



## MERCHANT AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Agreement ("Agreement"), the parties agree as follows:

1. **Parties.** The parties to this Agreement are MERRICK BANK CORPORATION, a Utah industrial loan corporation, whose address is 10705 South Jordan Gateway, Suite 200, South Jordan, Utah 84095 ("Bank"), SIGNATURE CARD SERVICES, a d.b.a. of CKC Holdings, Inc., a California Corporation, whose address is 8360 Melrose Ave., Los Angeles, CA 90069 ("SIGNATURE"), and the Merchant set forth on the Merchant Application form to which this Agreement is attached ("Merchant").

2. **Definitions.** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:

- (a) Address Verification shall mean a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.
  - (b) Association(s) shall mean VISA USA, Inc. ("Visa"), MasterCard International, Inc. ("MasterCard"), American Express. and Discover® ("Discover").
  - (c) Authorization shall mean an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
  - (d) American Express means the Cards bearing the Marks of, and Card Network operated by, American Express Travel Related Services Company, Inc. or its affiliates.
  - (e) Authorization Center shall mean the facility or facilities designated from time to time by Bank or SIGNATURE to which Merchant shall submit all requests for Authorization.
  - (f) Business Day shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which banking institutions in Utah are authorized by law or executive order to be closed (and on which Bank is in fact closed).
  - (g) Card(s) shall mean either a Visa, MasterCard or Discover® credit card, debit card or other similar card that requires a PIN for identification purposes or pre-paid, stored value or gift card.
  - (h) Cardholder(sometimes referred to as "Card Member" in certain Card Network Materials) shall mean a person authorized to use a Card.
  - (i) Card Network means Visa U.S.A., Inc., MasterCard International, Inc., American Express Travel Related Services Company, Inc., DFS Services LLC (the owner of Discover) and their affiliates, or any other payment networks approved by Bank that provide Cards accepted by Merchant.
  - (j) Chargeback shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.
  - (k) Forced Sale shall mean a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
  - (l) Full Recourse Transactions shall mean mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.
  - (m) Issuer shall mean a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.
  - (n) Merchant Statement shall mean an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 9 of this Agreement).
  - (o) Mid-Qualified Transactions shall mean: (i) key-entered retail Transactions; (ii) any MasterCard telephone or mail Transaction; and (iii) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations
  - (p) Non-Qualified Transactions shall mean: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations.
  - (q) Normal Transaction shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing all of the necessary Card information encoded on the Card's magnetic strip.
  - (r) Pre-Authorized Recurring Order Transactions shall mean Transactions that 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.
  - (s) Qualified Transactions shall mean: (i) retail Transactions in which the Card is swiped; (ii) Visa telephone or mail Transactions with Address Verification and order number entered; or (iii) Transactions that are part of a special registered program approved by the Associations.
  - (t) Services shall mean the transaction processing services provided by Bank under this Agreement.
  - (u) Transaction shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the Transaction is approved, declined, or processed as a Forced Sale. The term "Transaction" also includes credits, errors, returns and adjustments
3. **Merchant agrees to participate in program.** Merchant agrees to participate in the card processing services program established by Bank.
4. **SIGNATURE to provide services to Merchant.** During the term of this Agreement, subject to the terms and conditions of this Agreement, SIGNATURE agrees to provide technical documentation and support in order to allow Merchant to accept and process Transactions. SIGNATURE shall provide technical support and customer support for all Transactions, including, without limitation, Authorization, settlement, Chargeback processing and reporting, twenty-four hours each day, seven days each week during the term of this Agreement.
5. **Bank to Provide Services to Merchant.** Bank agrees to provide Merchant with the Services indicated on Schedule A, as amended from time to time by Bank, during the term of this Agreement, subject to the terms and conditions of this Agreement.
6. **Independent Contractor.** In the performance of its duties hereunder, SIGNATURE shall be an independent contractor, and not an employee or agent of Bank.
7. **Data Security/Personal Cardholder Information.** Except as otherwise provided by the Network Rules, Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Provider or the applicable Card Network, except as expressly authorized in writing by the Cardholder, or as required by Law or the Network Rules..
- (a) Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant in accordance with applicable Law and the Network Rules.
  - (b) Compliance with Card Network Rules. Merchant represents, warrants and covenants that it is and will remain throughout the Term of this Agreement in compliance with (i) Network Rules related to data security, data integrity and the safeguarding of Cardholder Information, including the Payment Card Industry Data Security Standard ("PCI"), Discover Information Security Compliance ("DISC"), MasterCard's Site Data Protection Program ("SDP"), the American Express Data Security Requirements ("DSR"), and Visa's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced from time to time, and (ii) any data security guidelines or operating guide that Provider may provide to Merchant, as the same may be amended, supplemented or replaced from time to time. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP, DISC, DSR and CISP requirements and any data security guidelines or operating guide provided by Provider at all times. Merchant will report any non-compliance immediately to Provider. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.
  - (c) Annual Certification. Merchant will provide an annual certification to Provider if requested by Provider (in a form acceptable to Provider) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Network requirements such as PCI, SDP, DSR and CISP. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.
  - (d) Information Use Limitation. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Provider's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or when such disclosure is required by legal process or applicable Law, and Merchant and its relevant service provider, subcontractor, or agent have entered into a written agreement containing Merchant's and such individual's or entity's agreement to the foregoing data security provisions, including compliance with the

