

**SUB-MERCHANT**  
**PAYMENT PROCESSING AGREEMENT**

**This Sub-Merchant Payment Processing Agreement** (“Agreement”) is entered into by and between Fullsteam Operations LLC with its principal office at 540 Devall Drive, Suite 301, Auburn, AL 36832 (“Provider”) and sub-merchant (“Sub-merchant”), in connection with Provider’s payment processor (“Processor”) and Processor’s designated Member Bank.

**Whereas**, Provider as a Payment Service Provider (“PSP”) and/or as a Payment Facilitator as defined in the Operating Regulations, in connection with Processor and/or Member Bank participates in programs affiliated with MasterCard, VISA, American Express, Discover, and Other Networks which enable Cardholders, by use of their Cards, to purchase goods and services from selected merchants located in the United States.

**Whereas**, Provider wishes to provide payment processing services to Sub-merchant for its United States locations, for sale of its goods and services to Cardholders by use of their Cards.

In exchange for Fullsteam Operations LLC’s (the “Guaranteed Party”) acceptance of this Agreement, each person clicking “Accept & Continue” (each a “Guarantor”) is signing this Agreement as a Guarantor of the Sub-merchant identified above which precedes this Guaranty. You understand that this is a personal guaranty of payment and not of collection and that the Guaranteed Party is relying upon this guaranty in entering into the Sub-Merchant Payment Processing Agreement. **BY CLICKING “ACCEPT & CONTINUE”, EACH GUARANTOR (I) ACCEPTS AND AGREES TO BE BOUND BY THE CONTINUING UNLIMITED GUARANTY PROVISIONS CONTAINED IN SECTION 23 OF THIS AGREEMENT, AND (II) ACKNOWLEDGES AND CONFIRMS THAT, PRIOR TO SIGNING, HE OR SHE RECEIVED AND READ THE THOSE PROVISIONS.**

**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND OF THE MUTUAL PROMISES CONTAINED HEREIN, BY CLICKING "ACCEPT & CONTINUE" AS AN AUTHORIZED REPRESENTATIVE OF SUB-MERCHANT, SUB-MERCHANT AND PROVIDER AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL DOCUMENTS, POLICIES, AND PROCEDURES INCORPORATED HEREIN BY REFERENCE.**

**1. Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings:

Account shall mean an open transaction account at a financial institution acceptable to Processor which Member Bank, Processor or their agents can access through the ACH system.

Account Change means a change in the Account or the financial institution where the Account is located.

ACH shall mean the Federal Reserve's Automated Clearing House (“ACH”) system.

Agreement means this Sub-Merchant Payment Processing Agreement and each exhibit, schedule, and addendum attached hereto or referenced to in this Agreement, as well as all documents and other materials incorporated herein by reference.

American Express shall mean American Express Travel Related Services Company, Inc.

Application shall mean the Sub-merchant's application for payment processing services as required by Provider as a prerequisite for obtaining the Services.

Association means VISA, MasterCard, Discover, American Express, or any Other Network, as the same are defined herein.

Cardholder shall mean any person authorized to use a Card or the accounts established in connection with a Card.

Cards shall mean MasterCard, VISA, Discover, American Express and Other Network cards, account numbers assigned to a Cardholder or other methods of payment accepted by Processor on behalf of Provider, for which pricing is set forth in the Application.

Data Incident shall mean any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

Discover shall mean Discover Financial Services, LLC.

Event of Default shall mean each event listed in Section 7 below.

Float Event shall mean a circumstance where Provider or Processor, for whatever reason, advances settlement or any amounts and/or delays the assessment of any fees.

Force Majeure Event shall mean, labor disputes, fire, weather or other casualty, power outages, and funding delays, however caused, governmental orders or regulations, or any other cause, whether similar or dissimilar to the foregoing, beyond a party's reasonable control.

Guarantor shall mean each person who signs this Sub-Merchant Payment Processing Agreement as a guarantor to guarantee Sub-merchant's obligations as set forth in this Agreement.

Initial Term shall mean a one (1) year period beginning on the date Provider processes the first transaction for Sub-merchant.

MasterCard shall mean MasterCard International, Inc.

Member Bank shall mean a member of VISA, MasterCard and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement.

Merchant Supplier shall mean a third party other than Processor used by Provider or Sub-merchant in connection with the Services received hereunder, including but not limited to, Sub-merchant's software providers, equipment providers, and/or third party processors.

Operating Regulations means the by-laws, operating regulations and/or all other rules, guidelines, policies and procedures of VISA, MasterCard, Discover, American Express and/or Other Networks, and all other applicable rules, regulations and requirements of Processor, Member Bank, providers, banks, institutions, organizations, associations, or networks which govern or affect any services provided under this Agreement, and all state and federal laws, rules and regulations which govern or otherwise affect the activities of Sub-merchant, including, but not limited to, those of the National Automated Clearing House Association (“NACHA”) and the Federal Trade Commission (“FTC”), as any or all of the foregoing may be amended and in effect from time to time.

Other Network shall mean any network or card association other than VISA, MasterCard, Discover or American Express that is identified in the Application or any subsequent amendment to this Agreement and in which Sub-merchant participates hereunder.

Payments shall mean payments initiated by Cardholders using a Card or by means of an ACH transfer.

Payor shall mean any customer of Sub-merchant who authorizes a payment to Sub-merchant.

PCI DSS shall mean the Payment Card Industry Data Security Standard.

Rules Summary means the Bank Card Merchant Rules and Regulations, as amended from time to time, which are incorporated into this Agreement by reference.

Service shall mean any and all services provided by Processor on behalf of Provider to Sub-merchant.

Service Delivery Process means Provider/Processor’s then standard methods of communication, service and support, including but not limited to communication via an online Sub-merchant portal, email communication, statement notices, other written communications, etc.

Sub-merchant shall mean any entity (including a government agency) that contracts with Provider as a PSP and/or Payment Facilitator, as permitted in the Operating Regulations, to obtain payment services.

VISA shall mean VISA USA, Inc.

Website shall mean a website owned and/or provided/controlled by Provider.

## **2. Services.**

**2.1.** Pursuant to Provider’s agreement with Processor, Processor and/or Member Bank will provide Sub-merchant with certain payment processing services ("Services") in accordance with the terms and conditions of this Agreement. Pursuant to the Provider’s agreement with Processor, Provider has arranged for Processor to acquire, process and settle payment for transactions initiated by Sub-merchant’s Payors. Such Services shall be made in accordance with the Operating Regulations using the channels set forth in Sub-merchant’s Application, which includes: credit/debit card payments and may include electronic check (“eCheck”) payments (collectively “Payments”). Provider agrees that it will fully comply, and to the extent practicable will assure all Sub-merchants comply, with any and all confidentiality and security requirements of the USA

PATRIOT Act (or similar law, rule or regulation), VISA, MasterCard, Discover, and/or Other Networks, including but not limited to PCI, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. In consideration of Sub-merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S. A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Associations"), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments.

### **3. Sub-merchant Responsibilities.**

**3.1.** Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant's agents ("Agents") to comply, with the Association's and other payment network's by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations").

**3.2.** Sub-merchant may review excerpts from the VISA, MasterCard, American Express and Discover Operating Regulations online, including via:

<https://www.mastercard.us/en-us/business/overview/support/rules.html>;

<https://usa.visa.com/support/consumer/visa-rules.html>;

<https://www.americanexpress.com/merchantsguide>;

[https://www.discoverglobalnetwork.com/content/dam/discover/en\\_us/dgn/pdfs/MIT-Implementation-Guide.pdf](https://www.discoverglobalnetwork.com/content/dam/discover/en_us/dgn/pdfs/MIT-Implementation-Guide.pdf)

VISA, MasterCard, Discover, American Express, or any other applicable network's complete Operating Regulations are incorporated by reference into this Agreement and will control with respect to any conflict in terms between this Agreement and such Operating Regulation. Sub-merchant will not discriminate against Cards or Issuers (e.g., limited acceptance options) except in full compliance with the Operating Regulations, and will comply with all Operating Regulations, applicable laws, and regulations related to its business operations, PCI- DSS obligations, the use of VISA, MasterCard, Discover, American Express, or any other applicable network's marks, and each transaction acquired hereunder. Sub-merchant expressly agrees that it will accept Cards and protect, utilize, or restrict transaction data, including the magnetic stripe and CVV2, in accordance with the terms of this Agreement, applicable law or regulation, and the Operating Regulations, and will cooperate with any audit requested by VISA, MasterCard, Discover, American Express, or any other applicable network until such audit is completed.

**3.3.** Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations. Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets Control (OFAC) and the Federal Trade

Commission. For purposes of this section, Agents include, but are not limited to, Sub-merchant's software providers and/or equipment providers.

