out of the same transaction as Service Providers's obligation to deposit funds to the Bank Account.

3.3 Transmission Method. Information regarding a Transaction transmitted with a computer, magnetic stripe, or chip reading terminal will be transmitted by Merchant to Service Providers as specified by Service Providers. The means of transmission indicated in the Merchant Application shall be the exclusive means used by Merchant until Merchant has provided Service Providers with at least 30 days' prior written notice of Merchant's intention to change the means of such delivery or otherwise alter in any material respect Merchant's medium of transmission of data to Service Providers. Service Providers shall have the right to refuse and cancel the agreement upon such notice.

3.4 Prohibited Payments. Merchant shall have the sole right to receive payment of any Purchase presented by Merchant and paid by Service Providers to Merchant unless and until there is a Chargeback. Unless specifically authorized in writing by Service Providers, Merchant shall not make or attempt to make any direct collections from Cardholders on any Purchase, including Chargebacks, yet shall promptly deliver to Service Providers any payment Merchant receives, in whole or in part, of the amount of any accepted Purchase, together with the Cardholder's name and account number, and any documents accompanying the payment.



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3.5 **Chargebacks.** Contemporaneously with each Cardholder Purchase, a contingent and un-matured claim for Chargeback accrues against Merchant in favor of Service Providers to the extent Service Providers are required, or exercise their right, to pay to the Card Networks with respect to any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items, which may in turn be charged back to Merchant by Service Providers. Merchant agrees that it is fully liable to Service Providers for all Chargebacks, and that Service Providers are authorized to offset from incoming transactions and to debit via transfer or ACH the Service Providers Account, the Reserve Account, or any other account held by Merchant at Bank in the amount of any Chargeback. If Merchant is identified in a Card Network chargeback program or is receiving excessive Chargebacks (as determined by reference to applicable Rules or Service Providers policy), then (i) Merchant shall be responsible to Service Providers for any fines and related third-party fees, along with any overhead required for Service Providers to complete its responsibilities relative to the identification; (ii) at Service Providers' sole discretion, Services can be immediately suspended until Merchant obtains Service Providers' approval of and implements a Chargeback remediation plan; and, (iii) if in any calendar month within the six months immediately following resumption of Services (after implementing approved remediation plan) and Merchant receives excessive Chargebacks then Service Providers can immediately terminate this Agreement. Merchant agrees to accept any Chargeback where the Cardholder disputes the validity of the Transaction according to the Rules. Merchant is liable for any Transaction that Service Providers reasonably determines that Merchant has in failed to comply with the Rules, Service Providers' procedures, this Agreement, or that Service Providers determine 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.

3.6 Types of Transactions.

3.6.1 **Telephone, Mail, Preauthorized, Installments Orders, and Internet Transactions.** (a) Merchant must prominently and unequivocally inform the Cardholder of the identity of Merchant at all points of the interaction, such that Cardholder understands that Merchant is responsible for the Transaction, the delivery of products, and related customer support. Merchant must display on its website and/or app (i) its name, as it will appear on the Cardholder statement, as prominently as any other information depicted on the website, other than images of the products or services being offered; (ii) a consumer data privacy policy, with a GLBA-compliant "short form" disclosure either hosted locally or accessible via direct hyperlink; (iii) a policy for transmission of Card details; (iv) the address of its permanent establishment; and (v) a telephone number or email address for customer inquiries. (b) For approved mail, telephone, and internet orders, Merchant shall ensure the creation of a transaction record that contains Cardholder data, the expiration number of the Card, an Authorization number, the sale amount and a record of the origination method, as appropriate; AVS, CVV2, Verified by Visa or similar Card Network verification tools may be required as set forth under the Rules. Such verification efforts, however, are not guarantees of payment, and the use of those techniques will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction; and if Merchant does not receive a positive match through AVS, the Transaction cannot be processed through the Discover Network Card as a Card Not Present Transaction, and Merchant should contact Service Providers immediately if it does not have AVS capability; (c) Merchant internet Transactions must be identified to Service Providers and for Visa and MasterCard internet Transactions, Service Providers will indicate in the settlement or transaction records special codes (an "Electronic Commerce Indicator"); (d) unless indicated on the Merchant Application, Merchant shall not submit Purchases before delivery of the product or service; and (e) Merchant will use Service Providers or a third-party encryption vendor approved by Service Providers for transmission of all Transactions. Merchant is solely responsible for managing the Internet telecommunications link.

3.6.2 **Recurring Transactions.** For recurring Transactions, Merchant must obtain a written or electronic authorization from the Cardholder, disclosing the frequency of the recurring charge and the duration of time during which charges may be made, for such goods and services to be charged to Cardholder's account. Merchant will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) Notice from Service Providers that authority to accept recurring Transactions has been revoked; or (iii) a response that Card is not to be honored. Merchant must use the recurring indicator in the Transaction message and state on the Sales Draft "recurring transaction."

ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

4.1 **Term and Termination.** (a) This Agreement shall become effective upon latest acceptance date of Service Providers ("Effective Date") as indicated by their signatures below. The initial term of this Agreement shall be for two years beginning on the Effective Date ("Initial Term") and will automatically renew for subsequent one-year terms ("Renewal Term") unless Merchant provides written notice to Service Providers of their decision not to renew at least 90 days before the expiration of the then-current term (the Initial Term or the current Renewal Term) ("Renewal Date"). (b) This Agreement may be terminated: (i) by Service Providers



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with 30 days prior notice with or without cause; (ii) by Merchant with 90 days prior notice with or without cause; or (iii) by Merchant in the event of a material breach of the terms of this Agreement by the other Party(s), provided Merchant provides the other Parties with 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; (iv) by Merchant within seven days of receiving notification from Service Providers of an increase in the Reserve Account balance requirement; and, (v) immediately by Service Providers upon written notice if any of the following occur: (A) Merchant has violated or breached any material provision of this Agreement, (B) Merchant has experienced a material adverse change in its financial condition, (C) Merchant or any of Merchant's officers or employees has been involved in fraudulent Transactions, (D) Service Providers are served with legal process seeking to attach or garnish any of Merchant's funds or property in Service Providers' possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service, (E) any Rule(s) are amended in any way so that the continued existence of this Agreement would cause Service Providers to be in breach of those Rules, or (F) the continuation of the Agreement will cause harm or loss of goodwill to any Card Network, any Card Network or regulatory agency requires Service Providers to terminate this Agreement, or any Card Network is no longer willing to accept Transactions from Merchant. Merchant's and Service Providers' rights of termination provided throughout this Agreement are cumulative. A specific right of termination enumerated in this Agreement shall not limit any other right of Merchant, and Service Providers to terminate this Agreement expressed elsewhere in the Agreement. (c) Merchant agrees to notify Service Providers immediately of any bankruptcy, receivership, insolvency, a material adverse change in Merchant's financial condition or similar action initiated by or against Merchant. Any party may immediately terminate this Agreement upon written notice if another party (i) has made any untrue material representations herein or in documents provided under this Agreement, including the Merchant Application; or (ii) becomes insolvent, is placed in receivership, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts or seeks relief or has a petition filed against it under any provision of the Federal Bankruptcy Code. In the event of early termination by Merchant for a reason not listed in Section 4.1 (b) (iii); or in the event of early termination by Service Providers on the grounds of a breach by Merchant of the terms of this Agreement or for a reason listed in Section 4.1 (c), unless prohibited by law, Merchant shall be liable to Service Providers for the Monthly Processing Commitment set forth in Section 2.14 hereof for the remainder of the then current Term.

4.2 Effect of Termination. (a) In the event of termination for any reason, Merchant expressly authorizes Service Providers to withhold and discontinue the disbursement of funds 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 all fees, charges, losses, or amounts for which Merchant is liable under this Agreement have been paid, and all contingent liabilities associated with Merchant have expired or been resolved. Further, Service Providers reserve the right to require Merchant to deposit reasonable additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Service Providers into the Reserve Account. The provisions of this Agreement relating to the debiting and crediting of the Bank Account shall be applied to the Reserve Account and shall survive termination of this Agreement. Any balance remaining after Chargeback rights have expired and all other expenses, losses and damages have been paid will be promptly disbursed to Merchant; (c) Merchant acknowledges that Service Providers are required to report the business name of the Merchant and the names and identification of its principals to MATCH and/or the CMNF in the event Merchant is terminated for the reasons set forth in those organizations' rules. Merchant consents to such reporting to the Card Networks by Service Providers. Merchant agrees that it will hold Service Providers harmless for all such reporting; (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Transactions to Service Providers. 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, if Merchant accepts Transactions at physical stores, then Merchant shall, upon request, provide Service Providers with all original and electronic copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination; (f) Upon termination, any amounts due to Service Providers will accelerate and be immediately due and payable. If Service Providers terminates this Agreement for cause then any fees that would have accrued for the remaining term, and any termination fees will accelerate and be immediately due and payable; (g) Merchant will return all of Service Providers' property, forms, or equipment; (h) All obligations for Transactions prior to termination (including to pay for Chargebacks and Service Providers' expenses relating to Chargebacks) survive termination.

4.3 Exception. Merchant shall submit with the Merchant Application procedures to comply with Section 2.2(iv), Section 2.11(j)(i), (ii), and (iv). If the Merchant materially complies with these procedures and Rules then a breach of Section 2.2(iv), Section 2.11(j)(i), (ii), and/or (iv) shall not be deemed a material breach for the purposes of Section 4.1(b)(iii).

