

MERCHANT PROCESSING AGREEMENT TERMS AND CONDITIONS

This Merchant Processing Agreement is among **Blue Parasol Group, LLC, d/b/a Paragon Payment Solutions**, whose principal place of business is 2141 E. Broadway Rd., Suite 202, Tempe, AZ 85282 ("ISO"), Merchant and Chesapeake Bank, whose principal place of business is 97 N. Main Street, Kilmarnock, VA 22482, ("Bank") for the limited purposes described expressly set forth herein below, and Bank is not otherwise a part of (nor liable for) any of ISO's obligations hereunder. For purposes of this Agreement and solely for convenience purposes, Bank and ISO may be collectively referred to hereinafter as the "Service Provider". Subject to the requirements of applicable Rules, ISO and Bank may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Bank may jointly or individually assert or exercise the rights or remedies provided to the Service Provider hereunder. This Merchant Agreement contains the terms and conditions under which Service Provider and/or other third parties will provide services to the Merchant and includes the Application signed by Merchant. To the extent ISO or any third party fails to perform any of its or their duties hereunder, Bank has the right, but not the obligation, to perform the services for Merchant.

RECITALS

Merchant desires to accept Cards, as indicated on the Application, validly issued by members under license of the Card Brands. Service Provider desires to provide Card processing services to Merchant. Therefore Service Provider and Merchant agree as follows:

ARTICLE I – DEFINITIONS

- 1.1 "ACH"** means the Automated Clearing House paperless entry system operated by the Federal Reserve.
- 1.2 "Application"** means the application document submitted as a part of this Agreement.
- 1.3 "Authorization"** means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain credit approval from the Card Issuer.
- 1.4 "AVS"** (Address Verification System) allows verification of the Cardholder's zip code and billing address while requesting Authorizations for Transactions or during a request for address verification only.
- 1.5 "Card"** means a valid payment card in the form issued under license from a Card Brand.
- 1.6 "Card Brands"** means, as applicable, Discover® Network ("Discover Network"), MasterCard® International, Inc. ("MasterCard"), Visa® U.S.A., Inc. ("Visa"), American Express Travel Related Services Company, Inc. ("American Express"), any Debit Network or any other entity that regulates and manages their respective brands of Cards that are accepted by Merchant.
- 1.7 "Cardholder"** means the person whose name is embossed upon the face of the Card presented to Merchant.
- 1.8 "Card Issuer"** means the entity which has provided a Card to a Cardholder.
- 1.9 "Chargeback"** means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) is returned to Service Provider by a Card Issuer.
- 1.10 "Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment credited to a Cardholder account.
- 1.11 "Debit Network"** means a network upon which Transactions linked to checking or savings accounts are routed.
- 1.12 "Designated Account"** has the meaning set forth in Section 3.1 of the Agreement.
- 1.13 "Effective Date"** has the meaning set forth in Section 5.1(a) of the Agreement.
- 1.14 "Excessive Activity"** has the meaning set forth in Section 2.4(d) of the Agreement.
- 1.15 "Fees"** has the meaning set forth in Section 3.5(a) of the Agreement.
- 1.16 "Fee Schedule"** has the meaning set forth in the Application.
- 1.17 "Financial Condition Change"** has the meaning set forth in Section 3.2(b) of the Agreement.
- 1.18 "Imprint"** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.
- 1.19 "Initial Term"** has the meaning set forth in Section 5.1(a) of the Agreement.
- 1.20 "Marks"** has the meaning set forth in Section 7.1(b) of the Agreement.
- 1.21 "Merchant", "You", and "Your"** has the meaning set forth in the Application and in all instances refers to the merchant identified therein.
- 1.22 "MCC"** means Merchant Category Code and indicates the Merchant's category classification by Visa and MasterCard describing specifically the type of business the Merchant operates.
- 1.23 "Penalties"** means any and all fines, charges, penalties, assessments, late submission charges and all other costs, expenses and indebtedness levied by any Card Brand, Card issuer, Debit Network, regulatory authority or other third party that are assessed against, likely to be assessed against, charged to, likely to be charged to, incurred by (directly or indirectly) or otherwise paid by, ISO and/or Bank to the extent attributable to, arising out of, or related to Merchant's (i) Transactions or business, or (ii) breach or alleged breach of any provision in this Agreement.
- 1.24 "POS Terminal"** has the meaning set forth in Section 3.4(e) of the Agreement.
- 1.25 "Reserve Account"** has the meaning set forth in Section 4.2(a) of the Agreement.
- 1.26 "Retrieval"** means a Card Issuer's or Cardholder's request of the Transaction receipt.
- 1.27 "Rules"** means the rules and regulations of any Card Brand, as amended

from time to time.

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

1.29 "Secured Assets" has the meaning set forth in Section 4.1(a) of the Agreement.

1.30 "Term" has the meaning set forth in Section 5.1(a) of the Agreement.

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

1.32 "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction. Unless otherwise approved in writing by Service Provider, Merchant agrees to pay \$0.95 for each Voice Authorization during the Term.

ARTICLE II - CARD ACCEPTANCE

2.1 HONORING CARDS

A. Without Discrimination. Merchant will accept without discrimination, all valid Cards as indicated by Merchant on the Application when properly presented by Cardholders for payment for goods or services within the Merchant's category (MCC) of acceptance. Merchant may not discriminate between payment Cards within a Card Brand network on the basis of the Card Issuer that issued the presented Card.

B. Acceptance. Merchant will elect on the Application to accept (full acceptance) or not accept (limited acceptance) Cards for payment. A full acceptance Merchant will accept all valid Cards unless Merchant provides 30 days written notice to Service Provider requesting limited acceptance and stating Merchant's election of Card types. Limited acceptance is not applicable to non-US issued Cards and is in all instances subject to the Rules.

C. Advertised Price. Merchant agrees to accept Cards for payment of goods or services without charging any amount over the advertised price as a condition of Card acceptance, unless local law requires Merchant be permitted to engage in such practice.

D. Minimums and Maximums. Merchant shall not establish minimum or maximum Transaction dollar values for Card sales except to the extent permitted under the Rules and applicable law.

E. Surcharges. If Merchant chooses to impose a surcharge on Card payments, Merchant may do so only after meeting specific considerations, limitations and requirements as defined by the Card Brands and applicable law.

F. Discounts. Merchant may offer a discount or in-kind incentive as an inducement for a Cardholder to use a means of payment that the Merchant prefers, provided that the discount meets all specific considerations, limitations and requirements as defined by the Card Brands and applicable law.

G. Disputes with Cardholder. (a) All disputes between Merchant and any Cardholder relating to any Transactions will be settled between Merchant and the Cardholder. The Service Provider bears no responsibility for such Transactions. (b) Merchant must not require a Cardholder, as a condition for honoring a Card, to sign a statement that waives the Cardholder's right to dispute the Transaction with the Card Issuer.

H. Cardholder Identification. Merchant will identify the Cardholder and check the expiration date and signature on each Card. Merchant will not honor any Card if: (i) the Card has expired; (ii) the signature on the Sales Draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form); or (iv) the Card was declined as a result of an Authorization attempt. Merchant may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver license number as a condition for honoring a Card unless permitted by law and the Rules.

I. Non-presentment. Merchant shall not accept a Card as payment (other than for mail order, Internet sale, 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 Merchant to examine it and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

J. Card Recovery. Merchant will use reasonable efforts and peaceful means to recover any Card if: (i) Merchant is advised by Service Provider, the issuer of the Card or the designated Voice Authorization center to retain it; or (ii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder. NOTE: The obligation of Merchant imposed by this section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property and Merchant will hold Service Provider harmless from any claim arising from any injury to person or property, or other breach of the peace in connection with the retention or recovery of a Card.

K. Location. Merchant may honor Cards only at location(s) approved by Service Provider. Additional locations may be added, subject to Service Provider's approval. Either Merchant or Service Provider may delete location(s) by providing notice as provided in this Agreement.

2.2 AUTHORIZATIONS

A. Required on all Transactions. Merchant will obtain prior Authorization for the total amount of a Transaction via electronic terminal, gateway or other compliant and certified device before completing any Transaction, and Merchant will not process any Transaction that has not been authorized. Merchant will follow all instructions received during the Authorization process. Upon receipt of an Authorization approval Merchant may consummate only the Transaction authorized and must note on the Sales Draft the Authorization number. Where Authorization is obtained, Merchant will be deemed to warrant the true and matching identity of

the customer as the Cardholder.

B. No Guarantees. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired or otherwise invalid Card.

C. Unreadable Magnetic Stripes. When presenting Transactions for Authorization electronically, and Merchant's terminal is unable to read the magnetic stripe on the Card, Merchant must obtain a Voice Authorization and Merchant must obtain an Imprint of the Card and also obtain the Cardholder's signature on the Imprinted Sales Draft before presenting the Sales Draft to Service Provider for processing. Failure to perform these additional actions may result in the assessment of Transaction surcharges or a rejected Transaction.