**3.4.** If appropriately indicated in Sub-merchant's agreement with Provider, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Provider and Processor have no obligations other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance. Sub-merchant and not Provider or Processor, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

**3.5.** In addition to complying with VISA, MasterCard, Discover, American Express, or any other applicable network's obligations or prohibitions related to acceptance, disbursement, or resubmission of a transaction, Sub-merchant may not submit any illegal, fraudulent, or unauthorized transaction and shall only submit transactions for the sale of its own goods or services, and not any other person or company, and may not receive payment on behalf of or, unless authorized by law, redirect payments to any other party. Sub-merchant covenants that it is not a third-party beneficiary under any agreement with VISA, MasterCard, Discover, American Express, or any other network, however, VISA, MasterCard, Discover, American Express, or any other applicable network may be a third-party beneficiary of this Agreement, and shall have the rights, but not any obligation, necessary to fully enforce the terms of this Agreement against the Sub-merchant.

**3.6.** Sub-merchant acknowledges and agrees that it is liable for all acts, omissions, customer disputes, and other customer service-related issues. Sub-merchant acknowledges and agrees that Provider, Processor and/or its Member Bank may refuse to process transactions for Sub-merchant's customers, and Sub-merchant agrees that Sub-merchant, and not Provider or Processor, shall be responsible for resolving any issues, problems, or disputes pertaining to its customers.

**3.7.** Sub-merchant agrees to notify Provider, Processor or its Member Bank by a detailed written communication, of any alleged breach by Provider, Processor or its Member Bank of this Agreement within thirty (30) days of the date on which the alleged breach first occurred. Failure to provide notice shall be deemed an acceptance by Sub-merchant and a waiver of all rights pertaining to the breach.

**3.8.** Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: (i) the minimum transaction amount does not differentiate between card issuers; (ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and (iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-merchant is a (i) department, agency or instrumentality of the U.S. government; (ii) corporation owned or controlled by the U.S. government; or (iii) Sub-merchant whose primary business is reflected by one of the following

MCCs: 8220, 8244, 8249 -Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

#### **4. Sub-merchant Prohibitions.**

**4.1. Sale Transactions.** Sub-merchant agrees that it will not take any of the following Prohibited Actions and it will not permit any third party under its control to take the following actions in any situation where it has knowledge of such actions:

**4.1.1.** That adds any surcharge to the transaction, except to the extent authorized by the Operating Regulations or applicable law.

**4.1.2.** That adds any tax to the transaction, unless applicable law expressly allows for the Sub-merchant to impose a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately.

**4.1.3.** That represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible or arises from the dishonor of a Cardholder's personal check or from the acceptance of a Card at a terminal that dispenses scrip.

**4.1.4.** That is not a valid transaction between the Sub-merchant and a bona fide Cardholder.

**4.1.5.** That Sub-merchant knows or should have known to be fraudulent or not authorized by the Cardholder, or that it knows or should have known to be authorized by a Cardholder colluding with a third party for a fraudulent purpose.

**4.1.6.** That Sub-merchant completes the transaction, and products were not shipped or the services were not performed, unless the Sub-merchant has obtained Cardholder consent for a recurring transaction.

**4.1.7.** That a valid authorization was required but was not obtained.

**4.1.8.** That is a transaction made up of multiple authorizations for amounts less than the total sale amount.

**4.1.9.** That results in a disbursement of cash or cash equivalent to a Cardholder.

**4.1.10.** That establishes a maximum dollar sale transaction amount, except to the extent authorized by the Operating Regulations.

**4.2. Refund Transactions.** Sub-merchant will not submit any refund transaction to Provider and/or Processor:

**4.2.1.** That does not correlate to an original sales transaction from the Cardholder.

**4.2.2.** That exceeds the amount shown as the total on the original sale transaction, unless the excess represents the exact amount required to reimburse the Cardholder for postage paid by the Cardholder to return merchandise in accordance with a policy applied consistently by the Sub-merchant to all its customers.

**4.2.3.** For returned products that were acquired in a cash purchase from the Sub-merchant.

**4.2.4.** That would cause an overdraft.

**4.2.5.** More than three (3) business days following either: (i) a regulatory requirement granting a Cardholder's right to a refund; or (ii) a non-disputed Cardholder request.

**4.3. Other Prohibited Activities.** Sub-merchant will not:

**4.3.1.** Use any Cardholder data or other transaction data received from a payor for any purpose not authorized by this Agreement.

**4.3.2.** Disclose any Cardholder data or other transaction data to any entity except for necessary disclosures to affected Cardholders and Provider and through Processor to affected Association entities.

**4.3.3.** Provide to Processor any inaccurate, incomplete, or misleading information.

**4.3.4.** Transfer or attempt to transfer, its financial liability by asking or requiring Cardholders to waive their dispute rights.

**4.3.5.** Submit transactions on behalf of another entity that the Associations would consider a sub-ISO, Payment Service Sub-merchant (PSP), Payment Facilitator, or other third party payment Sub-merchant.

## **5. Authorization, Fees and Payment.**

**5.1.** Sub-merchant will maintain a commercial transaction account, as entered in its Application, or otherwise designated by Sub-merchant ("Account"), with a financial institution for the crediting and debiting of all payments and fees. Sub-merchant hereby authorizes Provider to facilitate the debiting and crediting of the Account for purposes of depositing Payments to Sub-merchant's Account, debiting from Sub-merchant's Account any chargebacks, refunds, or reversals, and debiting any payment network fees, and Provider fees, including, but not limited to, dues, fees, assessments or other amounts due Provider, and such authority shall remain in effect for a period of one (1) calendar year following the date of termination of this Agreement. Sub-merchant agrees that Provider may hold, set-off, or retain funds to protect itself against losses, chargebacks, unauthorized returns, or any amounts due or to become due under this Agreement. In addition, Sub-merchant specifically authorizes Provider to debit Sub-merchant's Account, Reserve Account(s), and/or any account to which Provider has access which may be transmitted electronically or accessed through ACH, for any previously funded transaction that is returned or dishonored, or to pay amounts owed due to Provider or its affiliates, including, without limitation, any fees, costs, liabilities, or other amounts due to Provider or its affiliates without any further notice or demand, and such authority shall remain in effect for a period of one (1) calendar year following the date of termination of this Agreement. Sub-merchant shall always maintain the Account with sufficient cleared funds to meet its obligations under this Agreement. Sub-merchant agrees to maintain this Account information up-to-date with Provider at all times. Failure to do so may result in Payments being misdirected, withheld, or returned to its Payors. Provider shall in no event be liable for any damages directly or indirectly resulting from incorrect Account information.

**5.2.** Sub-merchant authorizes Provider to conduct checks of Sub-merchant's background, credit, or banking information, as necessary, and agrees that all information obtained under this

Agreement may be shared with VISA, MasterCard, Discover, American Express, or any other applicable network. Sub-merchant agrees to provide information and documents that identify Sub-merchant, its beneficial owners, officers, Guarantor(s), and other individuals. Provider reserves the right to review at any time the identity, financials, background, and credit worthiness of Sub-merchant, its principals, beneficial owners, and Guarantor(s), including financial statements, and related documents, when requested by Provider. For any background, credit, or other check or report on Sub-merchant's owners, officers, directors, or other principals or Guarantor(s), Sub-merchant agrees to obtain authorizations from such individuals. Sub-merchant acknowledges and agrees that it is responsible for its employees' actions, it will notify Provider of any 3rd party that will have access to cardholder data, and it will immediately report all instances of a data breach to Provider immediately after it reasonably identifies an incident. Sub-merchant also authorizes any person or credit reporting agency to compile information to answer those inquiries of Provider and to furnish all requested information to Provider.

## **6. Reserve Account Upon Mutual Agreement; Right of Setoff.**

**6.1.** Provider may upon mutual agreement with Sub-merchant, make one or more deductions or offsets to any payments otherwise due to Sub-merchant to fund the Reserve Account in an amount satisfactory to Provider based upon a reasonably anticipated risk of loss to Provider, Processor and/or Member Bank. To secure Sub-merchant's obligations to Provider, Processor and/or Member Bank under this Agreement, Sub-merchant grants to Provider, Processor and/or Member Bank a lien and security interest in and to (i) any such Reserve Account, and (ii) any of Sub-merchant's funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in Provider, Processor and/or Member Bank's possession, whether now or hereafter due or to become due to Sub-merchant. In addition, in the event of termination of this Agreement by either Provider or Sub-merchant, an immediate Reserve Account, if not already established, may be established by Provider and the Reserve Account will be held by Provider for six (6) months after termination of this Agreement or for such longer time as Provider may, in its sole discretion, deem necessary based upon Sub-merchant's liability to Provider, Processor and/or Member Bank arising prior to or after termination of this Agreement, and Provider may deposit into and retain in the Reserve Account any and all amounts otherwise payable to Sub-merchant. Sub-merchant's funds held in a Reserve Account may be held in a commingled account for the reserve funds ("Reserve Funds Account") of Provider's Sub-merchants, without involvement of an independent escrow agent. Sub-merchant agrees that it shall have no right, title or interest in or to the Reserve Funds Account. In addition to any rights now or hereafter granted under applicable law, and not by way of limitation of any such rights, Provider, Processor and/or Member Bank are hereby authorized by Sub-merchant at any time, without notice or demand to Sub-merchant or to any other person (and such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all funds held in a Reserve Account established hereunder against and on account of obligations owed to Provider, Processor and/or Member Bank by Sub-merchant, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Sub-merchant agrees to duly execute and deliver to Provider, Processor and/or Member Bank, as applicable, such instruments and documents as may reasonably be requested to perfect and confirm the lien or security interest set forth in this Agreement. The right of setoff shall be deemed to have



been exercised immediately upon the occurrence of Sub-merchant's default under this Agreement without any action by Provider or notation in Provider's records, although Provider may thereafter enter such set off in its books and records. Any amount of Sub-merchant's Reserve Account remaining in the Reserve Funds Account when Provider determines that the Reserve Account may be closed, shall be released to Sub-merchant.