ARTICLE V - ACCOUNTS; SECURITY INTERESTS; INDEMNIFICATION

5.1 Account Monitoring. Merchant acknowledges that Service Providers will monitor Merchant's daily Transaction activity. Merchant agrees that Service Providers may suspend, at their sole discretion, the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual activity. Service Providers will make good faith efforts to notify



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Merchant promptly following suspension. Service Providers shall have no liability for any losses or claims, either direct or indirect, which Merchant may attribute to any suspension of funds.

5.2 Requests for Information. (a) Within three business days of receipt of any request by Service Providers or sooner as may be required by Service Providers' regulatory authorities as same may be requested by Service Providers, Merchant shall provide a copy of all Transaction Records and any other documentary evidence available to Merchant; (b) Service Providers may require additional information about Merchant or Merchant's procedures for accepting Cards.

5.3 Bank Account. (a) Merchant will maintain a Bank Account at a US bank that is a member of the Federal Reserve ACH system. Merchant will maintain sufficient funds in the Bank Account to satisfy all obligations contemplated by this Agreement. Merchant must notify Service Providers of a change to the Bank Account prior to closing their existing bank account; (b) Merchant irrevocably authorizes Service Providers to initiate debit/credit entries to the Bank Account as authorized under this Agreement; (c) Service Providers will deposit all Purchases to the Bank Account subject to Section 3.2 of this Agreement on a basis net of any Returns, Chargebacks, Reversals, Fees, Reserve requirements, and, in the event that a Merchant participates in Disbursement Transactions, Disbursements (i.e. taken altogether, Settlement). If Merchant net Settlement amount is negative then Service Providers shall debit the Bank Account for the net Settlement amount due Service Providers; (d) Service Providers, in its sole discretion, may grant Merchant provisional credit for Purchase amounts in the process of collection, subject to receipt of final payment by Service Providers and subject to all Chargebacks and other amounts owed to Service Providers under this Agreement; (e) Merchant shall promptly examine all statements relating to the Bank Account, and immediately notify Service Providers 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 Service Providers within 30 days after Merchant received the periodic statement containing the asserted error, or Merchant shall have waived the right to contest any error. For 60 days immediately following receipt of Merchant's written notice Merchant may not make any claim related to the asserted error against Service Providers. During that 60-day period, Service Providers 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 Service Providers; (f) Merchant will indemnify and hold Service Providers harmless for any action taken by Service Providers against the Bank Account under this Section in accordance with the Agreement.

5.4 Reserve Account and Prefunding. (a) Upon or at any time after execution of this Agreement, Service Providers may establish and maintain an account for future indebtedness of Merchant to Service Providers that may arise out of or relate to the obligations of Merchant to Service Providers under this Agreement, including, but not limited to Chargebacks, Credits, refunds, fines, and fees, in such amount as Service Providers from time to time may determine in its sole discretion ("Reserve Account"). Funds in the Reserve Account will be held and controlled by Bank, will not bear interest, and may be commingled with other funds. Service Providers shall determine and Service Providers shall inform Merchant of the amount required if required for the Reserve Account at the commencement of this Agreement. Service Providers may change the Reserve Account balance requirements as reasonably necessary, and Merchant shall be immediately notified of such change. The Reserve Account may be funded by deduction from payments due Merchant, a charge or setoff against Merchant Bank Account, against any of Merchant's accounts at Bank, or a deposit by Merchant. (b) If the Merchant participates in Disbursements then Merchant understands that each day, the Bank Account must have a balance in good and available funds equal to its Disbursement requests ("Prefunding Obligation"). Bank has no obligation to process any Disbursement for which the Prefunding Obligation has not been met. In the event the Prefunding Obligation is not met and Disbursements are processed, Bank may immediately charge the Reserve Account to meet the Prefunding Obligation and if insufficient funds in the Reserve Account, then Merchant shall immediately deposit the Disbursement shortfall in the Reserve Account. (c) Except for Merchant's Prefunding Obligation hereunder which requires immediate remedy, Merchant must deposit good and available funds as necessary to satisfy the Reserve Account requirement within three business days. Bank, on its own behalf may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement. The Reserve Account will be maintained for an amount Service Providers deems commercially reasonable for a maximum of six months from the termination date of this Agreement or until such time as Service Providers determines that the release of the funds to Merchant is prudent, commercially reasonable and Merchant's existing and future liability with Service Providers is extinguished. On release by Bank, any balance remaining in the Reserve Account will be paid to Merchant. Service Providers will inform Merchant in writing of any charges debited to the Reserve Account during this period.

5.5 Security Interests. Merchant grants to Service Providers a security interest and lien upon future Purchase proceeds and all Merchant's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Service Providers, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant authorizes and appoints Service Providers as attorneys-in-fact to sign its name to any financing statement used for the perfection of any security interest or lien granted in this Agreement. This appointment



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is coupled with an interest and is not revocable. Merchant represents and warrants that no other party has a security interest in the Secured Assets senior to the Service Providers. These security interests and liens will secure all of Merchant's obligations under this Agreement. With respect to such security interests and liens in the Secured Assets, Service Providers will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Service Providers written consent prior to granting a security interest senior to Service Providers of any kind in the Secured Assets to a third party. In the event of a bankruptcy proceeding, Service Providers may exercise their rights under this Agreement to debit any of Merchant's accounts at Service Providers for amounts due Service Providers regardless of the pre-petition or post-petition nature of the amount due Service Providers, and Merchant promises not to contest any Motion for Relief from Automatic Stay that Service Providers may decide to file to debit the accounts. Further, Service Providers does not consent to the assumption of this Agreement in the event of a bankruptcy proceeding. This Agreement constitutes a security agreement under Article 9 of the Uniform Commercial Code.

5.6 Recoupment and Set-Off. Service Providers have the right of recoupment and set-off. Service Providers may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Bank Account; (ii) any other amounts Service Providers may owe Merchant under this Agreement; and (iii) the Reserve Account or any other account of Merchant at Service Providers. The rights conferred upon Service Providers in this Section are not intended to be exclusive of each other or of any other rights and remedies of Service Providers under this Agreement, at law, or in equity. Rather, each and every right of Service Providers at law or in equity will be cumulative and concurrent and in addition to every other right.

5.7 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 Rules and the requirements of any third party in using their products; (b) Merchant will notify and obtain approval of Service Providers prior to using electronic authorization or data capture terminals or software provided by any entity other than Service Providers or its authorized designee ("Third-party Terminals") to accept Card information or process Transactions. If Merchant elects to use Third-party Terminals, Merchant agrees (i) the third party providing the software or terminals will be Merchant's agent in the delivery of Transactions to Service Providers via an approved processing system or network; (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement; and (iii) any Third-party Terminals used by Merchant conform to Rules, including applicable PCI Data Security Standards.

5.8 Modifications to Agreement. This Agreement is subject to amendment to conform to the Rules. Service Providers may amend any provision of this Agreement as reasonably necessary to conform to any changes in the Rules, Service Providers regulatory requirements, or applicable law by providing written notice to Merchant of the amendment at least 30 days before the effective date of the amendment. Merchant may terminate this Agreement upon receiving notice but otherwise consents to such amendments after 30 days' notice. Amendments due to changes to the Rules or any law or judicial decision may become effective on such shorter period of time as Service Providers may specify if necessary to comply with the applicable Rule, law, or decision.

5.9 Limitation of Liability: Indemnity. (a) The liability, if any, of Service Providers under this Agreement, whether to Merchant or to any other party, shall not exceed in the aggregate the difference between (i) the fees paid by Merchant to Service Providers during the prior twelve-month period 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 twelve-month period. In no event will Service Providers and its officers, agents, directors, and employees be liable for any indirect, special, or consequential damages; (b) Merchant hereby agrees to indemnify and hold Service Providers and their respective officers, agents, directors and employees harmless from any claim relating to a dispute between Merchant and a Cardholder, any Transaction paid for as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action. Merchant agrees to indemnify Service Providers for losses that it may incur as a result of (i) Merchant's breach of any representation, warranty, or term of this Agreement; (ii) a breach of the security of the Merchant's system safeguarding Cardholder information or Merchant's failure to comply with PCI, CISP, and/or SDP; (iii) Merchant's negligence or willful misconduct in the performance of its obligations under this Agreement; (iv) any violation of applicable Rules; (v) fraud; and (vi) all third-party claims arising from the foregoing. (c) No party will be liable to the other parties for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. If any of the Transactions belonging to Merchant are subpoenaed by legal process or otherwise, Service Providers may produce records in accordance with the subpoena.

5.10 Warranty Disclaimer. SERVICE PROVIDERS MAKE NO WARRANTIES REGARDING THE USE, OPERATION, OR PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND SERVICE PROVIDERS EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE FULLEST EXTENT ALLOWABLE BY LAW. SERVICE PROVIDERS HAVE NO LIABILITY WITH RESPECT TO ANY SOFTWARE, DATA OR



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OTHER MATERIALS PROVIDED TO MERCHANT PURSUANT TO THIS AGREEMENT. FURTHER, EXCEPT AS EXPRESSLY SET FORTH HEREIN, SERVICE PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM SERVICE PROVIDERS PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, SERVICE PROVIDERS' LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF AND TO THE EXTENT THAT DOING SO IS COMMERCIALY REASONABLE. SERVICE PROVIDERS WILL PERFORM ALL SERVICES IN ACCORDANCE WITH THIS AGREEMENT.

5.11 Force Majeure. The Parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act beyond either Party's reasonable control.