Network Rules.

(e) Response to Unauthorized Access. Merchant will notify Provider within twenty four (24) hours after it becomes aware of any actual or potential breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Provider, Card Issuer, regulators, governmental authority or any Card Network deems necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Provider and the issuing bank(s) or the Card Network to investigate the incident and provide assistance and cooperation to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Provider's acts or omissions, Merchant will bear the cost of notifying affected Cardholder.

8. **Term.** This Agreement shall become effective when all parties sign the Merchant Application form to which this Agreement is attached and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of three (3) years each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then- current term. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.

9. **Merchant Operating Account.** Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank, or at a financial institution approved by Bank ("Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Bank to debit all amounts Merchant owes Bank or SIGNATURE hereunder from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any claims for loss or damage arising out of any such charges or debits to the Operating Account against any other financial institution where the Operating Account is maintained.

10. **Reserve Account.** Upon, or at any time after, execution of this Agreement, Bank may establish a reserve account at Bank or any other financial institution designated by Bank ("Reserve Account"), for all future indebtedness of Merchant to Bank or SIGNATURE that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Chargebacks and fees, in such amount as Bank from time to time may determine in its sole discretion. Bank may fund the Reserve Account by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The Reserve Account will be maintained for a minimum of six months after the date on which this Agreement terminates or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, and commercially reasonable, and that Merchant's account with Bank is fully resolved. Upon expiration of this six-month period, any balance remaining in the Reserve Account will be paid to Merchant. Bank will inform Merchant in writing of any charges debited to the Reserve Account during this six-month period.

11. **Fees.** Merchant shall pay Bank all fees specified on Schedule A, as amended by Bank from time to time. For each Transaction, Bank will charge Merchant as follows:

- (a) An amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction ("Merchant Discount Rate");
  - (b) A specified amount per Transaction ("Transaction Fee"); and
  - (c) A specified amount per Authorization ("Authorization Fee").
- The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on Schedule A. The Merchant Discount Fees are based on sales, not net sales. Different Merchant Discount Rates apply to Qualified, Mid-Qualified and Non-Qualified Transactions, as shown on Schedule A. Merchant agrees that Bank will deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on Schedule A. Merchant also agrees to pay Bank the amount of any fees, charges or penalties assessed against Bank by any Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such entities. Merchant shall pay Bank for any other services provided to Merchant by Bank and for all other fees shown on Schedule A, including, but not limited to monthly minimum fees, Chargeback fees and customer service fees.

12. **Billing.** All amounts Merchant owes Bank may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Bank holds for or on behalf of Merchant.

13. **Security Interest.** As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank a security interest in the funds held in the Operating Account and in the Reserve Account. Merchant will execute and deliver to Bank such documents, in form satisfactory to Bank, as Bank may reasonably request in order to perfect Bank's security interest in the Operating Account and Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Bank to be necessary or desirable. Bank is authorized to file financing statements relating to the Operating Account and the Reserve Account without Merchant's signature where authorized by law. Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Provider, its affiliated entities and/or any other cash advance funding source that partners with Provider or its affiliated entities, without consent from any Card Network. Notwithstanding the foregoing, Provider prohibits Merchant from selling or assigning future Transaction receivables to any third party without Provider's prior written consent.