**7. Default.** The following events shall be considered an "Event of Default":

**7.1.** Sub-merchant or Guarantor(s) become subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Sub-merchant or Guarantor(s), or

**7.2.** Sub-merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or

**7.3.** Sub-merchant fails to pay or reimburse the fees, expenses or charges referenced herein when they become due; or

**7.4.** Sub-merchant violates the Operating Regulations or applicable law; or

**7.5.** Sub-merchant is subject to any adverse legal or regulatory actions by governmental or non-governmental entities; or

**7.6.** Sub-merchant fails to remediate and resolve risks identified by Provider in a timely fashion; or

**7.7.** Provider reasonably believes that there has been a material deterioration in Sub-merchant's financial condition; or

**7.8.** Any standby letter of credit, if and as may be required, will be cancelled, will not be renewed, or is not in full force and effect; or

**7.9.** Sub-merchant ceases to do business as a going concern, or there is a change in ownership of Sub-merchant which changes the identity of any person or entity having, directly or indirectly, more than 25% of either the legal or beneficial ownership of Sub-merchant; or

**7.10.** Sub-merchant is otherwise in default of any terms or conditions of this Agreement whether by reason of its own action or inaction or that of another, and fails to cure such default within thirty (30) days of Provider's notice of default.

Upon the occurrence of an Event of Default, Provider may at any time thereafter terminate this Agreement by giving Sub-merchant written notice thereof, and all amounts owed to Provider shall be immediately due and payable with no further notice.

## **8. Term and Termination.**

**8.1.** This Agreement shall be binding upon Sub-merchant upon Sub-merchant's clicking "Accept & Continue" to this Agreement. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding the date Provider processes the first transaction for Sub-merchant and shall continue for the Initial Term. Except as hereafter provided, unless either party gives written notice to the other party at least ninety (90) days prior to the

expiration of any term, the Agreement shall be automatically extended for additional periods equal to the Initial Term.

**8.2.** Notwithstanding the foregoing, Provider may immediately cease providing Services and/or terminate this Agreement for cause, without notice if:

**8.2.1.** Sub-merchant fails to pay any amount to Provider or Processor when due; or

**8.2.2.** Provider has received a request from Processor, Member Bank, or the Associations to terminate this Agreement; or

**8.2.3.** Provider believes that the provision of a service to Sub-merchant may be a violation of the Operating Regulations or applicable law or regulation; or

**8.2.4.** Provider believes that Sub-merchant has violated or is likely to violate the Operating Regulations or applicable law or regulation; or

**8.2.5.** Provider believes that Sub-merchant poses a financial or regulatory risk to Provider, Processor, Member Bank or an Association; or

**8.2.6.** any of Sub-merchant's Guarantors attempts to revoke or terminate its guaranty.

**8.3.** If Sub-merchant is terminated for cause, including but not limited to the reasons in Section 8.2 above, Provider may report Sub-merchant's business name and the names and other identification of its principals and Guarantor(s) to the Terminated Merchant File. Sub-merchant expressly agrees and consents to such reporting, and Provider shall have no liability to Sub-merchant, its principals, or Guarantor(s) for any loss, expense or damage directly or indirectly sustained by Sub-merchant due to such reporting.

## **9. Indemnification.**

**9.1.** Sub-merchant shall indemnify, defend, and hold harmless Provider, and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Provider, Processor and/or Member Bank, its directors, officers, employees, affiliates and agents resulting from or arising out of the Services in this Agreement, Sub-merchant's processing activities, the business of Sub-merchant or its customers, any sales transaction acquired by Provider, Processor or Member Bank, any noncompliance with the Operating Regulations (or any rules or regulations promulgated by or in conjunction with the Associations) by Sub-merchant, or its agents (including any Merchant Supplier), any issue, problems, or disputes between Sub-merchant and its customers, any Data Incident, any infiltration, hack, breach, or violation of the processing system of Sub-merchant, Merchant Supplier, or any other third party processor or system, or by reason of any breach or nonperformance of any provision of this Agreement, on the part of the Sub-merchant, or its employees, agents, Merchant Suppliers or customers.

## **10. Limit of Liability; Force Majeure.**

**10.1.** EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, PROVIDER, PROCESSOR AND MEMBER BANK DISCLAIM ALL WARRANTIES,

INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUB-MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND SUB-MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN. WITHOUT LIMITING THE FOREGOING, NO PARTY HERETO SHALL BE LIABLE FOR LOST PROFITS, LOST BUSINESS OR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT ARISING OUT OF CIRCUMSTANCES KNOWN OR FORESEEABLE BY ANY PARTY HERETO) SUFFERED BY ANY PARTY, INCLUDING BUT NOT LIMITED TO SUB-MERCHANTS, THEIR CUSTOMERS OR ANY THIRD PARTY IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER. However, nothing in the foregoing sentence is in any way intended, and shall not be construed, to limit (i) Sub-merchant's obligation to pay any payment network fees, including, but not limited to, dues, fees, assessments or penalties due under this Agreement, including but not limited to those imposed by telecommunications services providers, VISA, MasterCard and/or Other Networks; or (ii) any damages due from Sub-merchant related to an early termination of this Agreement; or (iii) any damages due from Sub-merchant related to the failure by Sub-merchant to exclusively receive the Services from Provider to the extent required by the Agreement, and/or (iv) Sub-merchant's obligation to indemnify Provider pursuant to this Agreement. In no event shall Provider be liable for any damages or losses that are wholly or partially caused by Sub-merchants or its employees, agents, or Merchant Suppliers.

**10.2.** Sub-merchant's sole and exclusive remedy for any and all claims against Provider, Processor or its Member Bank arising out of or in any way related to this Agreement or the Services shall be termination of this Agreement.

**10.3.** Neither Provider, Processor or its Member Bank shall be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services to the extent resulting, from a Force Majeure Event. Upon such an occurrence, performance shall be excused until the cause for the delay has been removed and Provider, Processor or its Member Bank have had a reasonable time to again provide the Services. No cause of action, regardless of form, shall be brought by a party hereto more than one (1) year after the cause of action arose, other than one for the nonpayment of fees and amounts due Provider under this Agreement. Any restriction on Provider or Processor's liability under this Agreement shall apply in the same manner to Member Bank.

## **11. Security, Data Incidents.**

**11.1.** Sub-merchant will be solely responsible for the security, quality, accuracy, and adequacy of all transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Sub-merchant represents and warrants to Provider that it has implemented and will maintain secure systems for maintaining and processing information and for transmitting information via Provider to Processor. Neither Provider, Processor or Member Bank shall have any liability whatsoever for the security or availability of any communications

connection used in connection with the Services provided hereunder. Sub-merchant acknowledges that Provider and Processor are responsible, respectively, only for the security of their own proprietary systems, and not for the systems of any third party, including without limitation any Merchant Supplier. Sub-merchant shall notify Provider immediately if Sub-merchant becomes aware of, or suspects a Data Incident. Sub-merchant agrees to fully cooperate with Provider, Processor and any Association with respect to any investigation and/or additional requirements related to a suspected Data Incident.

**11.2.** In the event that Sub-merchant receives such Card or other personal information in connection with the processing services provided under this Agreement, Sub-merchant agrees that it will not use it for any fraudulent purpose or in violation of any Card Organization Rules, including but not limited to Payment Card Industry Data Security Standards (“PCI DSS”) or applicable laws or regulations. Sub-merchant must ensure compliance by itself and any third party service provider utilized by Sub-merchant, with all security standards and guidelines that are applicable to Sub-merchant and published from time to time, including without limitation those published by Visa, MasterCard or any other Card Organization, and including, without limitation, the Visa U.S.A. Cardholder Information Security Program (“CISP”), the MasterCard Site Data Protection (“SDP”), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS (“Payment Application Data Security Standards”) (collectively, the “Security Guidelines”). Provider will not be responsible for unauthorized use or access of Sub-merchant’s customers’ personal information or financial data, Sub-merchant’s employees, or any other party associated with Sub-merchant, except to the extent such use or access is due to Provider’s gross negligence or willful misconduct. Sub-merchant may not use any Card information other than for the sole purpose of completing the transaction authorized by the Payor for which the information was provided to Sub-merchant, or as specifically allowed by Card Organization Rules, Operating Regulations, or as required by applicable law. Provider may use any and all information gathered in the performance of the Services in accordance with its Privacy Policy. In addition, Sub-merchant agrees that Provider may use such information for any lawful purpose, including marketing and advertising.