5.12 Fees and Other Amounts Owed. (a) Merchant shall pay the fees and charges as set forth on the Fee Schedule and the published Service Providers' fee schedule as same may be changed from time to time and which are incorporated herein by reference (the "Fee Schedules"). Unless otherwise noted, Merchant shall pay all fees monthly or daily as set forth on the Fee Schedules or at Service Providers' sole discretion. The Bank Account will be debited through internal transfer or ACH initiated by Service Providers 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; (b) Merchant will immediately pay Service Providers any amount incurred by Service Providers attributable to this Agreement or any other agreement between Merchant and Service Providers or any subsidiary or affiliate of Merchant, including but not limited to equipment fees, compliance-related fees (including PCI), Chargebacks, fines or penalties imposed by a third party, non-sufficient fund fees, and ACH debits that overdraw the Bank Account, Reserve Account, or are otherwise dishonored. Merchant agrees to pay Service Providers the amount of any fees, charges or penalties assessed against Service Providers by any Card Network or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties. Merchant authorizes Service Providers to debit the Bank Account, Reserve Account, any other account Merchant has with Service Providers via internal transfer or ACH initiated by Service Providers for any amount Merchant owes under this Agreement, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such transfer or ACH does not fully reimburse Service Providers for the amount owed, Merchant will immediately pay Service Providers such amount.

5.13 Participation in the American Express OptBlue® Program Terms Below Are Additional Terms Applicable Specifically to American Express Card Acceptance (capital-ized terms below not defined elsewhere in the Agreement shall have the meanings assigned in the American Express Network Rules). With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control with respect to American Express transactions only. Merchant shall be bound by American Express Network Rules, including the Merchant Operating Guide: www.americanexpress.com/merchantopguide. If Merchant elects to participate in the AMERICAN EXPRESS OptBlue Program ("American Express Card Acceptance"), the following terms and conditions apply:

- a) **Transaction Data.** Merchant authorizes Bank and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant. Merchants shall ensure data quality and shall process transactional data and customer information promptly, accurately, and completely to comply with American Express specifications.
- b) Merchant agrees that Bank may disclose to American Express information regarding Merchant and Transactions to American Express, and that American Express may use such information: (i) to perform its responsibilities in connection with American Express Card Acceptance; (ii) to promote American Express; (iii) to 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 important transactional or relationship communications from American Express. American Express may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with American Express marketing and administrative purposes. Merchant agrees it may receive messages from American Express, including important information about American Express products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.
- c) **Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO; however, Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express. See page one of the merchant application for opt-out area.

- d) Merchant acknowledges it may be converted from the OptBlue to a direct Card acceptance relationship with American Express if and when it becomes a High Charge Volume Merchant in accordance with AXP rules for “High CV Merchant Conversions”. High CV Merchant is a OptBlue Merchant with either (i) greater than USD \$1,000,000 in Charge Volume in a rolling twelve (12) month period or
- (ii) greater than USD \$100,000 in Charge Volume in any three (3) consecutive months. For clarification, if an OptBlue Merchant has multiple Establishments under the same tax identification number (TIN), the Charge Volume from all Establishments shall be summed together when determining whether the Program Merchant has exceeded the thresholds above in American Express’ sole discretion. This acknowledgment is accepted by merchant signature on application and includes express agreement that, upon conversion, (i) the Merchant will be bound by American Express’ then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by the for Card acceptance.
- e) OptBlue accepting Merchants shall not assign to any third party any payments due to it under their respective Merchant Agreements, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the Merchant may sell and assign future Transaction receivables to Participant, its affiliated entities and/or any other cash advance funding source that partners with Participant or its affiliated entities, without consent of American Express.
- f) American Express retains a third-party beneficiary provision, conferring on American Express third-party beneficiary rights but not obligations, to this Merchant Agreement which fully provides American Express with the ability to enforce the terms of the Merchant Agreement against the Program Merchant at its own option.
- g) American Express Opt-Out. Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept other Cards.
- h) Bank and ISO have the right to terminate Merchant’s participation in American Express Card Acceptance immediately upon written notice to Merchant: (i) if Merchant breaches any of the provisions of this Section 46 or any other terms of this Agreement applicable to American Express Card Acceptance; or (ii) for cause or fraudulent or other activity, or upon American Express’ request. In the event Merchant’s participation in American Express Card Acceptance is terminated for any reason, Merchant must immediately remove all American Express branding and marks from Merchant’s website and wherever else they are displayed; or (iii) Cards if it breaches any of the provisions in this Section 3.2, “General Requirements” or the *American Express Merchant Operating Guide*, which is found at www.americanexpress.com/merchantopguide.
- i) Refund Policies. Merchant’s refund policies for American Express-related Transactions must be at least as favorable as its refund policy for purchase with any Non-Credit Payment Forms, and the refund policy must be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law. For the purpose of this subsection 46(i), Non-Credit Payment Forms means any forms of payment other than a (i) general purpose credit or charge card; or (ii) payment card brand name that references both general purpose credit or charge cards and debit cards, such as “Visa” or “MasterCard”. Merchant may not bill or attempt to collect from any cardholder for any American Express-related Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
- j) Merchant must accept American Express as payment for goods and services (other than those goods and services prohibited by this Agreement or Applicable Law) sold, or (if applicable) for charitable contributions made at all of its business locations and websites, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant’s business locations and websites under this Agreement.
- k) Merchant or American Express may elect to resolve any claim against each other, or against Bank or ISO with respect to American Express-related Transactions, by individual, binding arbitration, decided by a neutral arbitrator.
- l) Merchant will comply in full with the American Express Merchant Operating Guide (as the same may be amended from time to time) which can be obtained online at www.americanexpress.com/merchantopguide.
- m) American Express has the right to modify the terms of this Section 46 and to terminate Merchant’s acceptance of American Express-related Transactions and to require an investigation of Merchant’s activities with respect to American Express-related transactions.
- n) Establishment Closing. If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services.



Merchant Processing Agreement

ARTICLE VI- CONFIDENTIAL INFORMATION

6.1 **Confidential Information.** Each Party acknowledges that the performance of this Agreement will potentially require the disclosure of trade secrets, proprietary and confidential information and know-how (collectively, “**Confidential Information**”). Confidential Information expressly includes the Data in connection with this Agreement. Each Party agrees not to disclose, use or make such Confidential Information available to third parties (other than to a Party’s “**Representatives**”) without the other Parties’ written permission. A Representative is any employee, contractor, director, auditor, attorney, Bank regulator, Card Network, or similar agent of a Party that has a reasonable need to know the Confidential Information and a corresponding obligation not to disclose or misuse it. Each Party is responsible for its Representative’s breach of this Section. Confidential Information does not include any information which: (i) was known prior to its receipt; (ii) was or becomes a matter of public information through no fault of the receiving Party; (iii) is acquired from a third party entitled to disclose the information to the receiving Party; (iv) was developed independently by the receiving Party; or (v) is disclosed pursuant to the order of a court, administrative agency or governmental body.

ARTICLE VII- INTELLECTUAL PROPERTY

- 7.1 Service Providers will own and retain all right, title, and interest in and to their offerings. Merchant agrees not to use Service Providers’ offerings in any way that violates this Agreement. Service Providers do not grant to Merchant any license, express or implied, to the intellectual property rights of Service Providers or their respective licensors.
- 7.2 Merchant will own and retain all right, title, and interest in and to its offerings. Merchant does not grant to Service Providers any license, express or implied, to the intellectual property rights of Merchant and or its licensors.
- 7.3 Each Party shall retain all right, title and interest in and to each Party’s respective Data, provided, however, that each Party hereby grants to the other a worldwide, royalty-free, non-exclusive license to use that Party’s Data for the purposes of fulfilling its obligations and exercising its rights hereunder and for not other purpose. To be clear, each Party may otherwise lawfully use Data in an aggregated and anonymized form, and neither Party will have any interest in such aggregated and anonymized information of the other Party. Neither Party will include or make use of any unencrypted personally identifiable information in the Data without the prior written approval of the other Party.
- 7.4 As discussed in the foregoing Section 2.9, each Party hereby authorizes the other to use the Program Marks on their respective websites and within their respective offerings as reasonably necessary to fulfill their obligations under this Agreement and Rules, subject to then applicable trademark usage guidelines and prior written approval. All usage inures to the benefit of the owner(s) of such names and marks.
- 7.5 It is the express intent of the Parties that no jointly owned intellectual property be created under this Agreement. Nothing in this Agreement precludes a Party from engaging directly or through third parties in any business or using any technology similar to the other Party’s business or technology, provided that no use is made of the other Party’s Confidential Information. Each Party shall retain all right, title and interest in and to its respective patents, copyrights, trade secrets and other forms of intellectual property. Neither Party shall apply for, prosecute or attempt to enforce any such intellectual property rights anywhere in the world without the express written consent of the Party owning such rights.

ARTICLE VIII – MISCELLANEOUS

- 8.1 **Waiver.** Failure by any Party 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.
- 8.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be deemed delivered when delivered via overnight carrier or certified mail, addressed as follows:
- (a) If to Bank:
Evolve Bank and Trust
6070 Poplar Avenue
Memphis, TN 38119
 - (b) If to ISO:
CardFlex Inc.
2900 Bristol St #F-201
Costa Mesa, CA 92626
 - (c) If to Merchant, at the address on the Merchant Application.