14. **Power of Attorney.** Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or SIGNATURE.

15. **Equipment.** In processing Transactions, Merchant shall use only equipment or software programs provided or approved by the Authorization Center or SIGNATURE ("equipment") and related equipment installed or approved by SIGNATURE, subject to Bank's approval, and the following additional terms:

- (a) The equipment shall be suitable for processing the Services;
- (b) Merchant will provide, at Merchant's expense, suitable electric power and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's equipment.
- (c) If Merchant is using equipment, Merchant acknowledges receipt of a copy of the equipment User's Guide. Merchant will use and operate the equipment only in accordance with the equipment User's Guide; and
- (d) Bank will have no liability to Merchant if any installation is delayed or cannot be completed. SIGNATURE will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of SIGNATURE. At no time will SIGNATURE's liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.

16. **Documenting Transactions.** Merchant shall submit the following information to Bank or Bank's designee in connection with Transaction processing:

- (a) The DBA name of Merchant (if any), name of Merchant and Merchant's address;
- (b) Merchant's customer service telephone number;
- (c) Merchant's Internet address (if applicable);
- (d) The Merchant Number assigned to Merchant by Bank;
- (e) The Card account number, validation date and/or expiration date of the Card, if one appears on the Card used to effect the Transaction;
- (f) The name, address and telephone number of Cardholder; and
- (g) Such additional information as may from time to time be required by Bank and/or the relevant Issuer.

Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations

17. **Authorization for Transactions.** Merchant shall obtain Authorization for Transactions as follows:

- (a) Electronically Transmitted Transaction. Merchant shall submit each Normal Transaction for Authorization to the Authorization Center using the equipment. The Authorization Center shall authorize or decline a Normal Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Normal Transaction. If equipment is inoperable at the time of an Authorization request, the Transaction may be authorized by using the appropriate dial-up facility. In that case, the Transaction shall be entered as a Forced Sale Transaction, provided the approval number is also entered, and Merchant shall be subject to [an additional voice or audio response unit ("ARU") Authorization Fee as outlined on Schedule A.
- (b) Full Recourse Transactions. The following additional requirements apply to Full Recourse Transactions:

- i. All Full Recourse Transactions are at Merchant's risk. As to each Full Recourse Transaction, Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant: (i) Merchant shall pay Bank the amount of the Transaction, any Chargeback fee set forth on Schedule A, plus any Association fine or assessment; and (ii) Bank may charge all such amounts to the Operating Account or Reserve Account without prior notice to Merchant;

ii. All Full Recourse Transactions must be electronically authorized through the Authorization Center and, in addition to the information required in Section 19 of this Agreement, each such request for Authorization also shall include: (i) an Authorization code, if required; (ii) the Cardholder's address and Address Verification results; and (iii) in lieu of the Cardholder's signature, a notation of (A) mail order (MO), (B) telephone order (TO), (C) e-commerce order (EO), or (D) pre-authorized order (PO) on the signature line;

iii. If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once each year. Merchant shall not deliver goods or perform services covered by a pre-authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Bank that the Card covering the pre-authorization is not to be honored; and iv. Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall do an Address Verification to qualify for the Qualified Transaction discount rate.

**18. Prohibited Transactions.** Merchant shall not do any of the following with respect to any Transaction:

- (a) Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- (b) Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- (c) Establish a minimum or maximum dollar Transaction amount;
- (d) Obtain multiple Authorizations for amounts less than the total sale amount;
- (e) Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- (f) Extend credit for or defer the time of payment of the total cash price in any Transaction;
- (g) Honor a Card except in a Transaction where a total cash price is due and payable;
- (h) Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- (i) Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;
- (j) Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) the defense of any crime other than a traffic violation; (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- (k) Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- (l) Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
- (m) Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- (n) Use the equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
- (o) Use the equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- (p) Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- (q) Disclose any information obtained through the equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;
- (r) Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- (s) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- (t) Disburse funds in the form of cash;
- (u) Accept a Card to collect or refinance an existing debt;
- (v) Issue a transaction credit in respect of goods or services acquired in a cash transaction which are returned; or
- (w) Make any cash refund to a Cardholder who has made a purchase with a Card. All transaction credits will be issued to the same Card account number as the sale.
- (x) A merchant may not accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.

**19. Prohibition of Furnishing Account Information.** Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card to any third party.