2.3 PRESENTMENT OF SALES DRAFTS

A. Sales Draft Administration. Unless the Sales Draft is electronically generated from a swiped Transaction or is the result of an Internet, mail, phone or preauthorized sales order, Merchant must use a Sales Draft or other form approved by Service Provider to document each transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated if electronic); (iii) the date of the Transaction; (iv) a brief description of the goods or services involved; (v) the Authorization number; (vi) the total amount of the sale including any applicable taxes; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Sales Drafts must be signed by the Cardholder when required by the Rules or applicable law.

C. Delivery and Retention of Sales Drafts. Merchant will deliver a complete copy of the Sales Draft or Credit Voucher to the Cardholder at the time of the Transaction. In addition to any records routinely furnished to Service Provider under this Agreement, Merchant shall preserve a paper or microfilm copy of all actual paper Sales Drafts and Credit Vouchers and if a mail, phone order or preauthorized order is involved, the Cardholder's signed Authorization for the Transaction for at least eighteen (18) months (or longer if required by law or Rules) after the date Merchant presents the Transaction and Merchant must preserve records in accordance with Article III, Section 3.04 of the Agreement.

D. Electronic Transmission. If Merchant utilizes electronic authorization and/or data capture equipment and/or services; Merchant will enter the data related to a sales or return Transaction into a computer terminal or magnetic stripe reading terminal and transmit daily Transactions to the Service Provider (or its duly assigned processor) no later than the close of business on the date the Transactions are completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of Penalties.

E. Compliance. If Merchant provides or uses their own electronic terminal, gateway or similar Transaction device to capture Transactions and generate Sales Drafts, such devices must meet Service Provider, Card Brand, PCI Security Standards Council (pursuant to Article III, Section 3.4 of this Agreement) and Government requirements for processing Transactions.

F. Inspection. If Service Provider requests a copy of a Sales Draft, Credit Voucher or other Transaction evidence, Merchant will provide it within 24 hours following the request.

G. Multiple Transaction Records. Merchant shall not prepare more than one Sales Draft for a single sale or for a single item and shall include all items or goods and services purchased in a single Transaction in the total amount on a single Sales Draft except as permitted by the Rules.

H. Forms. Merchant shall only use forms or modes of transmission of Sales Drafts and Credit Vouchers as provided or approved by Service Provider. Merchant shall not use forms provided by Service Provider other than in connection with Transactions without Service Provider's prior written consent.

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

2.4 DEPOSIT OF SALES DRAFTS AND FUNDS DUE MERCHANT

A. Presentment and Acceptance. Service Provider shall accept from Merchant all valid Sales Drafts presented by Merchant under the terms of this Agreement and shall present the same to the appropriate Card issuers for collection against Cardholder accounts. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to this Agreement and the Rules. Service Provider shall be the only entity that will provisionally credit the value of collected Sales Drafts to the Designated Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, Fees, Penalties and items for which Service Provider did not receive final payment. Service Provider may refuse to accept or withhold payment of any Sales Draft without notice until the expiration of any Chargeback period, or revoke its prior acceptance of a Sales Draft, in the following circumstances: (i) Service Provider reasonably suspects that the Sales Draft was not made in compliance with this Agreement, Rules or applicable law; (ii) the Cardholder disputes its liability to Service Provider for any reason, including but not limited to Cardholder Chargeback rights enumerated in the Rules; (iii) the Transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder; (iv) the Transaction is outside the parameters indicated on the Application; (v) if Service Provider determines, at its sole and reasonable

discretion, that a Transaction or batch of Transactions poses a risk of loss; (vi) Service Provider may impose a cap on the volume and/or ticket amount of Sales Drafts that Service Provider will process for Merchant, as indicated on Application or imposed otherwise by Service Provider. This limit may be modified by Service Provider upon written notice to Merchant. If Merchant exceeds the limit established by this Agreement, Service Provider may suspend processing, charge additional Fees, hold deposits over the cap, and/or return all Sales Drafts evidencing funds over the cap to Merchant or terminate this Agreement. Merchant will pay Service Provider, as appropriate, any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by Service Provider. Merchant agrees that Service Provider has no liability for any delay in funding and that Service Provider is not responsible for any losses Merchant may incur, including but not limited to NSF fees, due to delayed deposit of funds.

B. Returns and Adjustments: Credit Vouchers. Merchant agrees that it will conduct business in regards to returns as follows: (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. Merchant agrees to disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms). (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale. (c) If Merchant does not make these disclosures and Cardholder requests a refund, a full refund in the form of a credit to the Cardholder's Card account must be given. Merchant shall not refund cash to a Cardholder who originally paid for the item by Card. (d) Credits must be made to the same Card account number on which the original sale Transaction was processed. (e) If Merchant accepts any goods for return, any services are terminated or canceled in conjunction with each such Transaction. Merchant shall have sufficient funds in its Designated Account available to Service Provider to cover the amount of the Transaction and any related Fees. (f) Merchant warrants that any Credit Voucher it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted. (g) Under no circumstance will Service Provider be responsible for processing credits or adjustments related to Sales Drafts not originally processed by processor and Service Provider.

C. Chargebacks and Penalties. Merchant and Guarantor(s) are fully liable for all Chargebacks and Penalties. Merchant will pay upon presentation the value of all Chargebacks. Authorization is granted by Merchant to Service Provider to offset from incoming Transactions and to debit the Designated Account, the Reserve Account or any other account held at Bank or at any other financial institution the amount of all Chargebacks and Penalties. Merchant will fully cooperate in complying with the Rules regarding Chargebacks. Merchant agrees that: (a) failure to pay a Chargeback upon such presentation shall be considered a material breach of this Agreement and Merchant, in addition to any other remedies which may be exercised by Service Provider, shall be charged \$25 per Chargeback, plus a late fee of (i) the maximum allowed by law; or (ii) one and one half percent (1.5%) per month or portion thereof on all unpaid Chargebacks, whichever is greater; (b) Merchant agrees to accept for Chargeback any sale for which the Cardholder disputes the validity of the sale according to the Rules, or Service Provider determines that Merchant has in any way failed to comply with the Rules or Service Provider procedures, including but not limited to the following: (i) Sales Draft is illegible, not signed by the Cardholder or has not been or cannot be presented to Service Provider within the required time frame(s); (ii) Sales Draft does not contain the Imprint of a valid unexpired Card; (iii) an Authorization has not been obtained and/or a valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iv) Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated on one Card for a single sale; (v) Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased; (vi) price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment; (vii) Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number; (viii) Service Provider reasonably believes, within its sole discretion, that Merchant has violated any provision of this Agreement; or (ix) Service Provider reasonably determines that the Transaction record is fraudulent or that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees, or for whatever reason pertaining to not complying with the Rules. Notwithstanding any Authorization or request from a Cardholder Merchant shall not initiate a sale Transaction in an attempt to collect a Chargeback. Guarantors are personally liable for all Chargebacks and Penalties. In the event Merchant sells its business and a new owner incurs Chargebacks and/or Penalties, the original Merchant and all Guarantors will be held personally liable for the Chargebacks, Penalties and any other liabilities of the new owner(s). In the event the Designated Account is closed or is otherwise unavailable to Service Provider for ACH debit, Merchant and/or Guarantors consent to Service Provider locating additional deposit accounts or assets by using any means available. In this event Merchant and/or Guarantors waive all rights to their privacy in favor of Service Provider until such time as all unpaid Chargebacks, Fees and Penalties owed to Service Provider have been paid in full. In addition to the Fees, Penalties and charges set forth in this section, Merchant agrees to pay Chargeback Fees as indicated on the Application for Chargebacks received by Service Provider regardless of outcome of a Merchant dispute of such Chargeback. Merchant has the right to follow procedures outlined by the Rules to dispute a Chargeback, but such Merchant dispute procedure does not guarantee to relieve Merchant from the responsibilities in respect to Chargebacks outlined in this Section.

D. Excessive Activity. Merchant's presentation to Service Provider of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period for any one of Merchant's terminal identification numbers or merchant identification numbers: (i) the dollar amount and/or number of Chargebacks and/or Retrieval requests in excess of 1% of the average monthly dollar amount and or number of Transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 3% of the average monthly dollar amount of your Transactions. Merchant authorizes, upon the occurrence of Excessive Activity, Service Provider to take any action deemed necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

2.5 OTHER TYPES OF TRANSACTIONS

A. Recurring Transactions. For recurring Transactions, Merchant must be approved by Service Provider to accept recurring Transactions and obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. Merchant will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from Service Provider, or (iii) a response that the Card is not to be honored. Merchant must print legibly on the Sales Draft the words "Recurring Transaction".