Merchant Processing Agreement

- 8.3 Choice of Law: Jurisdiction.** This Agreement shall be governed and construed under the laws of the State of California. All claims or controversies between the parties related to this Agreement, which are not otherwise settled by agreement of parties, will be submitted to and decided by binding arbitration as set forth in Section 8.9 below.
- 8.4 Entire Agreement: Assignability.** This Agreement, including the Merchant Application and these Terms and Conditions express 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 and constitutes a fully integrated document. This Agreement may be assigned by Service Providers, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Service Providers. This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, personal representatives, successors and assigns. Should Merchant assign this Agreement improperly, Merchant shall indemnify and hold harmless Service Providers for such improper assignment, including without limit, any claims to the Reserve Account.
- 8.5 Credit and Financial Inquiries: Additional Retail Locations: Inspections.** (a) Merchant authorizes Service Providers to make, at any time, any credit inquiries which either considers necessary to either review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance practices subsequent to acceptance of this Agreement. Such inquiries shall include, but are not limited to, a credit check of Merchant, including its proprietor, partners, principal owners, or officers; (b) Merchant may honor Cards only at URLs and retail locations approved by Service Providers. Additional URLs and retail locations may be added, subject to Service Providers' approval. Either Merchant or Service Providers may delete any retail location by providing notice as provided in this Agreement; (c) If Merchant Application indicates retail locations or Merchant has registered retail locations after submitting Merchant Application then Merchant agrees to permit Service Providers at any time, to inspect retail locations to confirm that Merchant has or is adhering to the terms of this Agreement; (d) Representatives of Service Providers may, with seven (7) business days' notice to Merchant, or less if request is the result of a Bank regulator, and during normal business hours, inspect, audit, request, and make copies of Merchant's books, accounts, records and files pertaining to any Card Transaction.
- 8.6 Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Service Providers for all attorneys' fees (including time spent by in-house counsel) and other costs and expenses paid or incurred by Service Providers in the enforcement of this Agreement, a violation of the Rules, or in collecting any amounts due from Merchant to Service Providers or resulting from any breach by Merchant of this Agreement.
- 8.7 Signature.** Each Party represents and warrants that the person(s) executing this Agreement is(are) duly authorized to bind it to all provisions of this Agreement.
- 8.8 General.** If any provision of this Agreement is deemed 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 and Service Providers. Sections 2.6, 2.9, 2.12, 3.3, 3.6, 8.3, 8.6, 8.8, 8.9 and the entirety of Articles 5, 6, and 7 will survive termination of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A facsimile or electronic signature will be binding and legal in all respects as if it were an original signature to this Agreement.
- 8.9 Arbitration Agreement for Claims.** In the event that Merchant, Service Providers, or Card Network are not able to resolve a Claim, this Section 8.9 explains how Claims may be resolved through arbitration. Merchant or Service Providers, may elect to resolve any Claim by binding individual arbitration, and such election shall be binding on the other parties. Claims will be decided by one or three neutral arbitrator(s), depending upon the complexity and scope of the dispute.
- a) Initiation of Arbitration.** A Party electing arbitration begins by serving a Demand for Arbitration (the "Demand") on each Party. The Demand shall include a statement of what is being claimed and a list of the remedies sought. Claims may be referred to either Judicial Arbitration and Mediation Services ("JAMS") or the American Arbitration Association, as selected by the Party electing arbitration. Claims will be resolved pursuant to this Section 8.9 and the selected arbitration organization's rules in effect when the Claim is filed. Claims may be referred to another arbitration organization if all Parties agree in writing, if Merchant or Service Providers, on one hand, selects the organization and Merchant, on the other hand, select the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in Orange County, California.
 - b) Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general

public or other persons allegedly similarly situated. An arbitrator's authority is not limited to Claims among Merchant and Service Providers. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant or Service Providers and cannot be used in any other case except to enforce the award as among Merchant and Service Providers. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against Merchant and Service Providers. The Parties to this Agreement acknowledge that the restriction on class or purported representative basis above is material and essential to the arbitration of any disputes between the Parties, and is therefore nonseverable from the Parties' agreement to arbitrate. Notwithstanding the foregoing, if any portion of these Limitations on Arbitration in this Section 8.9(b) is found invalid or unenforceable, then the entire Section 8.9 (other than this sentence) will not apply, except that Merchant and Service Providers do not waive the right to appeal that decision.

- c) **Arbitrator's Authority.** The arbitrator will have the power and authority to award any relief that would have been available in court. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 8.9.
- d) **Split Proceedings for Equitable Relief.** Merchant and Service Providers may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration.
- e) **Governing Law/Arbitration Procedures/Entry of Judgment.** This Section 8.9 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply California law and applicable statutes of limitations except for its Choice of Law Rules, and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any Party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have fifteen (15) days to respond before the arbitrator rules on the request. No Party may seek more than three (3) depositions or witness interviews without the prior written consent of all other Parties to the arbitration proceeding. The Parties shall utilize any "expedited" or "streamlined" procedures and rulesets to the extent they are available. If Claim is for \$10,000 or less, claimant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely written request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where the headquarters or assets of the Party that the judgment is being enforced against are located.
- f) **Confidentiality.** The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.
- g) **Costs of Arbitration Proceedings.** Each Party will be responsible for paying its own share of any arbitration fees (including filing, administrative, hearing or other fees).
- h) **Definitions.** For purposes of this Section 8.9 only (i) "Merchant" includes Merchant's Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (ii) "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against Service Providers that Service Providers has the right to join, including any allegation involving a transaction using a Card Network product or network or regarding the Rules.

8.10 Compliance with Applicable Law. All parties shall perform their obligations and exercise their rights hereunder in a manner that complies with applicable law and regulation.



Merchant Processing Agreement

Exhibit A: Consumer Lending Addendum

Disclosure: Service Providers have an obligation to protect the Card Networks from illegal and/or potentially brand damaging transactions and will not allow such transactions; thus, not allowing any credit card, consignment based cards, or margin based cards to be processed for debt repayment. Visa's Debt Repayment Acceptance Rules allow merchants to accept Visa Debit (also known as checkcards which remove funds from a checking or savings account) and Prepaid cards for non-payday consumer debt repayment transactions (for example: medical loans, dental loans, personal loans, home equity loans, short term installment loans and lines of credit).

Therefore, consumer lending merchants are required to adhere to the following additional terms to qualify for a merchant account:

Merchant agrees **NOT** to make any loans or provide any service to customers through, from, or on a payday loan license or loan origination agreement. In addition, Merchant agrees **NOT** to offer a payday loan in any of the states where it is illegal. Currently, these states include: Georgia, New York, New Jersey, Arkansas, Arizona, Connecticut, Maryland, Massachusetts, North Carolina, Pennsylvania, Vermont, West Virginia and the District of Columbia. This list is not exhaustive and it is Merchant's sole responsibility to ensure it is in compliance with applicable lending laws. Service Providers may immediately terminate this Agreement if either, in their sole discretion, believes Merchant has violated applicable laws.

Merchant agrees **NOT** to submit through the Interchange System debt representing payday loans.

Merchant agrees **NOT** to submit through the Interchange System debt that has been charged off.

Merchant agrees **NOT** to accept or process **credit cards** for any debt repayment transactions.

Acceptance of a **credit card** for debt repayment is cause for immediate termination of the Merchant Agreement.

Merchant agrees in addition to the other indemnification obligations hereunder, to indemnify Service Providers from and against any and all losses, costs, liabilities, damages, and expenses, including attorney's fees, resulting from or incurred in connection with any breach of this Addendum.



Merchant Processing Agreement

Exhibit B: Federal and State Rules and Regulations Addendum

Disclosure: Service Providers have an obligation to protect themselves from illegal and/or potentially brand damaging corporate structures, lending practices, and transactions; thus, requiring consumer lending merchants to comply with and adhere to the following additional terms in order to qualify for a merchant account:

Merchant UNDERSTANDS and AGREES to obtain and maintain all local, state, and federal licenses, registrations and approvals required for the consumer lending business it conducts throughout the term of the Merchant Agreement.

Merchant AGREES it has the responsibility to understand and remain current on all state and federal laws as it relates to consumer lending and finance, and to always be in compliance with these laws; which are not limited to the following:

- Federal Trade Commission Act “FTCA” and all regulations implementing the FTCA, including without limitation Section 5 of the FTCA.
- Truth In Lending Act “TILA” and all regulations implementing the TILA including without limitation Regulation Z.
- Telephone Consumer Protection Act “TCPA” and all regulations implementing the TCPA.
- Fair Debt Collection Practices Act “FDCPA” and all regulations implementing the FDCPA including without limitation Regulation F.
- Electronic Funds Transfer Act “EFTA” and all regulations implementing the EFTA without limitation Regulation E.
- Equal Credit Opportunity Act “ECOA” and all regulations implementing the ECOA including without limitation Regulation B.
- Bank Secrecy Act (“BSA”) and all rules and regulations implementing same, including without limitation the USA Patriot Act and related provisions.
- Gramm-Leach-Bliley Act (“GLBA”) and all rules and regulations implementing same, including without limitation the Security Rule and Privacy Rule.
- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and all rules and regulations implementing same, including without limitation the prohibition on unfair, deceptive and/or abusive acts or practices (“UDAAP”).
- Fair Credit Reporting Act (“FCRA”) and all rules and regulations implementing same.
- All other applicable Federal (CFPB, OCC, etc.), State, and Local laws, rules and regulations including, without limitation those referring or pertaining to consumer privacy and protection; credit; lending; unfair competition; marketing and advertising practices; usury and banking.

Merchant AGREES to immediately notify Service Providers in writing of any inquiry, investigation, complaint, charge, subpoena, claim, and request for information, other than routine examinations, by any State or Federal law enforcement or regulatory agency in connection with this Agreement. Merchant AGREES in addition to the other indemnification obligations hereunder, to indemnify Service Providers from and against any and all losses, costs, liabilities, damages and expenses (including attorney’s fees) resulting from or incurred in connection with any breach of this Addendum.



ACH Processing Agreement

This Data Processing and Payment Collection Agreement (this "Agreement") is entered into as of the date set forth below, by and among the undersigned client ("CLIENT") and Cliq, an organization existing under the laws of the State of California with its principal place of business at 2900 Bristol Street, Building F, Costa Mesa, CA 92626.