**20. Daily Reconciliation of Transactions.**

- (a) Electronically Transmitted Transactions. Transactions will be settled on a daily basis. Bank shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Operating Account equal to the reconciled summary Transaction total of all of Merchant's total summary Transactions since the previous credit. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks, Merchant owes Bank or SIGNATURE hereunder; (iv) all taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this Agreement; and (v) all applicable rates, fees and charges described on Schedule A.
- (b) Reconciliation of Transactions. Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Bank for payment, and shall notify Bank and SIGNATURE immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Neither Bank nor SIGNATURE shall have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Bank for settlement.
- (c) Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer or Bank and/or SIGNATURE receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

**21. Adjustments and Returns.** Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay Bank the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section 24. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies. Merchant shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

**22. Chargebacks.** The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement shall be without recourse to Merchant, except for:

- (i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) as follows:
  - (a) No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Bank, or the Transaction was submitted to the Bank or SIGNATURE thirty (30) days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
  - (b) The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been canceled and Merchant was so notified prior to the Transaction;
  - (c) The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, and Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
  - (d) The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
  - (e) The information required in Sections 17 and 18(b) above was not submitted to Bank;
  - (f) Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
  - (g) The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
  - (h) A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the

Cardholder in a Transaction;

(i) The Transaction was made at or by a Merchant other than Merchant named in this Agreement;

(j) The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;

(k) A Transaction is charged back by an Issuer; or

(l) Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect. In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Merchant shall pay Bank the amount of the Transaction. Merchant agrees that Bank, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. If Merchant disagrees with Bank's decision to charge back a Transaction, Merchant must so notify Bank in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued. Without limiting the generality of any other provision of this Agreement, if Bank or SIGNATURE, if SIGNATURE has indemnified Bank, takes legal action against Merchant for any Chargebacks or any amounts due Bank or SIGNATURE hereunder, Merchant shall pay the costs and attorneys' fees incurred by Bank and/or SIGNATURE, whether suit is commenced or not.

23. **Merchant Statement.** At least once per month, Bank shall provide Merchant with a statement (the "Merchant Statement"). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.

24. **Records.** In addition to any records Merchant routinely furnishes to Provider under this Agreement, Merchant will preserve Transaction Records and Credit Vouchers and any written authorization of the Cardholder for the longer of the following: (a) two years after the Transaction is completed, (b) the period required by Law or the Network Rules, (c) if a dispute is pending, until such dispute is resolved.

25. **Requests for Copies.** Immediately after Merchant receives the request by Provider, Merchant will provide to Provider either the original or a legible copy (in a size comparable to the actual Transaction Record) of the paper Transaction Record and any other documentary evidence available to Merchant that Provider reasonably requests to meet Provider's obligations under Law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

26. **Recovery of Cards.** Merchant will use its best efforts to reasonably and peaceably recover and retain any Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the equipment; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

27. **Customer Complaints.** Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank, Bank may terminate this Agreement. Bank reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice: (a) The Cardholder's name; (b) The Card account number; (c) The date and time the Cardholder asserted the claim or defense; (d) The nature of the claim or defense; and (e) The action that Merchant took in an attempt to resolve the dispute. Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

28. **Confidentiality.** Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to SIGNATURE and to Issuers.

29. Associations' and Issuers' Requirements. Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Bank directly or through SIGNATURE. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, Merchant may use Card service marks or design marks in its own advertisement and promotional materials. Merchant agrees that Provider may disclose to any Card Network information regarding Merchant and Merchant's Transactions to any Card Network, and that such Card Network may use such information to perform its responsibilities in connection with its duties as a Card Network, promote the Card Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of Card Network Card acceptance, and transactional or relationship communications from a Card Network. A Card Network may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with the Card Network marketing and administrative purposes. Merchant agrees it may receive messages from a Card Network, including important information about Card Network 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.