**12. Investigations.** Sub-merchant will promptly notify Provider in the event Sub-merchant becomes aware of any unusual or suspicious activity regarding its customers and will cooperate with Provider, Processor, Member Bank and the Associations, as applicable, in connection with any investigation of the customer’s background or activity.

**13. Electronic Check (“eCheck”) Services.**

**13.1.** In the event that Sub-merchant, pursuant to its Application, receives eCheck services from Processor, the terms and conditions of this Section 13 will apply in addition to all other terms and conditions of the Agreement. The terms of this Section 13 do not modify Sub-merchant’s due diligence obligations, including, without limitation, Sub-merchant’s responsibility to satisfy all applicable anti-money laundering (AML) laws and regulations. Without limiting the generality of any other provision of the Agreement, Sub-merchant shall comply with Processor’s and Member Bank’s security procedures and any other requirements, including data retention and record-keeping requirements.

**13.2.** Sub-merchant will maintain a commercial transaction account (“Account”) with a financial institution for the crediting and debiting of all payments and fees. Sub-merchant authorizes Processor and Member Bank to initiate and make transfers to and from the Account as contemplated by this Agreement. Any deficit in the Account shall be paid by Sub-merchant into the Account or as may be requested, directly to Processor or Member Bank to cover any deficit. Sub-merchant agrees to reimburse Provider, on demand, for any losses incurred as a result of insufficient funds in the Account. Provider will instruct Sub-merchant as to what data may be required by Provider to monitor the activity relative to the Account including any transfers to and from the Account.

**13.3.** During the term of this Agreement and for no less than one (1) year thereafter, Sub-merchant will maintain a positive balance in the Account, as defined in the Agreement at all times sufficient to accommodate all funding required by this Agreement. If at any time a deficit balance exists in the Account, Provider shall give Sub-merchant written notice of such deficit and Sub-merchant shall have two (2) business days to cure such deficit. Without limiting Sub-merchant’s obligation to fund the Account as outlined in the first sentence of this Section, Provider reserves the right to require that Sub-merchant maintain a minimum balance in the Account in an amount to be reasonably determined by Provider. Any fees, interest expenses or other expenses with respect to the Account will be the sole responsibility of Sub-merchant and will be paid directly by Sub-merchant. If Processor or Provider incurs any fees, interest expenses or other expenses with respect to funding any deficit in the Account, such amount shall be reimbursed by Sub-merchant, on demand by Provider. If Provider has required the establishment of a Reserve Account, Provider may, pursuant to Section 6 of this Agreement, offset such amount against the Reserve Account.

**13.4.** Processor has established a partitioned credit limit for eCheck transactions. In the event Sub-merchant receives eCheck Services from Processor, Processor may limit Sub-merchant’s eCheck activity under this Agreement to maintain such limit. Sub-merchant acknowledges and agrees that Processor may at any time restrict the amount or type of transactions Processor, in its sole discretion, will accept. Processor and/or Member Bank may reject any ACH entry (“Entry”) which does not comply with the requirements of this Agreement, the NACHA Operating Rules (“NACHA Rules”), applicable law or Member Bank’s or Processor’s requirements and specifications. Sub-merchant has no right to cancel or amend any Entry after its receipt by Processor or Member Bank. Sub-merchant agrees to be bound by the NACHA Rules and is responsible for payment for an Entry even if the Entry is erroneous or is a duplicate Entry. Sub-merchant agrees not to initiate any Entry or other transaction in violation of applicable United States law.

**13.5.** Sub-merchant (“Originator”) must obtain the authorization of the applicable individual, corporation or other entity (“Receiver”) to initiate a credit or debit Entry to the Receiver’s account. This authorization must be in compliance with applicable law and the NACHA Rules. Sub-merchant will provide Processor with copies of any such authorizations upon request. Sub-merchant will maintain the original or a copy of each authorization for such period of time as may be required by the NACHA Rules or applicable law, whichever is longer.

**13.6.** Sub-merchant acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Member Bank to the Receiving Depository Financial Institution (“RDFI”) may be made by the RDFI on the basis of the account number supplied by Sub-merchant, even if it identifies a person different from the named Receiver, and that Sub-merchant’s obligation to pay the amount of the Entry to Processor and/or Member Bank is not excused in such circumstances. If Sub-merchant receives a Notification of Change (“NOC”) Entry or corrected Notification of Change (“Corrected NOC”) Entry, Sub-merchant shall ensure that changes requested by the NOC or Corrected NOC are made by, or on behalf of, the individual, corporation or other entity that initiated the entry within six (6) banking days of Sub-merchant’s receipt of the NOC information or prior to initiating another entry to the Receiver’s account, whichever is later. Sub-merchant shall retain data on file adequate to permit remaking of Entries, and shall provide such data to Processor upon its request.

**13.7.** Each time Sub-merchant transmits an Entry to Processor or Member Bank, Sub-merchant represents and warrants to Processor and Member Bank the following (i) that the Receiver has authorized Sub-merchant to transmit Entries to Processor and Member Bank in a manner that complies with the NACHA Rules, for processing and transmittal by Processor and Member Bank through the ACH system, which authorization has not been terminated and is in full force and effect, and Sub-merchant agrees to make payment for any credit Entries originated and for any debit Entries returned by the RDFI and that (ii) each Entry accurately reflects the entry data furnished to Sub-merchant and does not violate any agreement between Receiver and Sub-merchant.

**13.8.** Without limiting the generality of anything in the Agreement, Sub-merchant will be liable for, defend, hold harmless, and will indemnify Processor from and against all claims, losses, liabilities, damages, fines, fees, assessments, expenses (including attorneys’ and collection fees and expenses) and other costs resulting from (i) inaccuracies in the Sub-merchants’ bank account information provided to Processor, (ii) any instructions from Sub-merchant regarding the release or holding of Sub-merchants’ settlement funds, and/or (iii) any breach by Sub-merchant of its obligations under the Agreement including this Section 13 or any misrepresentation by Sub-merchant under this Section 13.

**14. Employee Non-Solicit.** During the term of this Agreement and for a one (1) year period following any termination of this Agreement, neither party will, either directly or indirectly, on its own behalf or on behalf of its affiliates or others, solicit, divert or hire away, or attempt to solicit, divert or hire away any person who is (or was, at any time during the term of the Agreement or such one (1) year period following) an employee of the other party. Notwithstanding the foregoing, it is understood that this employee non-solicitation provision shall not prohibit: (i) solicitation of any person who contacts a soliciting party on his or her own initiative without any solicitation by or encouragement from the soliciting party; (ii) generalized solicitations by advertising and the like which are not directed to specific individuals or employees of the protected party; (iii) solicitations of persons whose employment was previously terminated by the protected party; or (iv) solicitations of persons who have terminated their employment with the protected party without any prior solicitation by the soliciting party.

**15. Audits.** At any reasonable time upon reasonable notice to Sub-merchant, Sub-merchant shall allow auditors, including the auditors of any Association or any third party designated by Provider or the applicable Association, to review the files held and the procedures followed by Sub-merchant at any or all of Sub-merchant's offices or places of business. Sub-merchant agrees that the cost of such audit shall be borne by Sub-merchant if the audit is conducted at the request of an Association or Member Bank. Sub-merchant will assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is requested by an Association, Member Bank or regulatory agency, and/or required by the Operating Regulations or applicable law, Provider may, at its option, and at Sub-merchant's sole expense, either retain a third party to perform the audit, or require that Sub-merchant directly retain a specific third party auditor. If Provider requires that Sub-merchant directly retain the auditor, Sub-merchant shall arrange immediately for such audit to be performed, and will provide Provider and the Associations with a copy of any final audit report.

**16. Amendment of Agreement or Modification of Services.** Provider may, without prior notice, amend this Agreement or modify the Services, including without limitation a change to the fees charged for the Services; provided that Provider will provide Sub-merchant at least thirty (30) calendar days' prior notice of such changes. Such notice may be made by means of email or a posting on the Website. Sub-merchant's continued use of the Services following notification of any change or amendment to this Agreement or the Services shall be taken as evidence of its consent and agreement to the modification and/or amendment. Posting notice of any modification or amendment on the Website shall be deemed adequate notification.

**17. Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without regard to conflicts of law provisions. The parties hereby consent and submit to service of process, personal jurisdiction, and venue in the state and federal courts in the State of Delaware and select such courts as the exclusive forum with respect to any action or proceeding arising out of or in any way relating to this Agreement, and/or pertaining in any way to the relationship between Provider and Sub-merchant. PROVIDER AND SUB-MERCHANT HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED HEREBY.