WHEREAS: Cliq is an item processor and provides Automated Clearing House ("ACH") and EFT services ("Services") for the collection and payment of Payments and Deposits to the accounts of Consumers and Businesses (collectively, "Customers") and;

WHEREAS: CLIENT wishes to initiate ACH transactions and desires to engage Cliq to process those ACH transactions items initiated by CLIENT.

NOW, THEREFORE, the parties intending to be legally bound do hereby agree as follows:

1. **Headings and Captions:** Unless the context otherwise clearly requires, words used in the singular include the plural, and words used in the plural include the singular. The captions and headings contained in this Agreement are for the convenience of the parties only and shall not be construed to limit or otherwise define the scope of this Agreement. This Agreement shall not be deemed to have originated with either party hereto.
2. **Definition of Terms:** Except as otherwise specifically indicated, the following terms shall have the following meanings in the Agreement:
 - a. **Banking Day:** Any business day, during which Cliq is open for business, but does not include any Saturday or Sunday, or Holiday observed by the Federal Reserve.
 - b. **Account:** A deposit account established by Customers at a Federal Reserve member bank that has the ability to receive Automated Clearing House ("ACH") items from the Federal Reserve for debit and credit to the account.
 - c. **EFT Data:** Electronic Funds Transfer ("EFT") Data is that certain data collected by CLIENT indicating funds to be distributed by credit or debit to Customers' accounts of Customers authorizing such credit or debit.
 - d. **Collected Funds:** Funds collected from the Federal Reserve as a result of the processing of EFT Data entries.
 - e. **Settlement Date:** A date specified by CLIENT, on which date EFT Data Entries will be available to Customers' banks that receive EFT Data from the Federal Reserve.
 - f. **Customer:** Those consumers or businesses who have given authorization to CLIENT for CLIENT to initiate credit or debit entries to the accounts of those CUSTOMERS.
 - g. **Sponsor Bank ("ODFI"):** The bank designated by Cliq which is a Federal Reserve depository with Agreements between itself, Cliq and the Federal Reserve to electronically transfer funds between member banks of the Federal Reserve Banking System.
 - h. **Originator:** CLIENT for purposes of this agreement is the Originator of the ACH entries as defined by the NACHA rules.
 - i. **Hold Period:** Cliq may hold the monies for a period established by Cliq pursuant to its underwriting of CLIENT. Upon the expiration of the Hold Period, Cliq shall transfer the Collected Funds, less the Reserve Amount to the CLIENT Bank Account.
 - j. **Reserve Amount:** Cliq may reserve a portion of the Collected Funds pursuant to its underwriting of CLIENT from time to time.
3. **Engagement:** CLIENT hereby retains and appoints Cliq as CLIENT's exclusive data processing and collection agent for processing ACH transactions originated by CLIENT for credit and debit to accounts of Customers, who have agreed to such transactions, in accordance with the terms and conditions contained herein.
4. **Fees:** For the services performed herein by Cliq, CLIENT agrees to pay the fees as detailed in the Fee Schedule. CLIENT understands that some fees may be subject to tax and agrees to pay all applicable tax. Increases in fees charged by Sponsor Bank, will be passed through to CLIENT, without notice, and the Fees may be changed by Cliq at any time upon Thirty (30) days prior written notice to CLIENT. CLIENT may be assessed an Investigation Fee equal to \$25 for each item investigated and/or 10% of the amount investigated each month for all sums that Cliq is required to investigate as a result of CLIENT's conduct.
5. **Term and Termination:** The initial term of this Agreement shall be for a period of three (3) years, commencing on the date first set forth below. This Agreement shall thereafter be automatically renewed for additional terms of one (1) year each unless either party notifies the other no later than fifteen (15) days prior to the end of the current term that it does not wish to renew this Agreement.

We may terminate this Agreement at any time upon written notice to you as a result of any of the following events: (i) your actions cause harm to Cliq, (ii) any noncompliance with this Agreement, the NACHA rules and regulations, (iii) any voluntary or involuntary bankruptcy or insolvency proceeding involving you, (iv) we deem you to be financially insecure, or (v) any processor notifies us that it is no longer willing to accept your transactions.

If your Merchant Account is terminated or suspended for any reason or no reason, you agree: (a) to continue to be bound by this Agreement, (b) to immediately stop using the Services, (c) that the license provided under this Agreement shall end, (d) that we reserve the right (but have no obligation) to delete all of your information and account data stored on our servers, and (e) that Cliq shall not be liable to you or any third party for termination or suspension of access to the Services or for deletion of your information or account data.

Termination of this Agreement prior to expiry of the initial term or any renewal term shall result in the assessment of an account termination fee in an amount equal to the greater of (i) the average monthly fees charged to you for the previous 12 months (or such shorter time if you have processed for less than 12 months) multiplied by the number of months remaining under the Agreement, or (ii) \$495. The parties expressly agree that the damages, which Cliq might reasonably anticipate to be sustained by Cliq, are difficult to ascertain and measure because of their indefiniteness or uncertainty and that the amount set forth above is a reasonable estimate of the damages that would probably be caused and shall be due regardless of proof of actual damages.
6. **Upon Default:** Either party shall have the right to terminate this Agreement, effective immediately, if either party is in default of any obligation under this Agreement and default continues for 30 days following notice from the other party, or if either party is declared bankrupt, files a petition under any bankruptcy laws, has a receiver appointed for all or substantially all of its property, or makes an assignment of all or substantially all of its assets for its creditors.
7. **Upon Termination:** All rights and obligations hereunder shall cease except CLIENT's obligations (A) to pay the applicable fees for any services performed by Cliq prior to the effective date of termination, (B) to pay for any items returned unpaid ("Returned Items") subsequent to the effective date of termination for which Cliq shall hold from the final deposit to the Settlement Account for sixty (60) days a balance sufficient to cover Returned Items and any unpaid fees payable to Cliq, and (C) within ninety (90) days of termination of this Agreement CLIENT shall return to Cliq all materials that are the property of Cliq and provided by Cliq to CLIENT, as part of the services contemplated hereunder, including, but not limited to software, hardware, manuals and instructions.

ACH Processing Agreement

8. **Rejection of Entries:** CLIENT agrees that Cliq has no obligation to accept Entries and therefore may reject any Entry issued by CLIENT. Cliq has no obligation to notify CLIENT of the rejection of an Entry but Cliq may do so at its option. Cliq shall have no liability to CLIENT for rejection of an Entry.
9. **Reversing Entries:** Upon proper and timely request by the CLIENT, Cliq will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; and (ii) be accompanied by a Reversal/Cancellation Request form that complies with all of the Rules. In addition, if the CLIENT requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the CLIENT Account an amount equal to that Entry or File. CLIENT agrees to notify the receiver that a reversing Entry has been transmitted to the Receiver's account no later than the Settlement Date of the reversing Entry. This notification may be made by the CLIENT's method of choice. Under no circumstances shall Cliq be liable for interest or related losses if the requested reversal of an Entry is not effected. The CLIENT shall reimburse Cliq for any expenses, losses or damages it incurs in effecting or attempting to effect the CLIENT's request for reversal of an Entry.
10. **Notification of Change:** Cliq shall provide CLIENT all information, as required by the Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Cliq relating to Entries transmitted by CLIENT. CLIENT shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of CLIENT's receipt of the NOC information from Cliq or prior to initiating another Entry to the Receiver's account, whichever is later.
11. **Audit:** Cliq and ODFI shall have the right to audit CLIENT for compliance with the agreement and Rules.
12. **Underwriting of CLIENT:** From time to time Cliq may request financial and other applicable documentation from CLIENT. CLIENT shall provide the data requested no later than thirty (30) calendar days. CLIENT understands and agrees that the Hold Amount, Hold Period, Reserve Amount, Reserve Period may be adjusted at the sole discretion of Cliq to insure availability and sufficiency of funds to cover the amount CLIENT is responsible to pay Cliq under the terms of this Agreement.
13. **Cooperation in Loss Recovery Efforts:** In the event of any damages for which Company or CLIENT may be liable to each other or to a third party pursuant to the services provided under this Agreement, Company and CLIENT will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.
14. **Responsibilities of the Parties:** In connection with the engagement of Cliq by CLIENT, the parties hereby agree that each shall have the responsibilities set forth hereunder:
15. **CLIENT** shall be responsible for the following as Originator:
 - a. **Settlement Account:** CLIENT shall, at all times, maintain an Account ("Settlement Account") at a bank that is a member of the Federal Reserve ACH System. All credits for collected funds and debits for fees, payments and Returned Items under the terms of this Agreement shall be made to the Settlement Account. For the services to be performed by Cliq hereunder as set forth in the Specifications as published from time to time by Cliq, CLIENT authorizes Cliq, at its sole and unfettered discretion, to credit and or debit the Settlement Account, and CLIENT warrants that it shall, at all times, maintain a sufficient balance in said account to cover overdraft of the Consolidation Account as might result from Returned Items and service fees, and other charges plus such additional fees charged by Cliq for the performance of services beyond the terms of this Agreement or resulting from increased expenses incurred by the failure of CLIENT to furnish data as specified in the Specifications as published from time to time by Cliq, upon demand of Cliq. CLIENT may not close or change the Settlement Account without written notice to Cliq. CLIENT will be solely liable for all fees and costs associated with the Settlement Account and for all returns/overdrafts. CLIENT hereby grants to Cliq a security interest in the Settlement Account as well as any other account owned by CLIENT to the extent of any and all fees, payments and Returned Items which may arise under this Agreement, and CLIENT shall execute any document and obtain any consents or waivers from the bank at which the Settlement Account is maintained as requested by Cliq to protect its security interest therein.
 - b. **Notice of Intent:** CLIENT shall provide Cliq with immediate notice of intent to: 1). Transfer or sell any substantial part of its total assets, or liquidate; 2). Change the basic nature of its business, including selling any products or services not related to its current business; 3). Change ownership or transfer control of its business; or 4). 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 CLIENT's business. Failure to provide notice as required above may be deemed as material breach and shall be sufficient grounds for immediate termination of the Agreement. In the event any of the changes listed above should occur, Cliq shall have the option to renegotiate the terms of this Agreement or provide thirty (30) days' notice of termination.
 - c. **Non-Disclosure of Customer Information:** CLIENT will not, under any circumstances, disclose any CUSTOMER's account number or any information relating to any CUSTOMER's account, or any sales information, to any person other than Cliq, except as expressly authorized in writing by CUSTOMER, or Cliq as required by law.
 - d. **Returned Items:** CLIENT is liable for repayment to Cliq for all Returned Items. Cliq will comply with ACH Associations' and the Federal Reserve prevailing regulations in processing any Returned Items which result from CUSTOMER disputes. However, all disputes which are not or cannot be resolved through established returned item procedures shall be settled between CLIENT and the CUSTOMER, and CLIENT will indemnify Cliq and will provide reimbursement for all expenses, including reasonable attorney's fees, which it may incur as the result of any CUSTOMER claim which is pursued outside the ACH Association or Federal Reserve rules and regulations. Excessive Late Returns are defined as Late Return Items totaling greater than the indicated % of total Returned Items.
 - e. **Inconsistency of Name and Account Number:** The CLIENT acknowledges and agrees that, if an Entry describes the Receiver inconsistently by the name and account number, payment of the Entry transmitted to the Receiving Depository Financial Institution might be made by the Receiving Depository Financial Institution on the basis of the account number. This provision shall apply even if an Entry or account number identified a person different from the named Receiver. CLIENT shall pay the Entry to Company and is not excused in such circumstances.
 - f. **Error Detection:** CLIENT agrees that Cliq has no obligation to discover and shall not be liable to CLIENT for any errors, omissions or wrongful acts made by or on behalf of CLIENT or any third party, including but not limited to errors made when identifying any Receiver, Intermediary or Receiving Depository Financial Institution ("RDFI"); or for errors in the amount or frequency of a particular Entry; or for errors in Settlement Dates; or for any failure or alleged failure to detect identity theft or fraudulent transactions. Cliq shall likewise have no duty to discover and shall not be liable for duplicate Entries. This provision shall survive termination of this Agreement.