30. **Compliance with Applicable Law.** Merchant will comply with and conduct its Card activities in accordance with all applicable local, state, and federal statutes, regulations, ordinances, rules and other binding law, as the same may be enacted or amended from time to time (collectively, "Laws") as well as all Network Rules. Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (c) add any tax to transactions, unless applicable Law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (d) enter into interchange any Transaction Record for a Transaction that was previously the subject of a Chargeback to Provider and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Network system); (e) request or use an account number for any purpose other than as payment for its goods or services; (f) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (g) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers cheques, Cards, or foreign currency, or (iii) Merchant is participating in the Card Network cash back or Cash Over service; (h) accept a Card for manual cash disbursement; (i) accept a Card to collect or refinance existing debt that has been deemed uncollectible by Merchant providing the associated goods or services; (j) enter into a Transaction that represents collection of a dishonored check; or (k) accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Network fines, fees, penalties and all other assessments or indebtedness levied by Card Network to Provider which are attributable, at Provider's discretion, to Merchant's Transaction processing or business. The Card Network may require that Bank limit Merchant's participation in the applicable Card Network and/or terminate this Agreement.

31. **Merchant's Business.** Merchant will notify Provider immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant or Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; (f) changes its return policies or to another fulfillment house different from those identified in Merchant Application; or (g) changes to its Account. Merchant will notify Provider promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of the Agreement and for Provider's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Provider may immediately terminate this Agreement.

32. **Merchant's Representations and Warranties.** Merchant represents and warrants that: (a) all information contained in the Merchant Application or any other documents delivered to Provider in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principals, partners, owners or officers (as applicable); (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of Law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds 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 action, suit or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.

33. **Merchant's Covenants.** Merchants covenants that: (a) each Transaction Record presented to Provider for collection is genuine and is not the result of any fraudulent activity, or a Transaction prohibited by a Card Network, or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (b) each Transaction Record is the result of a bona fide purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Transaction Record; (c) Merchant will perform all of its obligations to the Cardholder in connection with the Transaction evidenced thereby; (d) Merchant will comply with Provider's procedures for accepting Cards, and the Transaction itself will not involve any element of credit for any other purposes other than as set forth in this Agreement, and will not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Network Rules, the Consumer Credit Protection Act (15 USC §1601) or other Law; and any Credit Voucher which Merchant issues represents a bona fide refund or adjustment on a Transaction by Merchant with respect to which a Transaction Record has been accepted by Provider.

34. **Taxes.** Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank or SIGNATURE are required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank or SIGNATURE. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Bank or SIGNATURE shall be entitled to recover any of said taxes paid by it on behalf of Merchant from Merchant immediately after payment.

35. **Limitation of Liability.** In addition to all other limitations on the liability of Bank and SIGNATURE contained in this Agreement, neither Bank nor SIGNATURE shall be liable to Merchant or Merchant's customers or any other person for any of the following: (a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so; (b) Any loss caused by a Transaction downgrade resulting from defective or faulty equipment regardless if owned by Bank, SIGNATURE or Merchant; (c) The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, SIGNATURE or any other person for any reason; or (d) Interruption or termination of any Services caused by any reason except for failure of SIGNATURE to repair or replace equipment at Merchant's expense; or (e) Equipment has been modified by any other party. At no time will SIGNATURE's liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period. NEITHER BANK NOR SIGNATURE SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR SIGNATURE PURSUANT TO THIS AGREEMENT. MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR SIGNATURE'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND SIGNATURE'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

36. **Limitation on Damages.** In no case shall Merchant be entitled to recover damages from SIGNATURE or Bank that exceed the fees retained by Bank and SIGNATURE pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.

37. **Indemnification.** Merchant agrees to indemnify and hold Bank and SIGNATURE harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or Bank's affiliates, SIGNATURE or affiliates of SIGNATURE) arising out of any of the following: (a) Merchant's failure to comply with this Agreement; (b) Any act or omission of Merchant; (c) Merchant's failure to comply with the equipment's User's Guide; (d) Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer; (e) Merchant's failure to comply with any applicable law, rule or regulation; (f) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service; (g) The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns; (h) Merchant's selection of an Internet service provider or other telecommunication services provider; i. The theft of or damage or destruction to any equipment; or ii. Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.

38. **Credit Investigation and Bank Auditing.** Bank may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank to complete Bank's audit. Merchant authorizes parties contacted by Bank to release the credit information requested by Bank, and Merchant agrees to provide Bank a separate authorization for release of credit information, if requested. Merchant shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. [Without limiting the generality of the foregoing, Merchant shall provide to Bank and SIGNATURE its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.]