**18. Headings and Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The parties agree that the terms and conditions of this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this document.

**19. Survival.** The provisions of sections 4.3, 5, 6, 9, 10, 14, 17, 19, 20, 23, and 24 shall survive termination or expiry of this Agreement. Termination of this Agreement shall not relieve Sub-merchant of any amounts due and owing or for liability for any breach of this Agreement prior to termination.

**20. Entire Agreement; Parties to the Agreement.** This Agreement constitutes the agreement required by the Payment Facilitator Merchant Agreement between Provider and its Processor and Processor's Member Bank. VISA, MasterCard, Discover, American Express, or any other applicable networks may require that Sub-merchant also enter into a direct contractual relationship with Processor if Sub-merchant is categorized within certain MCC codes designated by VISA, MasterCard, Discover, American Express, or any other applicable network and Sub-merchant's card transaction volume exceeds \$1,000,000 for VISA, MasterCard, Discover, American Express, or any other applicable network or such other amount or criteria provided in the Operating Regulations. Where this direct contractual relationship is required by the Operating Regulations, by agreeing to this Agreement, Sub-merchant agrees to execute a direct processing agreement with Processor, in the form provided by Provider, and Provider will provide Processor with a copy of such agreement. Moreover, in the event that this Agreement is assigned, Sub-merchant may be required to enter into a Direct Processing Agreement with a processor of the assignee's choice. Provider and Sub-merchant acknowledge and agree that Processor and Member Bank are hereby made parties to this Agreement for the purpose noted above and that upon an assignment of this Agreement a different processor and its member bank may become parties to this Agreement, and that Processor and Member Bank or processor and its member bank, as chosen by the assignee, each, as applicable, depending upon whether the Agreement has been assigned, shall have the right to enforce against Sub-merchant all terms and conditions of this Agreement and to enforce against Guarantor(s) the guaranty, and any future amendments or addenda to which they are a party, that are set forth therein. This Agreement, its Exhibits and the Direct Processing Agreement, if applicable, shall constitute the entire agreement between the parties concerning the subject matter hereof. This Agreement shall not be superseded or replaced by the Direct Processing Agreement. In the event of a conflict between the terms of this Agreement and the Direct Processing Agreement, the terms of the Direct Processing Agreement shall control.

**21. Authorization.** Each of the parties hereto represents and warrants on behalf of itself that it has full power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, limited liability company or partnership or other appropriate authorizing actions; that the execution, delivery and performance of this Agreement will not contravene any applicable by-law, corporate charter, operating agreement, partnership or joint venture agreement, law, regulation, order or judgment; that execution, delivery and performance of this Agreement will not contravene any provision or constitute a default under any other agreement, license or contract which such party is bound; and, that this Agreement is valid and enforceable in accordance with its terms.

**22. Assignment & Successors.** Sub-merchant may not assign this Agreement or any of its rights or obligations hereunder without Provider's express written consent, and such consent shall not be unreasonably withheld. Provider may assign this Agreement at its sole discretion. The Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

**23. Miscellaneous.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of and may be enforced only by Provider and Sub-merchant and is not for the benefit of, and may



not be enforced by, any other party. Notwithstanding the foregoing, Provider and Sub-merchant acknowledge and agree that Processor and Member Bank are hereby made parties to this Agreement for the purpose set forth in Section 20 above. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement. "Member Bank" as used in this Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement. The Member Bank is a party to this Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by Processor at any time without notice to Provider or Sub-merchant.

**24. Guaranty.** As a primary inducement to Provider to enter into this Agreement with Sub-merchant, the Guarantor(s) unconditionally and irrevocably guarantees the continuing full and faithful performance and payment by Sub-merchant of each of its duties and obligations to Provider pursuant to this Agreement, as it may be amended from time to time, with or without notice, which obligations include, but are not limited to, all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) that Sub-merchant owes Provider under this Agreement, whether Sub-merchant created the obligation alone or with others, and whether Sub-merchant is primarily or secondarily responsible. Guarantor(s) understands further that Provider may proceed directly against Guarantor(s) without first exhausting its remedies against any other individual or entity responsible therefore to it or any security held by Provider. Guarantor(s) understands that the inducement to Provider to enter into this Agreement is consideration for this continuing unlimited guaranty, and that this continuing unlimited guaranty remains in full force and effect even if Guarantor(s) receives no additional benefit from the continuing unlimited guaranty. Guarantor(s) understands that Provider, without notice to Guarantor(s), may from time to time renew or extend the Sub-merchant Agreement, modify rates, limits, charges and fees, or modify the amount or type of services provided to Sub-merchant all of which may increase the obligations of Guarantor(s). The obligations of Guarantor(s) shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor(s) may have against Sub-merchant or Provider, except payment or performance of the obligations hereunder. Guarantor(s) waives notice of any acceptance of this continuing unlimited guaranty. The duties of Guarantor(s) shall not be released, discharged, or modified by Provider's (i) extending of the time for payment (for Sub-merchant or Guarantor(s)); or (ii) delay or omission in exercising any rights, taking any actions, or pursuing any remedies against Sub-merchant or Guarantor(s). Following an Event of Default under this Agreement, Provider may apply and/or set-off against amounts due to Provider any deposits, account balances, or other credits of Guarantor(s) in Provider's possession. Guarantor(s) grants Provider a security interest in the items described in the previous sentence. The obligations of each Guarantor shall be joint and several with Sub-merchant and any other Guarantor under this Agreement. This is a continuing unlimited guaranty that shall not be discharged or affected by the death of the Guarantor(s) and shall bind the heirs, administrators, representatives and assigns of the Guarantor(s). This continuing unlimited guaranty shall be binding upon and inure to the benefit

of the Parties and their respective heirs, executors, administrators, successors, transferees, and assignees.

**25. American Express Program Participation.** The following applies only if Sub-merchant participates in the American Express Program, as controlled by the American Express OptBlue Program Operating Regulations:

**25.1.** Sub-merchant must comply with, and accept Cards in accordance with, the terms of this Agreement and the American Express Merchant Operating Guide, as such terms may be amended from time to time.

**25.2.** Sub-merchant acknowledges that the American Express Merchant Operating Guide is incorporated by reference (available here: [https://icm.aexp-static.com/content/dam/gms/en\\_us/optblue/us-mog.pdf](https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf)).

**25.3.** Sub-merchant expressly authorizes Provider to submit transactions to, and receive settlement from, American Express on behalf of the Sub-merchant.

**25.4.** Sub-merchant expressly consents for (i) Provider to collect and disclose Transaction Data, Sub-merchant Data, and other information about the Sub-merchant to American Express; and (ii) American Express to use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communication purposes within the parameters of the Program Agreement, and important transactional or relationship communications from American Express.

**25.5.** Sub-merchant may opt-out of marketing messages by notifying Provider, however it will not preclude them from receiving important transactional or relationship communications from American Express. You may continue to receive marketing communications while American Express updates its records to reflect your choice. Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express.

**25.6.** Sub-merchant acknowledges and agrees that it may be converted from the OptBlue Program to a direct Card acceptance relationship with American Express if and when it becomes a High CV Merchant in accordance with the Operating Regulations. Sub-merchant further agrees that, upon conversion, (i) Sub-merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by the Sub-merchant for Card acceptance. Additionally, with respect to commercial marketing communications from American Express:

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

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

**25.7.** Sub-merchant acknowledges that American Express may use the information obtained in the Sub-merchant application at the time of setup to screen, communicate, and/or monitor Sub-merchant in connection with Card marketing and administrative purposes.

**25.8.** Sub-merchant acknowledges that it may not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the Sub-merchant may sell and assign future Transaction receivables to Provider, its affiliated entities and/ or any other cash advance funding source that partners with Provider or its affiliated entities, without consent of American Express.

**25.9.** American Express has third-party beneficiary rights, but not obligations, to this Agreement that will fully provide American Express with the ability to enforce the terms of the Agreement against the Sub-merchant.

**25.10.** Sub-merchant may opt out of accepting Cards at any time without directly or indirectly affecting its rights to accept Other Payment Products.

**25.11.** Provider may terminate Sub-merchant's right to accept Cards if it breaches any of the provisions in this Section or the American Express Merchant Operating Guide.

**25.12.** Provider has the right to immediately terminate a Sub-merchant for cause or fraudulent or other activity, or upon American Express' request.

**25.13.** Sub-merchant's refund policies for purchases on the Card must be at least as favorable as its refund policy for purchases on any Other Payment Products, and the refund policy be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law.

**25.14.** Sub-merchant is prohibited from billing or collecting from any Cardmember for any purchase or payment on the Card unless Chargeback has been exercised, the Sub-merchant has fully paid for such Charge, and it otherwise has the right to do so.

**25.15.** Sub-merchant shall comply with all Applicable Laws, rules and regulations relating to the conduct of the Sub-merchant's business.