ACH Processing Agreement

- g. **Transmittal of Entries:** CLIENT agrees to transmit all credit and debit entries to Cliq in compliance with the formatting, content and other requirements as included herein. CLIENT agrees that its ability to originate entries under this Agreement is subject to exposure/ACH processing limits and standard entry class restrictions in accordance with the Rules, this Agreement and the ACH Application. CLIENT understands that requests for Entries exceeding these amounts are honored solely at the discretion of Cliq.
 - h. **Delivery of EFT Data:** CLIENT shall deliver EFT data necessary for ACH processing in such form and at such times and in accordance with the ACH Gateway Manual. CLIENT will cause the EFT data to be current and accurate at all times. CLIENT warrants to Cliq that all data and entries contained in EFT Data and delivered to Cliq by CLIENT will contain true and accurate information; will be authorized by Customer.
 - i. **Record Retention:** CLIENT assumes the responsibility for obtaining, storing and producing of all consents and authorizations. CLIENT shall retain and be able to produce all consents and authorizations required under the Rules for a period of no less than two (2) years from the termination or revocation of the authorization. Failure to provide Cliq with requested CUSTOMER authorization documentation within five (5) business days after receipt of such request may be deemed as material breach and shall be sufficient grounds for immediate termination of the Agreement. CLIENT will maintain records of all entries including applicable documentation for a period of SIX (6) years past the date of the last transaction to any Account. Cliq shall have no liability to CLIENT, Customer, or third parties in the event data is inaccurate or incomplete. Further, the CLIENT shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by Cliq.
 - j. **Timely Delivery:** CLIENT shall cause the EFT data to be delivered to Cliq in a timely fashion to permit the electronic processing on the date designated by CLIENT which is estimated to require the delivery of the EFT Data not less than (2) banking days prior to the scheduled processing date. All data must be delivered before the end of the banking day. Cut-off time: 12:00 P.M. PST.
 - k. **Reports/Statements:** CLIENT acknowledges that it is their responsibility to review the following electronic materials: reports, fees, statements, return notifications, correction notices that are provided by Cliq and respond accordingly and in a timely manner.
 - l. **Data Protection:** CLIENT is responsible for providing access for its employees to the ACH Gateway and agrees to maintain adequate data security policies and procedures including policies on authenticating their customers. Cliq shall be entitled to rely on any electronically or written communication believed by it in good faith to be genuine and have been provided by the authorized representative of the CLIENT. CLIENT warrants that it will secure and protect all non-public personally identifiable information of the Customers and Cliq, and that if CLIENT believes or suspects that Customer data has been accessed by unauthorized persons or entities, or that one or more unauthorized transactions have been processed or attempted to be processed, CLIENT agrees to notify Company as soon as possible. CLIENT further acknowledges and agrees that said unauthorized access or transactions alone shall not affect Cliq's ability to recover payments that it is otherwise owed, or to obtain reimbursement for monies advanced pursuant to Paragraph 15(a) of this Agreement. This provision shall survive termination of this Agreement.
 - m. **Delivery of Payroll Funds:** CLIENT shall cause payroll funds to be delivered by wire transfer at least Three (3) Banking Days ("Lead Time") prior to the Settlement Date designated by CLIENT in an amount sufficient to cover payroll deposits, fees and other charges to Cliq ("Payroll amount requirement") in accordance with the Specifications as published from time to time by Cliq. CLIENT understands and agrees that in the event payroll funds are not delivered in accordance with the above Lead Time, or that the Payroll amount requirement is insufficient, the Settlement Date will be delayed to allow for sufficient Lead Time and sufficient Payroll amount requirement.
 - n. **Exclusive:** CLIENT agrees that Cliq shall be its sole provider of ACH services during the term of this Agreement.
 - o. **Acceptance by Cliq:** This Agreement shall be effective only upon acceptance by Cliq. In the event CLIENT is not accepted for the services as contemplated herein, any fees paid to Cliq shall be non-refundable.
 - p. **Compliance:** CLIENT shall be responsible to ensure they comply and not violate state, federal, local laws, and regulations, such as Regulation E, Article 4A of the Uniform Commercial Code, and sanctions laws administered by Office of Foreign Asset Control (OFAC). It shall further be the responsibility of the CLIENT to obtain information regarding such OFAC enforced sanctions. The CLIENT understands and agrees that the CLIENT shall be the originator of the ACH entries as defined by the National Automated Clearing House Association ("NACHA") Rules and shall Originate said Entries in accordance and be bound by these Rules. The CLIENT has access to a copy of the rules, acknowledges receipt of a copy, or may purchase a copy if they so desire. CLIENT agrees to acquire current copies of the Rules annually. In the event CLIENT violates any of the applicable Rules and NACHA imposes a fine on Cliq because of the CLIENT's violation, Cliq shall charge the fine to the CLIENT.
16. Cliq shall be responsible for the following:
- a. **ACH Gateway:** Cliq shall provide CLIENT with an initial secure log in and password into the ACH Processing Gateway Interface. CLIENT will be required to change the account password at first log on. See Appendix D regarding additional security requirements.
 - b. **Format of EFT Data:** Cliq shall provide CLIENT with consultation on the format and specification of EFT data if transactions are to be transmitted to Cliq other than through the virtual terminal incorporated within the Cliq ACH Processing Gateway Interface.
 - c. **Consolidation Account:** Cliq shall establish and maintain an account ("Consolidation Account") for deposit of Collected Funds and payment of returned Items and service fees, and other charges ("Other Fees") incurred by Cliq, Sponsor Bank and the Federal Reserve hereunder. CLIENT understands and agrees that: (i) Cliq shall deposit all Collected Funds to the Consolidation Account. (ii) Cliq shall hold One Hundred Percent (100%) of Collected Funds ("Hold Amount") in the Consolidation Account for a period of FIVE (5) Banking Days, or such other time period that may be established by Cliq pursuant to its underwriting of CLIENT ("Hold Period"), 3). Cliq shall, at the expiration of the Hold Period, transfer the Collected Funds, less a reserve amount of 10% of the Collected Funds ("Reserve Amount") or such other amount established for CLIENT pursuant to Cliq's underwriting of CLIENT, by EFT to the Settlement Account. Such transfer shall be in such form and at such times and in accordance with the Specifications as published from time to time by Cliq. CLIENT further understands and agrees that Cliq shall hold any Reserve Amount for a period of One Hundred Eighty (180) days from the date of collection ("Reserve Period"). Cliq shall release the Reserve amount to the credit of the Consolidation Account at the expiration of the Reserve Period unless CLIENT has unpaid amounts due Company. CLIENT understands and agrees that the Hold Amount, Hold Period, Reserve Amount and Reserve Period may be adjusted by Cliq, at the sole discretion of Cliq, to insure availability and sufficiency of funds to cover fees and returns.
 - d. **Electronic Bulletin Board:** Cliq shall provide an electronic means (electronic bulletin board service, or other like service) for the purpose of receiving EFT Data from CLIENT, posting return Items, correction notices and account statements for CLIENT. CLIENT understands and agrees that it is CLIENT's responsibility to pick up, by electronic means, the statements and return notifications from the electronic bulletin board service.