B. Multiple Sales Drafts. (a) Merchant will include a description and total amount of goods and services purchased in a single Transaction on a single Sales Draft or Transaction record, unless (i) partial payment is entered on the Sales Draft or Transaction record and the balance of the Transaction amount is paid in cash or by check at the time of Transaction, or (ii) a Sales Draft represents an advance deposit in a Transaction completed in accordance with this Agreement and the Rules. (b) Merchant shall not submit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any Chargebacks and/or Penalties resulting from duplicate Transactions.

C. Mail Orders "MO", Telephone Orders "TO" and Internet Orders "IO." (a) Unless Merchant has been implicitly approved by Service Provider to accept mail orders, telephone orders, or Internet orders, Merchant warrants that it is a walk-in trade business, located in a retail business place conducting face-to-face Transactions. If Merchant is found to be submitting Transactions for mail orders, telephone orders, or Internet orders without Service Provider approval, this Agreement may be terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds thereof may be held pursuant to Article IV of this Agreement. (b) If Merchant is authorized by Service Provider to accept payment by mail order, telephone order, or Internet order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant shall create a Sales Draft containing Cardholder account number, expiration date, Transaction date, an Authorization number, the sale amount and the letters "MO", "TO", or "IO" as appropriate. In addition, the Merchant's business name, city and state must be included. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any MO, TO or IO Transaction. (c) For Approved MO, TO, and IO Merchants, performing AVS (Address Verification System) is required. AVS is not a guarantee for payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction. (d) In the event the Merchant is approved to conduct MO, TO, or IO Transactions, Merchant is cautioned to apply fraud protection measures (as described on the Visa and MasterCard web sites) and Merchant understand that there is a higher risk of customer disputes and/or fraud associated with these types of Transactions. (e) If Merchant's Retail/Mail Order/Telephone Order, Internet mix changes from the percentages represented to Service Provider in the Application, Service Provider may cease accepting mail/telephone order Transactions, or limit its acceptance of such Transactions, or increase their Fees, or terminate this Agreement, or impose a Reserve Account, unless prior written approval has been obtained from Service Provider. (g) Merchant may not deposit a MO, TO, or IO Sales Draft before the product is shipped.

D. Future Delivery. (a) Merchant will not present for processing, whether by electronic means or otherwise, any Sales Draft, or other memorandum, to Service Provider representing a payment, partial payment or deposit for goods or services to be delivered in the future, without the prior written consent of Service Provider. Such consent will be subject to Service Provider's final approval. (b) The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the law or Rules. (c) If Service Provider has given such consent, Merchant represents and warrant to Service Provider that Merchant will not rely on any proceeds or credit resulting from such Transactions to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery Transactions. (d) If Merchant has obtained prior written consent, Merchant will complete such Transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. Merchant will note upon the Sales Draft the words "deposit" or "balance" as appropriate. Merchant will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or Merchant has fully performed the services.

2.6 PROHIBITED AND HIGH RISK TRANSACTIONS

IMPORTANT: FAILURE TO COMPLY IN FULL WITH THIS SECTION OF THE

AGREEMENT MAY RESULT IN THE TERMINATION OF THIS AGREEMENT, AND MERCHANT MAY BE ADDED TO THE CONSOLIDATED TERMINATED MERCHANT FILE (MATCH).

A. Fraud Transactions. Merchant will not, under any circumstances, present for processing, directly or indirectly, any Transaction or any Transaction Merchant knows or should know to be fraudulent or not authorized by the Cardholder. Merchant must not request or use a Card account number for any purpose other than as payment for goods and services.

B. Factoring. Merchant will not, under any circumstances, present for processing, directly or indirectly, any Transaction not originated as a result of a bona-fide Transaction directly between Merchant and Cardholder. Merchant will not present any Sales Drafts on behalf of another company, person, source or entity.

C. Lawful Purposes. Merchant will not, under any circumstance, engage in any Transaction, or use Card Acceptance and Transaction capabilities for selling goods and/or providing services prohibited by local, hyper-local, state, federal, international and other applicable laws included, but not limited to, the USA PATRIOT Act, Bank Secrecy Act, Consumer Protection Laws and the U.S. Tax Code. Merchant will not submit any Transactions prohibited by the Rules. Perpetrators of fraud or fraudulent Transactions will be referred to state and/or federal law enforcement agencies.

D. Cash Payments. Merchant will not, under any circumstances accept cash, checks or other negotiable items from any Cardholder and forward a Credit Transaction, as a purported payment or deposit to an account maintained by the Cardholder.

E. Cash Advances. Merchant will not submit, deposit or process any Transaction for the purpose of obtaining or providing a cash advance. Merchant will not submit any Transaction that involves a Card owned or controlled by Merchant for the purpose of obtaining a cash advance or deposit of funds into Merchant's own Designated Account. Merchant agrees that any such deposit or Transaction shall be grounds for immediate termination.

F. Refinancing Existing Debt. Merchant will not accept a Card to collect or refinance an existing debt that: (i) has been deemed uncollectible by the Merchant providing the associated goods or services; (ii) represents any other pre-existing indebtedness by Cardholder, including collection of delinquent accounts on behalf of other parties; (iii) represents the collection of a dishonored check. Further, Merchant must not accept Cardholder payments for previous Card charges.

G. Merchant Category. Merchant may not accept Card payments for products and/or services delivered to Cardholder that are not directly applicable to the Merchant Category Code (MCC) entered on the Application, for which Merchant was approved. Should Merchant's MCC change after execution of this Agreement, Merchant shall not submit, deposit or process any Transactions until receiving Service Provider's written approval of MCC change. Merchant understands that accepting payments for goods and/or services not directly relating to the approved MCC will result in termination of this Agreement.

H. Rules. Merchant shall comply with the Rules. Merchant is required to review the latest versions of Rules, as applicable to Merchant's obligations under this Agreement, available online at each Card Brand's respective web site.

I. Cooperation. Merchant will fully cooperate with Service Provider and each Card Brand in the event that Service Provider or any Card Brand determines that there is a substantial risk of fraud arising from Merchant's access to Card processing networks. Merchant will take whatever action(s) Service Provider or Card Brands reasonably deem necessary in order to protect Service Provider, Card Brands, its members and Cardholders. Neither the Service Provider nor the Card Brands and any of their respective personnel will have any liability to Merchant for any action taken in good faith.

J. Prohibited Transactions. Merchant will not submit any telemarketing (inbound or outbound) sales Transactions or any other Transactions that Service Provider or Card Brand deems to be High Risk unless Merchant obtains Service Provider's prior written consent. Such consent will be subject to Service Provider's final approval and may be revoked by Service Provider without prior notice. Merchant may be subject to Card Brand registration and reporting requirements. If Merchant processes any such Transactions without Service Provider's prior approval, Merchant may be terminated immediately and Service Provider may suspend funds and/or require Merchant to establish a Reserve Account.

ARTICLE III – MUTUAL OBLIGATIONS

3.1 DESIGNATED ACCOUNT

A. Establishment and Authority. Merchant will establish and maintain a demand deposit account at an ACH receiving depository institution that satisfies any OFAC rules or applicable laws related to financial crimes and terrorism ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations to Service Provider, including Fees, contemplated by this Agreement. Merchant irrevocably authorizes Service Provider to debit the Designated Account for Chargebacks, Fees, Penalties and any other amounts owed under this Agreement. This authority will remain in effect for at least two (2) years after termination of this Agreement whether or not Merchant has notified Processor and Service Provider of a change to the Designated Account. Merchant must obtain prior written consent from Service Provider or processor to change the Designated Account. If Merchant does not obtain that consent, processor and Service Provider may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Service Provider will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Article IV of this Agreement upon receipt of funds from a Payment Brand. Typically, the deposit will be initiated three (3) business days following Service Provider's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce Transactions, which may be initiated five (5) business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Bank will be the only entity to deposit Sales Drafts to the Designated Account subject to Article II, Section 2.04 of this Agreement. Merchant authorizes

Service Provider to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Service Provider, in its sole discretion, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Service Provider and subject to all Chargebacks.

C. Asserted Errors. Merchant must promptly examine all statements relating to the Designated Account, and immediately notify Service Provider in writing of any asserted 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 Provider within 30 calendar days after Merchant receives the periodic statement containing the asserted error. Merchant's failure to notify Service Provider of any error within thirty (30) days constitutes a waiver of any claim relating to that error. Merchant may not make any claim against Service Provider relating to any asserted error for 60 calendar days immediately following Service Provider's receipt of Merchant's written notice. During that 60 day period, Service Provider will be entitled to investigate the asserted error.

D. Indemnity.

E. ACH Authorization. Merchant authorizes Service Provider to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by Merchant at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event Merchant changes the Designated Account, this authorization will apply to the new account.