**25.16.** Sub-merchant must comply with the DSR and PCI DSS, each as described in Chapter 15, "Data Security".

**25.17.** Sub-merchant must report all instances of a Data Incident immediately to Provider after discovery of the incident.

**25.18.** Sub-merchant shall cease all use of, and remove American Express Licensed Marks from the Sub-merchant's website and wherever else they are displayed upon termination of the Agreement or Sub-merchant's participation in the Program.

**25.19.** Sub-merchant shall ensure data quality and that Transaction Data and customer information is processed promptly, accurately and completely, and complies with the American Express Technical Specifications.

**25.20.** Sub-merchant is responsible for being aware of and adhering to privacy and data protection laws and provide specific and adequate disclosures to Cardmembers of collection, use, and processing of personal data.

## EXHIBIT A

### HARDWARE AND SUPPORT SERVICES

**Hardware** means the terminals, printers, readers, and hardware accessories necessary to support Sub-merchant's chosen payment processing solution. Sub-merchant may purchase or lease Hardware from Provider. This Exhibit A is an integral part of the Sub-merchant Payment Processing Agreement and is incorporated therein by reference.

1. **Buy Hardware from Provider.** Sub-merchant may, via email or phone, place an order to Provider to buy certain of its Hardware. Unless otherwise provided in the Hardware's documentation, Provider gives a one (1) year warranty, starting on the date of shipment to Sub-merchant, that the Hardware will be free from errors in workmanship or defects in materials. Hardware covered by this warranty, as stated above, will be repaired or replaced at no cost during the one (1) year warranty period, otherwise it may be repaired, if reasonably possible, or replaced and charged to Sub-merchant. Following the warranty period, at Sub-merchant's request, Provider will repair, if reasonably possible, or replace non-functioning Hardware and charge to Sub-merchant. If Sub-merchant returns Hardware which it bought from Provider within forty-five (45) days of purchase in original condition and never used, Provider will credit Sub-merchant the purchase price less a restocking fee of \$150. Provider cannot accept Hardware for credit after 45 days of the date of shipment to Sub-merchant.

2. **Lease Hardware from Provider.** Sub-merchant may, via email or phone, place an order to Provider to lease certain Hardware from Provider for a lease term of one (1) year ("Initial Term"). Except as hereafter provided, unless Sub-merchant gives notice to Provider at least ninety (90) days prior to the expiration of any Term, the lease shall renew for additional one (1) year terms ("Renewal Term") (collectively the "Term"). All Hardware which Provider may lease to Sub-merchant is the personal property of Provider and may not, under any circumstances, be considered fixtures. Sub-merchant may not sell, re-lease, encumber, or otherwise dispose of any Hardware leased from Provider and will keep the leased Hardware free of all liens, claims or encumbrances whatsoever. The leased Hardware will be replaced or repaired at no charge to Sub-merchant if the Hardware becomes inoperable through no fault of Sub-merchant, otherwise the Sub-merchant will be charged for the repairs. If the Hardware is damaged beyond repair, the Sub-merchant will be charged the current purchase price of the Hardware, minus any lease fees already paid. If the Sub-merchant requires new hardware, a new lease term or purchase agreement will be required. In the event that Sub-merchant wishes to return, or exchange hardware, Sub-merchant will be charged for the remainder of the lease for the returned or exchanged hardware and a new lease will be required for the new hardware. Sub-merchant must, within fifteen (15) days of receipt of any replacement Hardware, return the Hardware, which was replaced, to Provider at Merchant's expense. If Sub-merchant does not return the replaced Hardware, or if the Hardware became inoperative because of negligence or willful acts, Sub-merchant will be charged for the replacement value of the Hardware. If Sub-merchant terminates the Processing Agreement, which will automatically terminate the lease or terminates only the lease prior to the end of its Term, payment for the remainder of the lease Term will be immediately due and payable to Provider. Upon termination of the lease, Sub-merchant must, within fifteen (15) days of the termination,

return the leased Hardware to Provider at Merchant's expense or Merchant will be charged the replacement value of the Hardware.

3. **Promotional Lease Hardware from Provider.** Should a promotional lease offer be made available by Provider, Sub-merchant may, via email or phone, place an order for such Hardware to Provider to lease that certain Hardware from Provider for a lease term of one (1) year ("Initial Term"). Except as hereafter provided, unless Sub-merchant gives notice to Provider at least ninety (90) days prior to the expiration of any Term, the lease shall renew for additional one (1) year terms ("Renewal Term") (collectively the "Term"). With the exception of a replacement during the warranty period, as described below, any replacement or substitution of Hardware outside of the warranty period may be purchased or leased by the Sub-merchant from Provider at the then current pricing, terms and conditions. All Hardware which Provider may lease to Sub-merchant under such promotion is the personal property of Provider and may not, under any circumstances, be considered fixtures. Sub-merchant may not sell, re-lease, encumber, or otherwise dispose of any interest in any Hardware leased from Provider and will keep the leased Hardware free of all liens, claims or encumbrances whatsoever. During the manufacturer's warranty period only, the leased Hardware will be replaced at no charge to Sub-merchant if the Hardware becomes inoperable through no fault of Sub-merchant. If the required repairs were caused by negligence or willful acts, Sub-merchant will be charged for the repairs. Sub-merchant must, within fifteen (15) days of receipt of any replacement Hardware, return the Hardware, which was replaced, to Provider at Merchant's expense. If Sub-merchant does not return the replaced Hardware, or if the Hardware became inoperative because of negligence or willful acts, Sub-merchant will be charged for the replacement value of the Hardware. If Sub-merchant terminates the Processing Agreement, which will automatically terminate the lease or terminates only the lease prior to the end of its Term, payment for the remainder of the lease Term will be immediately due and payable to Provider. Upon termination of the lease, Sub-merchant must, within fifteen (15) days of the termination, return the leased Hardware to Provider at Merchant's expense or Merchant will be charged the replacement value of the Hardware.

4. **Support Services.** Provider's sole obligation with respect to a warranty claim received by Provider during the applicable warranty period shall be to repair or replace any malfunctioning Hardware, which may be with a refurbished product, provided that Sub-merchant has first utilized Provider's assistance services and has not resolved the problem. Hardware sent back to Provider for repair must be repairable for this service. From time to time, services may be interrupted for system maintenance and, furthermore, may also be interrupted for reasons beyond the control of Provider. Any extended warranty services, if any, shall be governed by the terms and conditions of such extended warranty.

5. **LIMITATION OF LIABILITY. PROVIDER ACCEPTS NO LIABILITY TO SUB-MERCHANT FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUES AND BUSINESS OPPORTUNITIES, OR DAMAGES FOR INJURY TO PERSONS OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH ANY HARDWARE OR SOFTWARE PURCHASED OR LEASED, OR SERVICE OBTAINED FROM PROVIDER. THE LIABILITIES LIMITED BY THIS SECTION APPLY(i)**

REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (ii) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iii) EVEN IF PROVIDER'S REMEDIES FAIL FOR THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION, PROVIDER'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

6. **LIMITED WARRANTY.** EXCEPT FOR THE EXPRESS WARRANTIES, PROVIDER MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BEYOND THOSE STATED HEREIN. PROVIDER DISCLAIMS ALL WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. PROVIDER DOES NOT WARRANT THAT THE HARDWARE, SERVICE OR SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR-FREE; AND EXCEPT AS PROVIDED IN THE EXPRESS WARRANTIES IN THIS EXHIBIT A, THE HARDWARE AND SOFTWARE ARE PROVIDED "AS IS."

7. **U.S. Government Restricted Rights.** The software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.22719, as applicable.

8. **Export Restrictions.** Sub-merchant acknowledges that the software acquired hereunder may include technical data subject to U.S. export control laws and regulations. Sub-merchant confirms that it will not export or re-export the software, directly or indirectly, either to: (i) any countries that are subject to U.S. export restrictions, (ii) any end user who Sub-merchant knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons; or (iii) any end user who has been prohibited from participating in the U.S. export Transactions by any federal agency of the U.S. government.

EXHIBIT B  
GIFT CARDS AND SERVICES

In the event that Sub-merchant, herein referred to as Merchant, receives gift cards and services from Provider, herein referred to as Reseller, via the service provider, Valutec Card Solutions, LLC (“Valutec”), Merchant acknowledges and agrees that the Gift Card Program, Gift Cards and Services provided to Merchant shall be governed by and subject to this Exhibit B, the application and the Gift Card Terms and Conditions attached hereto (collectively the “Agreement”). Merchant’s use of the Digital Physical eCommerce and Marketing features are additionally subject to third Party terms and conditions. Merchant agrees to be bound by this Agreement and authorizes Reseller, Valutec and/or its third-party service providers to debit and credit via ACH Merchant’s bank or other financial account(s) on file with Reseller or Valutec for any obligation owing from or to Merchant under this Agreement. Merchant acknowledges and agrees that Valutec may jointly with Reseller or separately perform activities under this Agreement whereby Valutec: (i) without imposing any obligation on Reseller, is hereby a third-party beneficiary under this Agreement for purposes of Valutec’s activities under this Agreement; (ii) may directly perform and/or enforce any and all rights and/or obligations of Reseller hereunder, and (iii) may jointly with Reseller or individually assert or exercise any rights or remedies in the Agreement available to Reseller related to Reseller’s rights under this Agreement, including but not limited to, any right to obtain indemnity from Merchant and to avail itself of any limits of liability. Merchant agrees that the financial institution(s) that hold Merchant’s bank or other financial account(s) shall not be liable for any loss or damage incurred as a result of any ACH debit or credit made pursuant to this authorization.