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17. **Force Majeure:** Except when prevented from doing so by causes beyond its control, including, but not limited to Acts of God, strikes, mechanical or electrical breakdown, fire, flood, war, governmental action, accident, Cliq shall process EFT data furnished by CLIENT and observe the processing schedules set forth in the Specifications as published from time to time by Cliq, and deposit of funds in the Consolidation and Settlement Accounts.
18. **Materials:** CLIENT acknowledges that all materials provided to CLIENT by Cliq, in contemplation of and in fulfillment of this Agreement, are the property of Cliq. CLIENT shall guard against unauthorized duplication that would be a violation of United States copyright law.
19. **Use of Independent Sales Organization:** CLIENT acknowledges that Cliq may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable ACH Associations' rules, and the Rules and Regulations of the Federal Reserve System. ISO/MSP is an independent contractor and not an agent of Cliq. ISO/MSP has no authority to execute the Agreement on Cliq's behalf or to alter the terms hereof without Cliq's prior written approval.
20. **Sole Obligation:** Cliq's sole obligation to CLIENT hereunder is to perform the services agreed upon, exercising the same degree of care used in processing items and data for its own use. Cliq shall not be liable for the insolvency, neglect, misconduct, mistake or default of any other bank, corporation or person. In no event shall Cliq be liable for any loss, destruction, mutilation, damage or thefts resulting from any cause whatsoever, of any data, entries, or items, except those directly attributable to willful misconduct or gross negligence on the part of Cliq.
21. **Record Maintenance:** This Agreement and the performance by Cliq of its services hereunder shall not relieve CLIENT of any obligation imposed by law or contract, regarding the maintaining of records or other matters nor from employing adequate audit, account and review practices customarily followed by similar businesses.
22. **Indemnification:** CLIENT agrees to indemnify and to hold Cliq, Sponsor Bank and the Federal Reserve free and harmless from any and all liability, claims, and damages (including attorney's fees and costs) which Cliq, Sponsor Bank and the Federal Reserve may suffer or incur by reason of providing the services contemplated herein, including but not limited to any liability incurred by Cliq with respect to the warranties and indemnities required to be made by Cliq to Sponsor Bank or the Federal Reserve, its representatives, and other banks under the ("Operating Rules") of the National Automated Clearing House, except any liability, claims, or damages caused by Cliq's gross negligence in performing its services hereunder. This article shall survive termination of this Agreement.
23. **Warranty of Application:** In accordance with this Agreement, CLIENT has executed and delivered to Cliq a document entitled "Data Processing and Payment Collection Application" containing, among other things, certain information regarding the nature of CLIENT's business. Its form of business organization, and the individual principal owners of CLIENT. CLIENT represents and warrants to Cliq that all information and all statements contained in such Data Processing and Payment Collection Application are true, correct and complete as set forth in this Agreement. CLIENT FURTHER AGREES TO NOTIFY Cliq IN WRITING OF ANY AND ALL CHANGES WHICH MAY OCCUR FROM TIME TO TIME REGARDING ANY INFORMATION CONTAINED IN SUCH DATA PROCESSING AND PAYMENT COLLECTION APPLICATION, INCLUDING BUT NOT LIMITED TO: THE IDENTITY OF PRINCIPALS AND/OR OWNERS, THE FORM OF BUSINESS ORGANIZATION (i.e. SOLE PROPRIETORSHIP, PARTNERSHIP, ETC.), TYPE OF GOODS AND SERVICES PROVIDED, AND HOW SALES ARE COMPLETED (i.e. BY TELEPHONE, MAIL, OR IN PERSON AT THE CLIENT's PLACE OF BUSINESS).
Such notice must be received by Cliq within ten (10) business days of such occurrence. CLIENT acknowledges that Cliq may from time to time request updated credit information on CLIENT's business and CLIENT further agrees to provide updated financial statements and other information within a reasonable period of time as Cliq may request. CLIENT shall be and remain fully liable to Cliq for any and all losses, costs, claims, and expenses suffered or incurred by Cliq, arising out of or resulting from CLIENT's failure to report all such changes to Cliq in accordance herewith.
24. **Notices:** Any notice required or allowed to be given under this Agreement shall be addressed to the other party as follows: FOR CLIQ: at its principal place of business as listed above; FOR CLIENT: at the address listed on the attached "ACH Application". Any notice so addressed shall be deemed delivered on the date received.
25. **Invalidity:** If any provision in this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
26. **Facsimile:** This Agreement may be executed in one or more separate counterparts and conveyed by facsimile, each of which, when so executed shall be deemed an original and shall together constitute one and the same instrument which may be sufficiently evidenced by anyone counterpart, each of which shall be fully effective against the parties executing the same (even if by facsimile) and all parties claiming under or through them.
27. **Assignment:** Cliq shall have the right to assign this Agreement to any corporation or other entity which Cliq may hereafter merge or consolidate, or to which Cliq may transfer all or substantially all of its assets, provided such corporation or other entity agrees to assume responsibility for all of Cliq's material obligations under this Agreement.
28. **Limitation of Liability:** Any legal action undertaken by CLIENT pursuant to any of the terms or conditions or the interpretation thereof shall be commenced within six (6) months of said termination. CLIENT agrees hereby that after a term of six (6) months has expired, no legal action against Cliq may be brought in any court regarding any term or condition of this Contract.
29. **Entire Agreement:** This contract cancels any previous contract written and executed at Cliq. Further, this Agreement constitutes the entire Agreement between parties and each of the parties hereto acknowledges and agrees that there are no other agreements, either written or oral, governing their relationships or Fees.
30. **Amendment:** Except as otherwise provided herein, no provision of this Agreement may be amended or modified except in writing signed by Cliq. Any amendment to this Agreement shall be effective the later of either the effective date contained in the notice of acceptance or fifteen (15) days after the notice is mailed, or when expressly agreed.
31. **Guarantors:** The undersigned owners/officers ("Guarantors"), by their execution of this Data Processing and Payment Collection Agreement hereby unconditionally and irrevocably personally guarantee the full and faithful performance or payment by CLIENT of each and all of its duties and obligations herein set forth and contained, whether prior or subsequent to termination or expiration hereof. This provision does not apply if CLIENT is registered as an "exempt" organization under Section 501(c)(3) of the Internal Revenue Code, 26 USC 501(c)(3).
32. **Attorney's Fees:** Should either party pursue an action in court or arbitration against the other regarding any provision of this Agreement, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fees.
33. **Binding Effect: Governing Law: Jurisdiction and Venue:** Any action or proceeding on the Agreement by or against Cliq shall be initiated and maintained under the jurisdiction of the State of California with venue in the courts of Orange County, in which case this Agreement shall be construed and governed by the laws of the State of California.
34. **Severability:** In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

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35. **ACH Transaction Entry Types:** The following provisions only apply to those ACH Transaction Entry Types selected by the CLIENT in the Application portion of the Agreement. No other entry types other than those listed below may be originated by CLIENT.
- a. **CCD – Corporate Credit or Debit Entries**
 - i. Transmittal of Entries by CLIENT: The CLIENT shall transmit CTX, CCD+ and/or CCD Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
 - ii. Uniform Commercial Code Article 4A (UCC 4A) Disclosure: In regard to the origination of “wholesale credit” entries (defined as incoming corporate ACH credit transfers containing Standard Entry Class Codes (SEC Codes) “CCD” and “CTX”), the Originating Depository Financial Institution (ODFI) may provide disclosure as required by UCC 4A to the CLIENT.
 - iii. Reporting Requirements: the ODFI may provide reporting to NACHA for CLIENT regarding “CTX”, “CCD+” and/or “CCD” debit Entries whose return rate for unauthorized Entries exceeds .50% as required by the NACHA Rules. This section does not apply if CLIENT is initiating “CTX”, “CCD+” and “CCD” credit Entries only.
 - iv. Authorization: The CLIENT shall obtain authorization but no specific format is required per the NACHA Rules. The CLIENT shall retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization.
 - v. Customer Agreement: CLIENT must have an agreement that binds the Customer to the Rules.
 - b. **PPD – Direct Payment Entries**
 - i. Transmittal of Entries by CLIENT: The CLIENT shall transmit PPD Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
 - ii. Authorization: The CLIENT shall obtain authorization for PPD Entries in accordance with the NACHA Rules and U.S. Law. The CLIENT shall retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization. The authorization must be in writing, provide Customer may revoke it, and be signed or similarly authenticated.
 - iii. Pre-notifications: If the CLIENT initiates Pre-notifications, then the CLIENT shall send Pre-notifications six (6) banking days prior to initiating the first Entry to a particular account.
After the CLIENT has received notice that any such Entry has been rejected by the Receiving Depository Financial Institution (RDFI), the CLIENT shall not initiate any Entry to such customer.
 - iv. Notice of Change in Amount: The CLIENT shall provide written notification to the Receiver ten (10) calendar days in advance if the amount of the Entry varies from the previous one, unless the authorization indicates variable amounts.
 - v. Notice of Change in Scheduled Debiting Date: The CLIENT shall provide written notification to the Receiver seven (7) days in advance of the new debit date if the date of the debit date changes.
 - vi. Reporting Requirement: ODFI shall provide reporting information to NACHA for CLIENT regarding PPD Entries whose return rate for unauthorized Entries exceeds .50% as required by the NACHA Rules.
 - c. **PPD – Direct Deposit Entries**
 - i. Transmittal of Entries by CLIENT: The CLIENT shall transmit PPD Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
 - ii. Authorization: The CLIENT shall obtain authorization for PPD Entries in accordance with the NACHA Rules and U.S. Law. The CLIENT shall retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization. The authorization must be in writing, provide Customer may revoke it, and be signed or similarly authenticated.
 - iii. Pre-notifications: If the CLIENT initiates Pre-notifications, then the CLIENT shall send Pre-notifications six (6) banking days prior to initiating the first Entry to a particular account.
After the CLIENT has received notice that any such Entry has been rejected by the Receiving Depository Financial Institution (RDFI), the CLIENT shall not initiate any Entry to such customer.
 - d. **TEL – Telephone Initiated Entries**
 - i. Transmittal of Entries by CLIENT: The CLIENT shall transmit TEL debit Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules. A Tel entry may only be transmitted if there is an existing relationship between the CLIENT and the Customer or if there is not one, the Customer initiated the telephone call to the CLIENT.
 - ii. Authorization: The CLIENT shall obtain authorization for TEL Entries in accordance with the NACHA Rules and U.S. law. The CLIENT shall retain a record of the authorization for a period of two (2) years from the Settlement Date of the TEL Entry. For recurring TEL entries CLIENT shall record and provide Customer with a written copy of the authorization.
 - iii. Routing Number Verification: The CLIENT shall employ a commercially reasonable procedure to verify routing numbers.
 - iv. Receiver Identification: The CLIENT shall employ a commercially reasonable procedure to verify the identity of the Receiver.
 - v. Reporting Requirement: The ODFI shall provide reporting information to NACHA for CLIENT regarding TEL Entries whose return rate for unauthorized Entries exceeds .50% as required by NACHA Rules.
 - e. **WEB – Internet Initiated Entries**
 - i. Transmittal of Entries by CLIENT: The CLIENT shall transmit single and recurring WEB debit Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
 - ii. Authorization: The CLIENT shall obtain authorization for WEB Entries in accordance with the NACHA Rules and U.S. law. The CLIENT shall retain a record of the authorization for a period of two (2) years from (i) the Settlement Date of a single WEB Entry, and (ii) the termination or revocation of the authorization of a recurring WEB Entry. The CLIENT must ensure the authorization is in writing that is signed or similarly authenticated.
 - iii. Routing Number Verification: The CLIENT shall employ a commercially reasonable procedure to verify routing numbers.
 - iv. Receiver Identification: The CLIENT shall employ a commercially reasonable procedure to verify the identity of the Receiver.
 - v. Fraudulent Transaction Detection System: The CLIENT shall employ a commercially reasonable fraudulent transaction detection system.