F. Fees. Unless otherwise approved in writing by Service Provider, Merchant agrees to pay \$25 for each ACH debit or credit rejected or returned from the Designated Account and \$20 for each DDA change submitted to Service Provider during the Term.

3.2 MERCHANT OBLIGATIONS

A. Notification of Business Changes. Merchant shall provide Service Provider with immediate notice if Merchant intends to: (i) transfer, sell or liquidate any substantial part of its total assets and/or equity; (ii) change the basic nature of its business affecting Merchant's MCC; (iii) change ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; or (v) modify Merchant's monthly processing volume and/or average ticket size as approved by Service Provider, collectively known as Business Changes. Notice to Service Provider should be made to in accordance with Article VII, Section 7.02. Failure or neglect to provide notice of Business Changes may be grounds for termination of this Agreement. In event of Business Changes, Service Provider may at its sole discretion act to terminate this Agreement or, if deemed acceptable by Service Provider, Service Provider may opt to initiate a new Agreement with Merchant. In the event Service Provider suffers a monetary loss caused by neglect to comply with this Section, Service Provider has the right to recover such losses by means of exercising its Security Interests per Article IV, Section 4.01 of the Agreement.

B. Financial Condition. (a) Merchant will notify Service Provider, within one business day, in event of bankruptcy, receivership, insolvency, or similar condition or action initiated by or against Merchant or any of its principals; hereafter collectively referred to as a "Financial Condition Change." (b) Merchant will include Service Provider as a creditor in Merchant's bankruptcy proceedings if Merchant has funds due to Service Provider for any reason including Fees, Chargebacks, Penalties, ACH rejects or other amounts. (c) In event of Financial Condition Change, or if Merchant is aware of future or imminent Financial Condition Change, Merchant will cease all Card acceptance at once and will no longer accept and submit Transactions until Service Provider has given Merchant permission to do so after receiving notice of Financial Condition Change. (d) In the event of Financial Condition Change, Merchant will not sell, transfer, or disclose any Cardholder information, inclusive of Card account numbers or personal information to agent, vendors or any other parties.

C. Separate Notification. Separate notification regarding changes to account information, including those to the Designated Account, must be made to outside services used by Merchant including but not limited to American Express and any leasing company.

D. Request for Copy. Within three (3) calendar days of receipt of any written or verbal request by Service Provider, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof, in size comparable to the actual Sales Draft, and any other documentary evidence available to Merchant and reasonably requested by Service Provider to meet Service Provider's obligations under law (including its obligations under the Fair Credit Billing Act, 15 U.S.C. § 1601 et seq.) or otherwise to respond to questions concerning Cardholder accounts. Unless otherwise approved by Service Provider, Merchant will be assessed a \$15 fee for each request for copy.

3.3 CREDIT INQUIRIES FINANCIAL EXAMINATION AND INSPECTIONS.

A. Credit Inquiries. Merchant authorizes Service Provider to make credit inquiries considered necessary in order to review the acceptance and continuation of this Agreement. This authority is granted to Service Provider at any time during which Merchant owes any obligation to Service Provider and may survive the Term if necessary. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, principal owners or officers. If requested to do so by Service Provider, Merchant shall provide written consent of any individual for which an inquiry has been or is to be made if such individual did not execute this Agreement.

B. OFAC and Patriot Act Notice. Merchant, its principal owner(s) and guarantor(s) acknowledge that Bank is required by federal law (Section 326, USA PATRIOT Act of 2001) to inquire with the Office of Foreign Asset Control (OFAC) of the U.S. Treasury Department if Merchant, its principal

owner(s), proprietor(s), officer(s) or Guarantor(s) are present on any lists maintained by OFAC prior to accepting Merchant. To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT ACT requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means: When you open an account, as defined as a formal relationship established with Service Provider to provide or engage in financial services, dealings, or transactions, Service Provider may ask for the applicant's and/or your name, physical address, date of birth, taxpayer identification number, and other information that will allow Service Provider to identify the applicant and you. Service Provider may also ask to see the applicant's driver's license or other identifying documents. Service Provider will let you know if additional information is required. Further, you must adhere to all applicable guidelines of the USA PATRIOT Act. You acknowledge receipt of the following notice. **NOTICE: to help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, and other information that will allow us to identify you. We may also ask to see identifying documents.**

C. Inspections. Merchant grants Bank (or ISO at the direction of Bank) the right to occasionally inspect Merchant's principal place of business solely for the purpose to confirm that Merchant is adhering to the terms of this Agreement. However, nothing in this paragraph shall be interpreted as a waiver of Merchant's obligation to comply in all respects with the terms of this Agreement.

D. Audits. Merchant authorizes Bank (or ISO at the direction of Bank) to audit Merchant's records, systems, processes or procedures to confirm compliance with this Agreement. . .

3.4 SAFEGUARDING CARD INFORMATION

A. Release of Card Information. Merchant will not, under any circumstance, disclose, copy, distribute, release, make public or transmit Card information including account number, expiration date, CVV2/CVC2 or other Card security codes, or any data element relating to the Card to any third party, person, company, recipient or entity other than Service Provider or its authorized processing agent.

B. Storing Card Data. If Merchant is inclined to retain paper or electronic Sales Drafts or Credit Vouchers, Merchant may only do so if (i) Sales Drafts or Credit Vouchers contain only Cardholder account information permitted to be retained by Merchant as mandated by the Rules; (ii) any type of electronic storage is maintained in strict accordance with the PCI-DSS on a PA-DSS certified system; (iii) Sales Drafts or Credit Vouchers which no longer bear an importance are properly destroyed in a manner which renders the data unreadable and unrecoverable.

C. Prohibited Data Storage. Neither Merchant nor any type of software system used by Merchant, shall store, save or retain, in whole or in part, either electronically, on paper or any other type of media, Card magnetic stripe information, track data, or Card security codes (e.g. CVV, CVC, CID, CVV2 or CVC2) appearing or stored on the Card.

D. Payment Applications. Merchant may be using special services, hardware or software provided by a third party ("Third Party Payment System") to assist Merchant in processing Transactions, including Authorizations, batch settlement or accounting functions. In the event Merchant uses a Third Party Payment System including, but not limited to, a POS Terminal, POS system, POS software, payment software, payment gateway, virtual terminal, Cardholder activated terminal or automated fuel dispenser, Merchant is responsible for assuring third party system is PA-DSS certified and complies with the PABP (Payment Application Best Practices) as set forth by the Payment Card Industry Security Standards Council (PCI-SSC) and the Card Brands. Merchant must ensure that any software or system updates of Third Party Payment System(s) satisfies all security standards then required under the Rules (including PABP, PA-DSS and PCI-DSS). Service Provider has no responsibility for any Transaction until that point in time Service Provider receives data about the Transaction. Merchant must notify Service Provider of its use of any Third Party Payment System that will have access to and/or stores Cardholder or Card information.

E. Electronic Terminals. If Merchant provides its own Point-of-Sale electronic terminal or similar device ("POS Terminal"), such POS Terminals must comply with, and meet all requirements set forth by, Service Provider, any applicable processor, and directives set forth by the PCI-SSC as amended from time to time, in order to submit Transactions. Information regarding a sales or credit Transaction transmitted with a POS Terminal will be transmitted by Merchant to Service Provider or applicable Processing Host in the format Service Provider from time to time specifies or is required under the Rules. If Service Provider requests a copy of a Sales Draft, Credit Voucher or other Transaction evidence, Merchant will provide it within three (3) business days following the request. The means of transmission indicated in the Application shall be the exclusive means utilized by Merchant until Merchant has provided Service Provider with at least thirty (30) days prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to Service Provider or Processing Host.

F. PCI-DSS Compliance. Merchant shall be in full compliance with Rules relating to the privacy and security of Cardholder and Transaction data, including without limitation the most up-to-date version of the Payment Card Industry Data Security Standard (PCI-DSS), as amended from time to time by the Payment Card Industry Security Standards Council. Detailed information pertaining to aforementioned requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements may be found on the Card Brand's respective web sites. If Merchant does not validate and/or maintain its PCI-DSS compliance status through ISO's PCI-DSS compliance service program within 3 months after credit approval, Merchant will be charged a non-receipt of PCI data

validation fee of \$39.95 per month until such validation is obtained by ISO.

G. Merchant Responsibility. (a) Merchant shall be responsible for all Penalties levied by the Card Brands against Service Provider due to Merchant's actions or failure to act as required by the Card Brands. (b) Merchant acknowledges that it may be prohibited from participating in payment network programs if it is determined that Merchant is non-compliant. (c) Merchant acknowledges that Service Provider may cause Merchant to undergo an audit to verify Merchant's compliance with the foregoing security requirements (d) Merchant must notify Service Provider within twenty-four (24) hours after becoming aware of: (i) any suspected or actual data security breach; or (ii) any noncompliance by Merchant with the security requirements set forth herein. (e) Merchant shall, at its own expense: (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data by an authorized assessor acceptable to Service Provider; (ii) take all such remedial actions recommended by such investigation, Service Provider or Card Brand; and (iii) cooperate with Service Provider in the investigation and resolution of any security breach.