### Gift Card Terms and Conditions

The following are the terms and conditions upon which Fullsteam Operations LLC (“Reseller”) via the service provider, Valutec Card Solutions, LLC, a Delaware limited liability company (“Valutec”) will provide Merchant Gift Cards and Services. Merchant agrees to be bound by these Gift Card Terms and Conditions and the Application effective as of the execution of the Application. References to Valutec below will mean, where applicable, Valutec and Reseller.

**1. Gift Card Program.** Merchant hereby requests and authorizes Valutec to provide the Services so that Merchant and, if applicable, any other Participating Merchant may process Gift Card Transactions under the Gift Card Program.

**2. Services.** Under the terms of this Agreement and any user documentation that may be furnished to Merchant by Valutec from time to time, Merchant will subscribe to, and Valutec will provide to Merchant, the services as set forth in this Section (collectively, the “Services”). As applicable, Valutec shall implement the Services at each of Merchant’s locations listed or referenced on the Application or a subsequent add location form or otherwise in accordance with an implementation schedule jointly developed by Valutec and Merchant. Merchant understands and agrees that some or all of the Services may be performed by Valutec’s third-party service providers and that Valutec may provide any and all data and information reasonably necessary for such service providers to provide the Services so long as such service providers are bound by the same or similar confidentiality obligations as set forth below in Section 12 applicable to Valutec. In the event (a) Merchant checks the box for any or all of the Valutec Services on the Application or any Valutec order form; or (b) Merchant is provided additional services by or through Valutec and Merchant does not object in writing to the provision of such services, Merchant subscribes to the applicable services, and Merchant agrees to be bound by and accept any and all terms and conditions provided or made available to Merchant applicable to the provision of the services, which services are part of the Services and may be provided directly by Valutec’s third-party service providers, Valutec, or a combination of Valutec’s third-party service providers and Valutec. Certain of the Services may require Merchant to have an active credit card processing service agreement with Valutec’s affiliated third-party processor and a member bank. Certain Gift Card Program features which are part of the Services include those set forth in the Application. Merchant acknowledges and agrees that Valutec may from time to time modify, expand, restrict, suspend, or terminate the Services or products that it offers to Merchant without obligation or liability to Merchant. As part of the Services Valutec will:

- i. Offer Merchant an electronic stored value payment instrument in the form of an electronic Gift Card and/or plastic Gift Card encoded with a magnetic stripe;
- ii. Increase or decrease, as applicable, the balance of a Gift Card upon the completion of a Gift Card Transaction;
- iii. Provide the capability for Cardholders to check their Gift Card balances online;
- iv. Decline a Gift Card Transaction if the then-current balance on the Gift Card is less than the transaction amount;
- v. Provide Merchant an online reporting package detailing the Gift Card Transactions for each Gift Card; and
- vi. Provide Merchant access to help desk support for the Gift Card Program over the telephone.

**3. Merchant Obligations.**

A. **Transactions.** Merchant will honor, in accordance with the terms and conditions set forth in this Agreement, any Gift Card properly tendered by a Cardholder for use in a Gift Card Transaction. Merchant will not discriminate as to price, service or other conditions of sale with respect to any tendered Gift Card Transaction. Merchant will not present for processing any Gift Card Transaction not originated as a result of a transaction directly between Merchant and the Cardholder. If applicable, Merchant will check the signature and expiration date of each Gift Card presented and will not complete a Gift Card Transaction if the signature on the sales draft does not correspond with the signature on the Gift Card or if the Gift Card is not valid or has expired. Merchant will not request additional identification, or information, from a Cardholder unless necessary in order to complete the Gift Card Transaction or under the Rules. All disputes between Merchant and any Cardholder relating to any Gift Card Transaction will be settled between Merchant and the Cardholder. Valutec bears no responsibility for such disputes.

B. **Authorizations.** Merchant will obtain an authorization via a Valutec Integration when processing a Gift Card Transaction. Authorizations are not a guarantee of payment from a Participating Merchant and will not validate a fraudulent transaction.

C. **Process.** Merchant, at its sole cost and expense, shall maintain and be responsible for the Valutec Integration.

D. **Rules.** Merchant will comply with all rules and instructions provided to Merchant by Valutec. Merchant is responsible for ensuring that its Gift Cards, including the verbiage and terms contained on and that apply to the Gift Cards and Merchant’s issuance and usage of the Gift Cards, complies with all applicable local, state and federal laws, rules and regulations, including, but not limited to, the Credit Card Accountability Responsibility and Disclosure Act of 2009 and the Bank Secrecy Act of 1970, as amended, and its implementing regulations (collectively, the “Bank Secrecy Act”) (individually, a “Rule” and, collectively, the “Rules”). Merchant will redeem Gift Cards only for goods or services provided by Merchant and will not redeem Gift Cards for cash unless required under any Rule. Furthermore, Merchant specifically acknowledges and agrees that Valutec has not and is not expected to provide Merchant with any analysis, interpretation or advice regarding the compliance of any aspect of Merchant’s or Cardholder’s use of the Gift Card Program or other systems, services, products or programs of Merchant, with any third-party rights or Rules. Upon request, Merchant shall provide reasonable proof of compliance with the Rules and Valutec shall have no obligation to provide its services where Valutec reasonably believes that Merchant has not so complied.

E. **Content; Royalty Free License.** By Merchant’s submission to Valutec of images, brands, marks, verbiage, terms and/or other graphics (collectively the



“Content”), Merchant, hereby authorizes and permits Valutec and its affiliated entities to reproduce such Content on Gift Cards and other collateral used by Merchant under the Gift Card Program. This authorization and permission is granted royalty-free. Merchant represents and warrants that it has the requisite ownership, license, and/or rights to the Content for its use and reproduction of same by Valutec and that such use and reproduction will not violate any third party intellectual property rights.

F. **Exclusivity.** During the term of this Agreement, Merchant will not participate in any program similar to the Gift Card Program not administered or otherwise provided by Valutec or contract with any entity other than Valutec that provides services similar to the Services.

G. **Information.** Merchant will provide Valutec with financial information as requested from time to time. Merchant will not use, sell, exchange, or provide to any third party, and will keep strictly confidential, any information related to the Gift Card Program, including, but not limited to, sales slips, monthly statements, Valutec documents, and this Agreement.

H. **Review and Reconciliation of Accounts.** Merchant agrees to review its Gift Card Transactions, Valutec’s reports (including those made available online), notices, and invoices, and balance and reconcile Merchant’s bank account(s) associated with the Gift Card Program on a daily and monthly basis. Merchant agrees to notify Valutec immediately of any error in or dispute with any report, notice, invoice, Service deficiency, and/or billing or payment error. Valutec has no obligation to correct any errors, disputes, or Service deficiencies that flow from Merchant’s failure to comply with the duties and obligations in this section.

I. **Gift Cards.** Merchant agrees to redeem Gift Cards for eligible purchases of goods and services during all normal business hours. Merchant shall not condition the purchase or reload of any Gift Card on the purchase of another good or service and shall accept all forms of payment for purchases or reloads of Gift Cards, except a Gift Card, that it accepts for purchases of any other goods or services. Merchant agrees that Gift Cards may be used repeatedly by a Cardholder for a retail purchase of any amount less than or equal to the then-current Gift Card balance. Merchant furthermore agrees that Gift Cards may be redeemed by a Cardholder at any Participating Merchant location for up to the dollar amount loaded on the Gift Cards and may be reloaded at any Participating Merchant location.

J. **Non-Clearing; Unauthorized Purchases.** Merchant agrees that Valutec is not responsible for the non-clearing payment of a Gift Card purchase or for any subsequent unauthorized purchases or Gift Card Transactions and that Merchant is solely liable for these events. Merchant agrees that non-electronic authorizations are not permitted.

K. **Audit.** Merchant agrees to cooperate and provide all information requested as reasonably necessary for Valutec and/or its third-party service providers to audit or review the Gift Card Program and/or Gift Card Transactions and furthermore agrees that Valutec may adjust such audited or reviewed Gift Card Transactions and take such other actions or steps as it deems reasonable as a result of any finding from such audits or reviews.

L. **Payments.** Merchant does hereby agree and authorize any obligation owing under this Agreement (including, without limitation, any Fees) to be charged and deducted from Merchant’s bank or other account(s) on file with Valutec by Valutec via an ACH debit. Merchant’s payment obligations under this Agreement shall survive the termination of this Agreement.