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- vi. Secure Internet Session: The CLIENT shall establish a secure Internet session with each Receiver utilizing a commercially reasonable level of encryption such as SHA-2 (SHA256) or the equivalent prior to the Receiver's key entry of any banking information, including but not limited to, the Receivers Cliq routing number, account number and PIN number or other identification symbol.
- vii. Security Audit: The CLIENT shall conduct an annual audit to ensure that the financial information it obtains from Receivers is protected by security practices and procedures that include, at a minimum, adequate levels of (i) physical security to protect against theft, tampering or damage, (ii) personnel and access controls to protect against unauthorized access and use; and (iii) network security to ensure secure capture, storage and distribution of data.
- viii. Reporting Requirement: The ODFI shall provide reporting information to NACHA for CLIENT regarding WEB Entries whose return rate for unauthorized Entries exceeds .50% as required by NACHA Rules.



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Appendix A

Sample ACH Debit Authorization Agreement

I (we) hereby authorize _____ (Company Name), hereinafter called Company, to initiate debit entries to my (our) Account indicated below and the financial institution named below, hereinafter called Financial Institution, to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Financial Institution Name: _____ Branch Address: _____ City: _____
State: _____ Zip: _____ Routing/Transit # (ABA) _____
☐ Checking Account ☐ Savings Account
Routing/Transit # (ABA) _____ Account Number: _____

Attach Copy of Voided Check to This Form

Sample ACH Credit Authorization Agreement

I (we) hereby authorize _____ (Company Name), hereinafter called Company, to initiate credit entries to my (our) Account indicated below and the financial institution named below, hereinafter called Financial Institution, to credit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Financial Institution Name: _____ Branch Address: _____ City: _____
State: _____ Zip: _____ Routing/Transit # (ABA) _____
☐ Checking Account ☐ Savings Account
Routing/Transit # (ABA) _____ Account Number: _____

Attach Copy of Voided Check to This Form



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Appendix B

UCC Article 4A Disclosure

DISCLOSURES REGARDING ELECTRONIC "WHOLESALE CREDIT" TRANSACTIONS SUBJECT TO UNIFORM COMMERCIAL CODE ARTICLE 4A

Provisional Payment:

Credit given by us to you with respect to an automated clearing house credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e. the originator of the entry) shall not be deemed to have paid you in the amount of such entry.

Notice of Receipt of Entry:

Under the operating rules of the "NACHA" National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, all processing information and statement information is available online through the Cliq ACH Processing Gateway user interface.

Choice of Law:

We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses ("ACH") and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of California, unless it has otherwise specified in a separate agreement that the law of some other state shall govern.

Appendix C

Written Statement of Unauthorized ACH Debit

Transaction Information

Name on Account _____
Account Number _____
Transaction Amount _____
Transaction Date _____
Company Debiting the Account _____

Statement

I hereby attest that (1) I have reviewed the circumstances of the above electronic ACH debit to my account, (2) the debit was not authorized, and (3) the following, to the best of my ability to identify, is the reason for that conclusion:

- ☐ I did not authorize the company listed above to debit my account.
☐ I revoked the authorization I had given to the company to debit my account before the debit was initiated.
☐ My account was debited before the date I authorized.
☐ My account was debited for an amount different than I authorized.
☐ My share draft or check was improperly processed electronically.
☐ Other (Please describe your reason in detail below):

Signature

I am an authorized signer, or otherwise have authority to act, on the account identified in this statement. I attest that the debit transaction above was not originated with fraudulent intent by me or any person acting in concert with me.

I have read this statement in its entirety, and attest that the information provided on this statement is true and correct.

Signature _____ Date _____



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Appendix D

Security Procedures

CLIENT agrees to comply with the security procedures identified below in transmitting all Origination Files pursuant to this Agreement. CLIENT understands that the Security Procedures are designed to verify the authenticity, and not to detect errors in transmission or content, of Origination Files. If an Origination File is authorized or issued by CLIENT, or on CLIENT's behalf, or CLIENT otherwise benefits from such Origination File, CLIENT agrees to be bound by the Origination File, whether or not Company complies with the Security Procedures. The Security Procedures for Origination Files shall consist of the procedures the Company and CLIENT use to verify that an Origination File has been validly issued by CLIENT and shall include:

- a. CLIENT warrants and agrees that no individual will be allowed to initiate and/or approve ACH transfers in the absence of proper supervision and adequate safeguards.
- b. CLIENT agrees to maintain the confidentiality of any Security Procedures and prevent the disclosure of such procedures except on a "need to know" basis. CLIENT shall notify Company immediately if CLIENT becomes aware of or suspects that any of the procedures relating to the transfer of funds may have been compromised or disclosed.
- c. CLIENT's unique user IDs, passwords, and/or other access devices or authentication techniques as Company may require from time to time ("Access Codes") to access the Services will be provided to the Authorized Representative(s). CLIENT agrees that Access Codes are strictly confidential and must be safeguarded. CLIENT shall have sole responsibility for controlling the distribution and maintaining the confidentiality of the Access Codes assigned to CLIENT. CLIENT acknowledges that anyone with knowledge of CLIENT's or Authorized Representatives' Access Codes will be able to issue Origination Files on CLIENT's account. CLIENT authorizes Company to execute Origination Files pursuant to the instructions of anyone who has provided Company with proper Access Codes and acknowledges that Company shall conclusively presume that any person possessing CLIENT's Access Codes is an Authorized Representative and will regard their Origination File as being authorized by CLIENT. If CLIENT becomes aware of the unauthorized use of Access Codes, or suspects that an unauthorized use may occur, or if CLIENT has terminated authorization for an Authorized Representative, CLIENT shall immediately notify Company to deactivate such Access Codes and issue new Access Codes as appropriate. IN NO EVENT SHALL COMPANY BE RESPONSIBLE FOR ANY DAMAGES RESULTING, EITHER DIRECTLY OR INDIRECTLY, FROM THE UNAUTHORIZED USE OF THE ACCESS CODES PRIOR TO SUCH NOTICE AND A REASONABLE TIME THEREAFTER REQUIRED TO CANCEL SUCH PASSWORD(S).
- d. Company may from time to time, and at its sole discretion, change the Security Procedures or establish additional Security Procedures.
- e. CLIENT agrees that Company may delay the execution of an Origination File until Company has completed any security measures Company, in its sole discretion, deems warranted.
- f. CLIENT is responsible for ensuring that there are adequate software and hardware security measures in place on CLIENT's computers to prevent initiation of fraudulent payments. Such security measures include but are not limited to anti-virus, spyware, malware, key logger detection software, firewalls, and any other "crime ware" protection programs.
- g. CLIENT has carefully analyzed the Security Procedures which will be used in connection with Payment Orders, under the terms of this Agreement, and acknowledges the Security Procedures identified herein are a satisfactory method of verifying authenticity of Payment Orders based on CLIENT's needs and that the Security Procedures are commercially reasonable.

Cancellation or Amendment

CLIENT shall have no right to cancel an Entry after its receipt by Bank. Bank will not manipulate or modify an Entry that needs to be amended, so CLIENT will need to submit a written request to Cliq to cancel the Entry and submit a new one. All Client requests must be submitted by an Authorized Representative of the Client. If the Entry has not yet been transmitted to the ACH Operator, Cliq will request Bank to use reasonable efforts to act on the request to cancel the Entry.

If Cliq is successful and the Bank was able to cancel the Entry, Cliq will call CLIENT to confirm the cancellation.