H. Truncation. Merchant must comply and adhere to the security provisions set forth in the Fair and Accurate Credit Transactions Act of 2003 (FACTA) which mandate that Card receipts given to the Cardholder may not contain: (i) more than the last five digits of the Card account number; and (ii) that the Card receipt may not contain the expiration date.

I. Passwords. In the event where Merchant receives a password from Service Provider to access a Transaction system or gateway, Merchant shall: (i) keep password confidential; (ii) not allow any other entity or individual to use password or gain access to Service Provider's systems; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Service Provider if Merchant believes the confidentiality of Service Provider's system or Merchant's information has been compromised by use of such password.

3.5 FEES AND OTHER AMOUNTS OWED SERVICE PROVIDER

A. Fees and Taxes. Merchant will pay Service Provider fees for services, forms and equipment in accordance with the Fee Schedule. In the event that the Service Provider modifies the Fee Schedule in any way not acceptable to the Merchant, Merchant has the right upon 30 days prior notice to terminate the Agreement. The fees set forth in the Fee Schedule (collectively, the "Fees") will be calculated and debited from the Designated Account once each business day or month for the previous business day or month's activity, or will be deducted from funds due Merchant attributable to Sales Drafts presented to Service Provider. Merchant is obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Service Provider may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement. Except as otherwise set forth in this Agreement, Merchant will not be responsible for any other fees, expenses, surcharges or costs.

B. Other Amounts Owed. Merchant will promptly pay processor and Service Provider any amount incurred by Service Provider attributable to this Agreement including but not limited to Chargebacks, Penalties and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. Merchant authorizes Service Provider to initiate a debit via ACH the Designated Account, Reserve Account, or any other account Merchant has at Bank or at any other affiliate or subsidiary of Bank or other financial institution for any amount Merchant owes Service Provider under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between Merchant and Service Provider, whether Merchant obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Service Provider demand funds due or such ACH does not fully reimburse Processor and Service Provider for the amount owed, Merchant will immediately pay Service Provider such amount. Merchant acknowledges and agrees that Service Provider will impose a 6% per annum interest rate charged to Merchant on the balance of any overdue funds due to Service Provider, or the greatest amount allowed by law, whichever is greater.

C. Pass-Through Fees. Each Card Brand assess fees to merchants in connection with Transactions that are outside the control of Service Provider, such as, dues & assessments, fixed acquirer network fees, international/cross-border Transaction fees, network access and data usage charges. Because these fees are frequently modified by the Card Brands, a detailed list of these fees has been posted online at <http://www.paragonsolutions.com/cardassociationfees>, where these fees are kept up to date. Pass-through fees are charged at cost to Merchant.

ARTICLE IV – SECURITY INTERESTS, RESERVE ACCOUNT, RECUPMENT AND SET-OFF

4.1 SECURITY INTERESTS

A. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to Service Provider a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; (iv) Merchant's electronic terminal, printer, imprinter and imprinter plate; (v) all accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor(s), including any affiliated companies of Merchant and/or Guarantor(s), whether established or designated and maintained pursuant to this Agreement or not; and (vi) any and all amounts which may be due to Merchant under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other collateral or security to Service Provider to secure your obligations under this Agreement upon Service Provider's request. These security interests and liens will secure all Merchant obligations under this Agreement and any other agreements now existing or later entered into between Merchant and Service Provider. This security interest may be

exercised by Service Provider without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.

B. Perfection. Upon request of Service Provider, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant will represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Service Provider will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Service Provider written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Service Provider are not required to file a motion for relief from a bankruptcy action automatic stay for Service Provider to realize on any of its collateral (including any Reserve Account). Merchant authorizes Service Provider to appoint Service Provider as Merchant's attorney-in-fact to sign Merchant's name to any financing statement used for the perfection of any security interest or lien granted hereunder.

4.2 RESERVE ACCOUNT

A. Establishment. Merchant will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Service Provider, with sums sufficient to satisfy Merchant's current and future obligations as determined by Service Provider, provided that such amount shall not exceed \$100,000 in the aggregate. Merchant authorizes Service Provider to initiate a debit to the Designated Account or any other account Merchant has at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if Service Provider determines such action is reasonably necessary to protect Service Provider's interests.

B. Use of Reserve Account. Bank may, with notice to Merchant apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and Service Provider. Further, Service Provider may exercise its right under this Agreement against the Reserve Account to collect any amounts due to Service Provider including, without limitation, rights of set-off and recoupment. Service Provider's right to outstanding amounts owed it by Merchant pursuant to this Agreement shall in no way be limited to the balance or existence of the Reserve Account. Rights granted to Service Provider with respect to the Reserve Account, as well as the security interest under this Agreement, shall survive the termination of this Agreement

C. Funds. Funds in the Reserve Account will remain in the Reserve Account until 180 calendar days following the later of termination of this Agreement, or Merchant's last transmission of Sales Drafts or Credit Voucher to Service Provider, or Chargeback submitted by Cardholder, provided, however, that Merchant will remain liable to Service Provider for all liabilities occurring beyond such 180-day period. After the expiration of such 180-day period Merchant must provide Service Provider with written notification indicating Merchant's desire of a release of any funds remaining in the Reserve Account in order to receive such funds. Merchant agrees that Merchant will not use these funds in the Reserve Account for any purpose, including but not limited to paying Chargebacks, Fees, Penalties or other amounts Merchant owes Service Provider under this Agreement. Bank will have sole control of the funds in Reserve Account.

D. Assurance. In the event of a bankruptcy proceeding, Service Provider does not consent to assumption of this Agreement. Nevertheless, in the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under the Bankruptcy Code (11 U.S.C. § 365), as amended from time to time, Merchant must establish or maintain a Reserve Account in an amount reasonably satisfactory to Service Provider. Assumption will be made under terms and conditions that are acceptable to Service Provider and comply with the applicable federal or state laws governing such assumption.

E. Recoupment and Set Off. Service Provider has the right of recoupment and set-off. Specifically, Service Provider may offset or recoup any outstanding/uncollected amounts owed by Merchant from: (i) any amounts Service Provider would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Service Provider may owe Merchant under this Agreement; and (iii) any funds in the Designated Account or Reserve Account. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under the Bankruptcy Code to Service Provider, Merchant must create or maintain the Reserve Account as required by Service Provider, and Service Provider must have the right to offset against the Reserve Account for any and all obligations which Merchant may owe to Service Provider, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

F. Recoupment of Chargebacks. In the event of Merchant's default in payment of Chargebacks and/or Penalties, Merchant agree: (i) all ACH debits, made against Merchant's Designated Account shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system; and (ii) Merchant consents to Service Provider utilizing any commercially reasonable means available to locate such deposit accounts until such time when all amounts due have been satisfied. Service Provider may enforce this security interest as applicable by: (a) making an immediate debit/charge via the ACH system (code CCD) to any deposit account standing in the name or names of Merchant, without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any account through the ACH system; (b) freezing the Designated Account and Reserve Account, without notice or demand of any kind; (c) taking possession of any or all of Merchant's Sales Drafts; (d) taking possession of any and/or all of Merchant's electronic terminals, printers, imprinters, and imprinter plates; (e) by placing a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to Service Provider arising under this Agreement has been

satisfied in full; (f) by obtaining either a writ of attachment or a writ of possession without bond pertaining to Merchant property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that Service Provider determines to be necessary in order to preserve and protect this security interest. The granting of this security interest by Merchant in no way limits Merchant's liabilities to Service Provider under this Agreement.

G. Account Monitoring. Merchant acknowledges that Service Provider will monitor Merchant's daily deposit activity. The deposit activity shall not exceed \$30 million a month ("Monthly Volume Limit"). If the deposit activity exceeds the Monthly Volume Limit, Service Provider may, upon thirty (30) days prior written notice, charge a fee of 1% on any subsequent month on the amount that exceeds such Monthly Volume Limit.

ARTICLE V – TERM AND TERMINATION EVENTS

5.1 TERM AND TERMINATION

A. Term. The Agreement will become effective on the date Service Provider executes this Agreement ("Effective Date"), provided, however that if Merchant submits a Transaction prior to the Effective Date, Merchant will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of two (2) years ("Initial Term") and will renew for successive one (1) year terms ("Renewal Term", and collectively with the Initial Term, the "Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by Service Provider or Merchant upon 30 days prior written notice. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement.