39. **Termination of Agreement by Bank and SIGNATURE.** Bank may terminate this Agreement upon at least 30 days' prior written notice to the other parties. In addition, Bank and SIGNATURE jointly may terminate this Agreement without notice to Merchant under any of the below listed circumstances. Any such notice of termination by Bank is effective upon mailing. (a) Any information concerning Merchant obtained by Bank is unsatisfactory to Bank in Bank's sole discretion; (b) Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or SIGNATURE or Bank believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation; (c) Chargebacks are excessive in the opinion of Bank; (d) Breach of this Agreement by Merchant; (e) Any representation or warranty made by Merchant in this Agreement is not true and correct; (f) Merchant files a petition under any bankruptcy or insolvency law; (g) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank hereunder; (h) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank; (i)

Any insurance policy obtained by Bank, SIGNATURE or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason; (j) Merchant fails to provide financial statements suitable to Bank on request; or (k) SIGNATURE does not or cannot perform its duties under this Agreement and Bank determines that it is not feasible to provide to Merchant the Services contemplated by this Agreement. Bank is not obligated to provide replacement Services if SIGNATURE does not or cannot perform. Bank may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction.

40. **Termination of Agreement by Merchant.** Merchant may terminate this Agreement upon at least 30 days' prior written notice to the other parties if Bank amends Schedule A pursuant to Section 40 to increase the rates, fees or charges Merchant pays hereunder, except for fees or rates that result from a pass through from an Association.

41. **Setoff.** In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or SIGNATURE may set off any amounts due to Bank and/or SIGNATURE under this Agreement against any property of Merchant in the possession or control of Bank or SIGNATURE.

42. **Exclusivity.** Merchant shall submit all Transactions made during the term hereof solely to Bank for processing. If Merchant fails to comply with this provision, Merchant agrees to pay Bank, within 10 days of the date of non-compliance, a liquidated damages sum to be determined by computing the projected gross dollar volume of Transactions processed by Bank on behalf of the Merchant for the remainder of the term hereof and multiplying that number by 1%. Merchant and Bank agree that the damages suffered by Bank as a result of such non-compliance would be extremely difficult to calculate with precision. For that reason, the parties hereto agree that the liquidated damages should be computed as set forth above. Any exceptions to this exclusive arrangement must be approved by Bank and SIGNATURE in advance in writing.

43. **Amendments to this Agreement.** From time to time Bank may amend this Agreement as follows: (a) Amendment to Cards and/or Services. Bank may amend or delete Cards or Services listed in Schedule A by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions. (b) Amendment to Fees and Charges. From time to time, Bank may change all rates, fees and charges set forth on Schedule A. Bank will provide written notice to Merchant of all such amendments. Bank may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached. If notice is required, Bank will give written notice on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Section 37. (c) Amendments to all other Provisions. Bank may amend this Agreement in any manner other than as described in Section 40(a) or 40(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank in such written notice.

44. **Assignment.** This Agreement may not be assigned by Merchant without the prior written consent of Bank. Bank may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve Bank of any further obligations under this Agreement.

45. **Financial Accommodations.** Bank, SIGNATURE and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.

46. **Waiver.** To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's rights or claims under this Agreement.

47. **Cooperation.** In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.

48. **Entire Agreement.** This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

49. **Severability.** If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

50. **Notices.** Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

**If to BANK:**

Merrick Bank Corporation  
10705 South Jordan Gateway, Suite 200  
South Jordan, Utah 84095

**With a Copy to:**

Merchant Services Department  
Merrick Merchant Services  
135 Crossways Park Drive North Suite, A  
Woodbury, New York 11797

**If to SIGNATURE:**

Signature Card Services  
2101 W. Burbank Blvd  
Burbank, CA 91506

**If to MERCHANT:**

Address listed on Merchant Application

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.

51. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Utah, without regard to internal principles of conflict of laws, and federal law.

52. **Captions.** Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

53. **No Waiver.** Any delay, waiver or omission by Bank to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

54. **Force Majeure.** The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority. Terms Below Are Additional Terms Applicable Specifically to American Express Card Acceptance (capitalized 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](http://www.americanexpress.com/merchantopguide).

55. **Transaction Data.** Merchant authorizes Provider and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Bank on behalf of Merchant.

56. **Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Provider. Note that 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.

57. **Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OptBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

58. **American Express as Third Party Beneficiary.** Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.

59. **American Express Opt-Out.** Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Networks.

60. **Refund Policies.** Merchant's refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Network, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

61. **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.