C. Terminated Merchant File. Merchant acknowledges that MATCH (formerly known as the Combined Terminated Merchant Files or "CTMF") is a file maintained by MasterCard and accessed by Card Brands and Service Providers containing the business names and the identification of principals of Merchant, which have been terminated for one or more reasons specified in the Rules. Merchant acknowledges that Service Provider is required to report the business name of Merchant and the names and identification of its principals to MATCH when Merchant is terminated for such reasons. Merchant consents to such reporting to the Card Brands by Service Provider. Further, Merchant waives and will hold harmless Service Provider from any claims, which Merchant may raise as a result of such reporting.

D. Designated Account. All Merchant obligations regarding accepted Sales Drafts will survive termination. Merchant must maintain in the Designated Account and the Reserve Account enough funds to cover all Chargebacks, Penalties, deposit charges, refunds and Fees incurred by Merchant for a reasonable time, but in any event not less than the time specified in this Agreement. Merchant authorizes Service Provider to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not commercially reasonable, Merchant will pay Service Provider the amount owed to Service Provider upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

E. Reason to Terminate: Service Provider may terminate this Agreement immediately without prior notice if (i) Service Provider reasonably believes that fraudulent Transactions or other activity prohibited by this Agreement is occurring at any Merchant location;

(ii) Service Provider is required to take action to prevent loss to Bank or Card Issuers, (iii) in the event of any significant circumstances that do or could create harm or loss of goodwill to any Card Brands; (iv) Merchant appears on any Card Brand's security or termination reporting, or (v) Merchant Acceptance Criteria of Service Provider or laws in respect to Merchant's business changes.

F. Bankruptcy. If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Service Provider shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by Service Provider.

5.2 ACTION TAKEN UPON TERMINATION

A. Discontinuation of Services. In the event of termination for any reason, Merchant expressly authorizes Service Provider to withhold and discontinue the disbursement for all Cards and other Transactions of Merchant in the process of being collected and deposited. Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to Service Provider. 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.

B. Maintaining Reserves. Collected funds will be placed in a Reserve Account until Merchant pays any equipment and processing cancellation fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, Service Provider reserves the right to require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Service Provider into the Reserve Account. The Reserve Account shall be maintained for a minimum of 270 days after the termination date and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules. The provisions of this Agreement relating to the debiting and crediting of the Designated Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Service Provider terminates the Reserve Account. Any remaining balance after Chargeback rights have expired and all other expenses, losses, and damages have been paid will be disbursed to Merchant upon request.

C. Records. Following termination, Merchant shall upon request provide Service Provider with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.

D. Return to Service Provider. All promotional materials, advertising displays, signage, emblems, Sales Draft forms, credit memoranda and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of Service Provider and will be immediately returned to Service Provider upon termination of this Agreement. Merchant is fully liable for all loss, cost, and expense suffered or incurred by Service Provider arising out of the failure to return or destroy such materials following termination.

ARTICLE VI – INDEMNIFICATION, LIMITATION OF LIABILITY, WARRANTIES

6.1 LIMITATION OF LIABILITY

A. Limitation of Liability. Any liability of any party under this Agreement to any other party, whatever the basis of liability, shall not exceed in the aggregate the difference between: (i) the amount of Fees paid by Merchant to Service Provider during the month in which the Transaction out of which the liability arose occurred; and (ii) assessments, Chargebacks, Penalties and any offsets authorized under this Agreement against such Fees which arose during such month. In the event more than one month was involved, the aggregate amount of Service Provider's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one-month involved. Nothing in the foregoing limitation will limit (i) either ISO's or Merchant's liability for Penalties, or (ii) Merchant's liability for Chargebacks. In no event will Bank, nor its officers, agents, directors, or employees be liable for any indirect, special, or consequential damages including lost profits, revenues and business opportunities. **NO PARTY UNDER THIS AGREEMENT OR ANY OF ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORSEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT THAT ISO AND BANK ACKNOWLEDGE AND AGREE THAT PENALTIES DO NOT CONSTITUTE INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES HEREUNDER.**

B. Indemnification. ISO and Merchant shall hold harmless and indemnify the other parties to this Agreement, their affiliates, officers, directors, agents, representatives and their employees harmless from: (i) any claim relating to a dispute between Merchant and a Cardholder; (ii) against all claims by third parties arising out of this Agreement; (iii) any Sales Draft paid for by Service Provider as may be made by anyone by way of defense, dispute, off-set, counterclaim or affirmative action, or for any damages of, or losses that Service Provider may incur as a result of Merchant's breach of this Agreement; and (iv) for all reasonable attorney fees and other costs and expenses paid or incurred by Service Provider in the enforcement of the Agreement, including but not limited to those resulting from any breach by Merchant of this Agreement and those related to any bankruptcy proceeding. Additionally Merchant shall hold harmless and indemnify Service Provider against any claim against Service Provider in the event of a data breach or unauthorized disclosure of Merchant's data, except to the extent such breach or disclosure occurred as the result of the actions or failure to act of the Service Providers.

C. Service Agreement. THIS AGREEMENT IS A SERVICE AGREEMENT. SERVICE PROVIDER DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER INDIVIDUAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

D. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ANY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT IDENTIFIED IN THE APPLICATION AS "FEES FOR VALUE ADDED SERVICES (THIRD PARTY FEES)" ARE PROVIDED SOLELY BY A THIRD PARTY AND MERCHANT EXPRESSLY AGREES THAT BANK HAS NO LIABILITY OF ANY DESCRIPTION WITH REGARD TO ANY SUCH PRODUCTS OR SERVICES.

E. SERVICE PROVIDER SHALL BE LIABLE FOR ALL COSTS, EXPENSES, LIABILITIES AND LOSSES IN THE EVENT THAT IT SHALL HAVE ACTED GROSSLY NEGLIGENT, FRAUDULENTLY OR WITH WILFULL MISCONDUCT.

6.2 REPRESENTATIONS AND WARRANTIES

A. Performance. Service Provider will perform all services in accordance with this Agreement. Service Provider will provide all services in a professional and workmanlike manner consistent with industry standards and practices. Service Provider makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such warranty. Service Provider disclaims all implied warranties, including those of merchantability and fitness for a particular purpose. Service Provider will not 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 Service Provider. Service Provider is not liable for the acts or omissions of any third party not within its control.

B. Terminals not Provided by Service Provider. Merchant will notify Service Provider immediately if Merchant decides to use electronic authorization or data capture Terminals or Software provided by any entity other than Service Provider or its authorized designee ("Third-Party Terminals") to process Transactions. If Merchant elects to use Third-Party Terminal(s), Merchant agrees: (i) the third party providing the terminals or software will be Merchant's agent in the delivery of the Transactions to Service Provider via a data processing system or network; and (ii)

to assume full responsibility and liability for any failure of that third party to comply with the Rules of this Agreement and the provisions of Article III, Section 3.04 of the Agreement. Service Provider will not be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a third party's software or terminal.

C. Warranties of Merchant. Merchant represents and warrants to Service Provider at the time of execution and during the Term: (a) to the best of its knowledge that all information contained in the Application or any other documents delivered to Service Provider in connection herewith and therewith is true and complete and properly reflects Merchant's business, financial condition, and principal partners, owners or officers. (b) Merchant is a corporation, limited liability company, partnership, sole proprietorship or other legitimate and legally organized organization validly existing and organized in the United States. (c) Merchant and individual signing this Agreement have the power and authority 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. (d) Individuals signing this Agreement are duly authorized by Merchant to bind Merchant into this Agreement on behalf of Merchant. (e) 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. (f) Merchant is not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Merchant, unless Merchant obtains the prior written consent of Service Provider. (g) 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. (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 Service Provider procedures accepting Cards, and the Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC § 1601) or other relevant state or federal statutes or regulations. (j) Merchant warrants that any Credit Voucher, which it issues represent a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted. (k) Unless Merchant notifies Service Provider in writing, either on Application or otherwise, no other processing relationship exists between Merchant and any other payment processing institution, for this business, or any other business managed or owned by Merchant. (l) All Transactions are bona fide. No Transaction involves the use of a Card for any purpose other than the purchase of goods or services from Merchant. (m) Merchant and Guarantor(s) acknowledge that all documents submitted in conjunction with this Agreement are being submitted in order to induce a federally insured financial institution to extend them credit and that submission of any false information herein may subject them to criminal prosecution, fine and/or imprisonment. (n) Merchant has supplied its true and correct taxpayer identification number on the Application.

D. Authorization of Agreement. Merchant represents and warrants that the individual signing the Agreement, physically or by acknowledging consent by electronic means, is duly authorized to bind Merchant to all provisions of this Agreement and that such individual is duly authorized to execute any contract document on behalf of Merchant. Merchant will execute a separate Entity Certification if requested to do so by Service Provider.

E. Signature. Merchant, by its signature, upon its first transmission of Transactions, or first payment of Fees, acknowledges receipt, acceptance and comprehension of this Agreement. If Merchant has not entered into this Agreement by executing this Agreement via counter signature or electronic means, Merchant agrees that Merchant's first transmission of a Transaction or first payment of Fees to Service Provider constitutes Merchant's acceptance of this Agreement.

F. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Service Provider for all reasonable attorneys' fees and other costs and expenses paid or incurred by Service Provider or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

ARTICLE VII – MISCELLANEOUS

7.1 USE OF TRADEMARKS AND CONFIDENTIALITY

A. Use of Trademarks. (a) Use of trade name, trademark, service mark or logotype ("Marks") associated with any of the Card Brands and their brands shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Service Provider and must fully comply with the Rules. (b) Merchant may use promotional materials and Marks during the Term and shall immediately cease their use and return any inventory to Service Provider upon termination thereof. (c) Merchant shall not use any promotional materials or Marks associated with the Card Brands in any way that implies that the Card Brands endorse any goods or services other than their own.

B. ISO shall not use Merchant's name, and any name of its subsidiaries or affiliates, or any adaptations of those names, for advertising, trade or other commercial purposes without Merchant's express prior written consent. ISO and its contractors, employees and agents shall not hold themselves out as an employee, affiliate, or subsidiary of Merchant at any time while performing services under this Agreement. Any materials provided to ISO by Merchant pursuant to this Agreement or in connection with ISO's performance of services hereunder, bearing any Merchant names, logos, styles or trademarks may be used by ISO only as necessary to perform services under this Agreement. ISO understands and agrees that it shall not engage in any actions or behavior that

would reflect negatively on Merchant during the term of this Agreement. ISO further understands and agrees that any violation or threatened violation of this Section would materially and irreparably injure Merchant and its business in a manner inadequately compensable in damages, and that therefore Merchant may seek injunctive relief against the breach or threatened breach of ISO's obligations herein in addition to any other legal remedies that may be available to it.

C. Confidentiality.

- A.** Merchant acknowledges that Service Provider through the expenditure of a significant amount of time, effort, cost, and research, developed and secured the right to use various computer programs, forms, logos, manuals, and related materials, including without limitation the Rules, which constitute property of great value and trade secrets, and that disclosure to others of such materials may result in loss and/or irreparable damage. Merchant further acknowledges that the system in its entirety constitutes a trade secret which is revealed to Merchant in confidence. Accordingly, Merchant agrees to hold and use any and all such property or information regarding the system in confidence, and not to disclose, reveal, copy, sell, transfer, sub-license, assign, or distribute any part of it, in any form, to any individual, firm, corporation, or other entity, nor permit any of its employees, agents, or representatives to do so, except as permitted by the Rules, or otherwise expressly permitted in writing by the Service Provider. The Merchant further agrees that upon termination of this Agreement for any reason, it will immediately return or destroy all such property to Service Provider.
- B.** ISO acknowledges that certain information received under this Agreement, including, but not limited to, non-public information concerning the Merchant's business, methods, programs, activities, services, past, present or potential future donors, members, consumers, attorney-client communications and attorney work product or finances ("Confidential Information"), is confidential and proprietary. ISO agrees to hold any and all Confidential Information of Merchant in strict confidence and not disclose such Confidential Information to any third party, except as required by law or as authorized by Merchant. Upon the termination of this Agreement or at Merchant's request, all Confidential Information in tangible form, including any copies made by ISO will be either (at Merchant's election) returned to Merchant or destroyed, and ISO will delete, erase or otherwise destroy all intangible Confidential Information including any electronic or digital versions thereof in its possession or control and confirm such destruction in writing to Merchant, unless the retention of any such information is required under the Rules.

7.2 GENERAL PROVISIONS

A. Entire Agreement. This Agreement, including the Application, the Schedule of Fees, the Rules, and Exhibits to this Agreement expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, all prior or other agreements or representations, written or oral, are superseded. Reference to "this Agreement" also includes all documents incorporated into this Agreement by reference. If copies of this Agreement or any amendments are to be physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.

B. Governing Law and Venue. Service Provider, Merchant and Guarantor(s) agree that all performances and Transactions under this Agreement will be deemed to have occurred in New York and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of New York. This Agreement will be governed by New York law, without regard to its conflicts-of-law principles, and applicable federal law. Service Provider, Merchant and Guarantor(s) hereby consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in New York County, New York and/or the United States District Court for New York. The parties consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the New York or United States federal law.

C. Construction. The typographical headings used in this Agreement are inserted for reading convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

D. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Service Provider, which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors, and assigns. Service Provider may assign this Agreement.

E. Amendment. This Agreement is subject to amendment in order to conform and comply with any amendments or modifications of the Rules or law. From time to time Service Provider may amend any provision of this Agreement, including, without limitation, those relating to Fees and charges payable by Merchant by mailing written notice to Merchant of the amendment, and the amendment shall become effective and enforceable unless Service Provider receives Merchant's notice of termination of this Agreement within thirty (30) days. Amendments due to changes in either Card Brand's fees, interchange, assessments, Rules or any law or judicial decision may become effective on such shorter period of time as Service Provider may specify if necessary to comply with the applicable Rule, law, or decision.

F. Notices; Consent to Electronic Communications. By applying for services and confirming that it has read the Merchant Agreement, Merchant is confirming to Service

Provider that it has the means to access the Internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email. Such communications may pertain to the services delivered by Service Provider, the use of information Merchant may submit to Service Provider, changes in laws or Rules impacting the service or other reasons, such as amendment of the Merchant Agreement. In addition, all notices and other communications required or permitted under this Agreement by Service Provider to Merchant may also be delivered by Service Provider to Merchant either by fax, overnight carrier or first class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to Service Provider shall be delivered by Merchant to Service Provider by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Notice by fax or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first business day after mailing or delivery to the carrier. Following are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section: (a) if to ISO, addressed and transmitted as follows: Blue Parasol Group, LLC, d/b/a Paragon Payment Solutions, 2141 E. Broadway Rd., Suite 202, Tempe, AZ 85282 (b) If to Bank, addressed and transmitted as follows: **Chesapeake Bank, 97 N. Main Street, Kilmarnock, VA 22482, Fax: (757) 258-4501**; (c) If to Merchant, at the address provided as the billing address, or the fax number or e-mail address and to the contact listed on the Application.

G. Force Majeure. Any delay in or failure of performance by Service Provider under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, pandemics, failures of the Internet, failures of banking, ACH or payment networks not under direct control of Service Provider.

H. Severability and Waiver. If any provision of this Agreement is illegal, 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. Neither the failure nor delay by Service Provider to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

I. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

J. Relationship of Parties. The parties are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other party.

K. Employee Actions. Merchant is responsible for its employee's actions while in its employ.

L. Survival. All Sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, limitations of liability, Sections 2.04.C, 2.07, 3.01, 3.04, 3.05, and Articles 4, 5, 6 and 7.01.C.

M. Further Assurances. At any time or from time to time, upon the request of Service Provider, Merchant will execute and deliver further documents as Service Provider may reasonably request in order to effectuate fully the purposes of this Agreement.

N. IRS Withholding Regulations. Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all Transactions with payees occurring in that calendar year. Accordingly, Merchant will receive a Form 1099-K reporting its gross Transaction amounts for each calendar year. The Merchant's gross Transaction amount refers to the gross dollar amount of the Transactions processed through its merchant account with Service Provider. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors will be required to perform backup withholding by deducting and withholding income tax from reportable Transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provide Service Provider with the correct name and TIN that it uses when filing your tax return that includes the Transactions for its business. In addition to all other charges and Fees set forth in the Fee Schedule, you may be charged a fee of \$25 per month for each month during the Term that either subsection (a) or (b) applies to you.

ARTICLE VIII - TERMS BELOW ARE ADDITIONALLY APPLICABLE TO ONLY THOSE MERCHANTS WITH AMERICAN EXPRESS CARD ACCEPTANCE

A8.01 Merchant shall be bound by the American Express Merchant Operating Guide: www.americanexpress.com/merchantopguide.

A8.02 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.

A8.03 General Terms. Merchant authorizes ISO and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Service Provider on behalf of Merchant.

A8.04 Marketing Message Opt-Out. Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO. 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.

A8.05 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.

A8.06 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.

A8.07 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 Brands.

A8.08 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 Brand, 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.

A8.09 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.

ARTICLE IX – INTENTIONALLY OMITTED.

ARTICLE X - TERMS BELOW ARE ADDITIONALLY APPLICABLE TO ONLY THOSE MERCHANTS UTILIZING ACCOUNT UPDATER SERVICE. THE FOLLOWING SERVICES ARE PROVIDED BY ISO ONLY AND BANK IS NOT RESPONSIBLE FOR ANY OF THE FOLLOWING SERVICES IN ANY MANNER.

AU10.01 "Account Updater Service" means the MasterCard Automatic Billing Updater and Visa Account Updater service that enables a merchant to obtain updated Cardholder information when its customers' Cardholder account information changes due for certain reasons, including, but not limited to, Card expiration, Card reissuance and portfolio sales. **"Record"** means a Cardholder's Card information.

AU10.02 To request an updated Record for Cardholder accounts, Merchant must submit an encrypted file of the applicable Records, in the format prescribed by ISO from time to time. ISO will obtain from the Card Brands the available updated information for the Records and provide access to the information to Merchant. ISO is not responsible for ensuring that all Records submitted by Merchant receive updated information and cannot advise Merchant in advance if updated information is available for any particular Record. ISO will only provide information for a Record if such information is available and provided by the applicable Card Brand. Merchant acknowledges and agrees that ISO may discontinue the Account Updater Service at any time, including if required by Card Brand or if Merchant no longer meets the eligibility requirements to use the Account Updater Service. Merchant must be, and for so long as Merchant uses the Account Updater Service will remain, registered with the Card Brands for participation in their specific Account Updater Service and cooperate with ISO in obtaining and maintaining such registration. Merchant must not have been disqualified from participating in a Card Brand system.

AU10.03 Merchant may terminate the Account Updater Service at any time upon sixty (60) days prior written notice to ISO.

AU10.04 ISO will make commercially reasonable efforts to make the Account Updater Service generally available, but cannot guarantee the availability of the Account Updater Service at any particular time. For greater certainty, ISO is entitled at any time, and without prior notice, to interrupt Merchant's access to the Account Updater Service for any reason, including without limitation for security considerations or to do maintenance work.

AU10.05 ISO will bill all fees for the Account Updater Service one month in arrears. ISO will not be liable for any claims, losses, costs, exemplary, punitive, special, incidental, direct, indirect or consequential damages, lost profits, lost revenues, lost business opportunities or loss of goodwill caused by the unavailability or performance failure of the Account Updater Service. The fees for the Account Updater Service are as set forth on the Application and may be modified as otherwise set forth in the Merchant Agreement.

AU10.06 Merchant represents and warrants that it has an existing relationship with any Cardholder for whom it uses the Account Updater Service (a "Participating Cardholder") and will only submit inquiries to the Account Updater Service for Participating Cardholders when Merchant has a valid business need to receive updated Record information. Merchant must have the Participating Cardholder's Record on file and permission to use the Record in connection with the Account Updater Service. Merchant represents and warrants that it will NOT request updates on Cardholders with a status of "Closed Account" or similar designation and Merchant will remove such Cardholders from the Account Updater Service until Merchant has contacted the Cardholder. Merchant will NOT submit update inquiries on behalf of any other person. Merchant represents and warrants that it will not engage in business categories characterized by the following Visa Merchant Category Codes: 5962 (Direct Marketing – Travel Related Arrangement Services), 5966 (Direct Marketing – Outbound Telemarketing Merchant), 5967 (Direct Marketing – Inbound Telemarketing Merchant) or 7995 (Betting, including Lottery Tickets, Casino Gaming Chips, Off-

Track Betting, and Wagers at Race Tracks) or have Transactions that are predominately quasi-cash Transaction, account funding, or any combination thereof.

AU10.07 Merchant further represents and warrants that all information Merchant sends to the Account Updater Service is accurate. Merchant agrees to cooperate fully with ISO in investigating any alleged inaccuracies in information sent to or received from ISO in connection with the Account Updater Service and in correcting any actual inaccuracies. Merchant must inform Paragon Payment Solutions immediately upon discovery of any Account Updater Service information (i) that does not meet the requirements of the Card Brands or other requirements or (ii) that is inaccurate.

AU10.08 Merchant represents and warrants that Merchant will request updates to Participating Cardholder Records at least once every 180 days.

AU10.09 Merchant represents and warrants that Merchant will update its Participating Cardholder Record database and correct erroneous Records therein within five (5) business days of receiving any update to or notice of inaccuracy of any Participating Cardholder Record from ISO or a Card Brand and ensure that Merchant properly, completely and accurately incorporates such updates into its Participating Cardholder database for future transactions.

AU10.10 Merchant represents and warrants to comply with the Rules; the terms and conditions set forth in this Article X, the Merchant Agreement, the MasterCard Automatic Billing Updater Reference Guide, the Visa Account Updater documents and all other applicable Card Brand documents and any other applicable documents and requirements, which are all incorporated herein by reference.

AU10.11 Merchant represents and warrants to comply with all laws and regulations applicable to its use of the Cardholder Record information and the Account Updater Service, including, but not limited to, privacy and/or data protection laws. Merchant must ensure the confidentiality of each Participating Cardholder Record and associated information obtained from the Account Updater Services is securely stored. Merchant must ensure its employees with access to the Participating Cardholder Records and associated information have a legitimate business need and authorization to access such information and are aware of, and familiar with, Merchant's policies related to such information. Merchant must ensure that it deletes Participating Cardholder Records and associated information obtained through the Account Updater Service after use to minimize the likelihood of improper access to, or use of, such information.

750,001+	\$0.20 per SAN
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TS11.07 ISO will charge Merchant a fee based on the Tokenization Service pricing plan selected by Merchant below and the number of SANs stored each month during the term of this Agreement. Merchant will be charged the monthly fee associated with the selected pricing plan along with an additional fee for each SAN (if any) stored in excess of the included SANs for the selected pricing plan. ISO will periodically debit any amounts owed by Merchant hereunder from the Designated Account. ISO may terminate this Agreement, or suspend the provision of the Tokenization Service, if Merchant fails to maintain an adequate balance in the Designated Account and does not make payment to ISO of any outstanding amounts within 48 hours of written or oral notice by ISO of such failure.

Pricing Plan	Monthly Fee	Included SANs	Per add'l SAN
Plan A	\$25.00	250	\$0.10
Plan B	\$50.00	500	\$0.09
Plan C	\$80.00	1,000	\$0.08
Plan D	\$175.00	2,500	\$0.07
Plan E	\$300.00	5,000	\$0.06
Plan F	TBD	10,000	TBD

ARTICLE XI - TERMS BELOW ARE ADDITIONALLY APPLICABLE TO ONLY THOSE MERCHANTS UTILIZING TOKENIZATION SERVICES. THE FOLLOWING SERVICES ARE PROVIDED BY ISO ONLY AND BANK IS NOT RESPONSIBLE FOR ANY OF THE FOLLOWING SERVICES IN ANY MANNER.

TS11.01 "Tokenization Service" means the services performed by ISO on behalf of Merchant as described in this Article XI.

TS11.02 If requested by Merchant in writing, ISO will provide to Merchant and Merchant will purchase from ISO the Tokenization Service. The Tokenization Service will allow Merchant to transfer its Cardholder payment account data offsite to ISO and use a unique token provided to Merchant by ISO to allow Merchant to process Transactions via the ISO-stored account numbers ("SANs"). In order to use the Tokenization Service, Merchant must be a direct or gateway merchant of ISO. Merchant agrees to use ISO exclusively for Tokenization Service.

TS11.03 Merchant will establish and maintain secure data connections for the delivery of Transaction and/or Cardholder information to ISO. Merchant shall transmit accurate and updated Transaction and/or Cardholder information to ISO using ISO's required data protocols and formatting. Merchant will immediately update Cardholder information with additions, deletions and updates. Merchant will create, delete and query SANs in accordance with ISO's instructions.

TS11.04 If Merchant elects to utilize the Tokenization Service, Merchant will transmit all Cardholder information to ISO within 30 days of the Effective Date and will securely purge its systems and premises of such information in all formats within 30 days of such transmission. ISO will not be liable for Merchant's failure to remove Cardholder information and Merchant agrees to indemnify and hold ISO harmless for any liabilities, costs or damages incurred as the result of the failure to remove such information.

TS11.05 Merchant must provide a valid, working administrative e-mail address on enrollment. Any changes made to Merchant's account via e-mail must be made via the administrative e-mail address provided on enrollment. Merchant is responsible for maintaining the security of its e-mail and passwords and agrees that it shall be responsible for any and all activities that occur under Merchant's account.

TS11.06 Upon termination or expiration of this Agreement and within five business days of Merchant's written request and payment of the data retrieval fee based on the number of Merchant SANs as set forth in the table below, ISO will provide a data file including all SANs to a facility designated by Merchant that is qualified (in ISO's sole discretion) to receive such data. The data retrieval fee will be calculated cumulatively so that all stored records will be billed at the same lower fee per record once a higher volume tier is reached. Records may only be provided with file format and encryption requirements to be determined in ISO's sole discretion.

SANs	Data Retrieval Fee
1 - 5,000	\$2,000 (minimum data retrieval fee)
5001 - 250,000	\$0.40 per SAN
250,001 - 500,000	\$0.35 per SAN
500,001 - 750,000	\$0.25 per SAN