4. **Participating Merchants.** Merchant requests and authorizes Valutec to provide the Services to Merchant and to each of the merchants set forth on the Application as well as any subsequently added merchant as set forth in Section 5 (Merchant, each merchant set forth on the Application, and any and all such added merchants shall be referred to individually as a “Participating Merchant” and collectively as the “Participating Merchants”) so that Gift Cards issued by one Participating Merchant may be redeemed by Cardholders at all of the Participating Merchants. Merchant agrees to indemnify and hold harmless Valutec and its officers, directors, employees, agents and representatives from any loss, damage or claim relating to or arising from any action or inaction of any Participating Merchant. Valutec agrees to provide the Services to the Participating Merchants as a group under the terms of this Agreement; provided, however, that each Participating Merchant shall execute an Application.

5. **Additional Participating Merchants.** Merchant agrees that Valutec may, at any time and without notice to Merchant, add as a Participating Merchant any merchant that (A) uses the same or similar trade name as Merchant or (B) is a part of a chain of independently owned stores, independently owned franchisees or some other group of merchants commonly connected by or through a brand, web-site, club, affiliation or some other commonality. Merchant additionally agrees that Valutec may add as a Participating Merchant any merchant approved in writing by Merchant.

6. **Bank Secrecy Act Compliance.** In the event that the Gift Card Program qualifies as a “prepaid program” (as defined in the Bank Secrecy Act), Merchant agrees that it shall serve as the “provider of prepaid access” (as defined in the Bank Secrecy Act) and comply with all of the requirements of a provider of prepaid access under the Bank Secrecy Act, including, without limitation, the requirement to register as a money services business with the Financial Crimes Enforcement Network of the United States Department of the Treasury and identify the prepaid programs for which it is serving as the provider of prepaid access. Merchant acknowledges and agrees that it shall be solely responsible for limiting the associated value of a Gift Card to \$2,000 per day and implementing any and all policies and procedures reasonably adapted to prevent the sale of prepaid access to funds of more than \$10,000 to one individual per day and that failure to so limit such associated value and/or implement such policies and procedures may result in additional data collection, reporting, registration and other requirements being applicable to Merchant under the Rules. Merchant further acknowledges and agrees that, other than Valutec’s obligation to provide an online reporting package in accordance with Section 2, Valutec shall have no obligation to provide any information or assistance to Merchant in connection with Merchant’s compliance with any Rule.

#### 7. **ACH Transfer Services.**

A. **Use of ACH Transfer Services.** In the event (a) Valutec provides ACH Transfer Services to Merchant; and (b) Merchant accepts, permits, or does not object in writing to Valutec’s provision of such services, Merchant subscribes to the ACH Transfer Services, and the Services shall include the ACH Transfer Services. As part of Merchant’s subscription to the ACH Transfer Services, Merchant agrees to provide Valutec with its banking and bank account information to facilitate ACH transfers from the bank account of Merchant to the bank account of another Participating Merchant (directly or vis-à-vis a central merchant pooling bank account owned by Merchant, a Participating Merchant or another third party) in connection with Gift Card Transactions. In order to protect the Participating Merchants and their customers, Merchant agrees that it shall, at all times, have available funds in its bank account(s) to cover all outstanding Gift Card liability (directly or vis-à-vis a central merchant pooling bank account owned by Merchant, a Participating Merchant or another third party). Merchant authorizes Valutec to credit or debit Merchant’s bank account(s) for all payments on Valutec’s or a Participating Merchant’s behalf and to debit or credit Merchant’s bank account(s) for all Gift Card Transactions. If any type of overpayment to Merchant or other error occurs, Merchant’s bank account(s) may be debited or credited, without notice, and, if Merchant’s bank account(s) do not contain sufficient funds, Merchant agrees to immediately fund into such account(s) the amount owed. Merchant agrees not to, directly or indirectly, prevent, block or otherwise preclude any debit by Valutec to Merchant’s bank account(s) permitted hereunder. For purposes of this Agreement, the term “bank account” includes a financial account at a bank, a credit union or another financial institution.

B. **Non-Use of the ACH Transfer Services.** In the event that Merchant does not subscribe to the ACH Transfer Services, Merchant shall be solely responsible for reconciling and paying any amounts owed to any other Participating Merchant in connection with any Gift Card Transactions.

C. **General Terms, ACH Transfers.** Whether or not Merchant subscribes to the ACH Transfer Services, Merchant agrees that (i) it shall hold harmless and indemnify Valutec and its officers, directors, employees, agents, and representatives from any loss, damage, or claim relating to or arising out of any failure by Merchant or any other Participating Merchant to pay any amounts, or have adequate funds for ACH transfers, in connection with any Gift Card Transactions and (ii) Valutec, in the event of any such failure by Merchant or any other Participating Merchant, shall have no obligation to pay Merchant or any other Participating Merchant for any amounts owed to Merchant or any other Participating Merchant in connection with any Gift Card Transactions and shall have no liability for any failure of Merchant or any other Participating Merchant to pay such amounts.

#### 8. **Fees.**

A. **Application.** Merchant agrees to pay Valutec the fees set forth on the Application (collectively, the “Fees”). Valutec shall have the right to determine and modify the Fees in its sole discretion upon notice to Merchant.

B. **Gift Card and Other Order Forms.** In addition to the Fees, Merchant agrees to pay Valutec all fees (including, without limitation, any shipping or handling fees) set forth in any Gift Card or other Valutec provided order form submitted by Merchant. The fees specified in a Gift Card or other Valutec provided order form are based on Merchant’s representations as to the anticipated number of Gift Cards under the Gift Card Program and the Gift Card Program features selected by Merchant.

9. **Integration.** Not all POS systems or terminals are integrated with Valutec's Gift Card Program processing systems. Merchant agrees that Valutec shall have no obligation: (A) to integrate its Gift Card Program processing system(s) or any or certain of its features with any POS system or terminal; and (B) for any cost associated with a Valutec Integration or any upgrades or service fees charged by any POS developer or reseller.

10. **Information Security.**

A. **Information Security.** Merchant shall be responsible for maintaining security for its own systems, servers, and communications links as necessary to (i) protect the security and integrity of Valutec's systems and servers on which Cardholder Data or Gift Card Transaction data is stored and (ii) protect against unauthorized access to or use of Valutec's systems and servers on which Cardholder Data or Gift Card Transaction data is stored.

B. **Data Backup.** Merchant shall maintain, for the longer of ten (10) business days or the number of days required under any Rule, adequate records, including backup on magnetic tape or other electronic media, of Gift Card Transactions from which lost or damaged items or data can be reconstructed. Merchant assumes all responsibility and liability for any loss or damage resulting from failure to maintain such records.

C. **Transmission of Data.** The responsibility and expense for transmission of Gift Card Transaction and other data between Valutec and Merchant, and the risk of loss for data and media transmitted between Valutec and Merchant, shall be borne by Merchant. Data lost by Valutec following receipt shall, at Valutec's election, either be (i) restored by Valutec from its backup media or (ii) reconstructed from Merchant's backup media at no additional charge to Merchant.

D. **Reliance on Data.** Valutec will provide the Services on the basis of information furnished by Merchant. Valutec shall be entitled to rely upon any such information or instructions as provided by Merchant. If any error results from incorrect input supplied by Merchant, Merchant shall be responsible for discovering and reporting such incorrect input and/or error and supplying the data necessary to correct such input and/or error to Valutec for processing at the earliest possible time. Valutec will rely on the instructions and directions of Merchant in administering the Gift Card Program and will not be responsible for any liability arising from Valutec's performance in accordance with Merchant's instructions.

11. **Proprietary Interests.** Merchant shall have no interest whatsoever, including copyright interests, franchise interests, license interests, patent rights, property rights or other interest in the Gift Card Program and/or Services. This Agreement is not to be construed as granting to Merchant any patent rights or patent license in any patent which Valutec may obtain in respect of the Gift Card Program, Services or Valutec's software or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any Valutec provided equipment or software.

12. **Confidentiality.**

A. **Valutec Systems and Information.** Merchant acknowledges that it has no rights in any Valutec software, systems, documentation, guidelines, procedures and similar related materials or information used to administer the Gift Card Program or provide the Services or any modifications thereto provided by Valutec, except with respect to Merchant's use of the same in accordance with and during the term of this Agreement to process the Gift Card Transactions. It is acknowledged and agreed that Merchant is the owner of its Cardholder Data and Gift Card Transaction data and that Valutec shall have the right to freely use such data during and after the term of this Agreement to administer and operate the Gift Card Program, perform its obligations under this Agreement and for any other legal purpose and may share such data with third parties, including, but not limited to, the Participating Merchants and Valutec's third-party service providers. Merchant agrees that Valutec may aggregate the Cardholder Data and Gift Card Transaction data with other Valutec data and that Valutec shall be the sole owner of such aggregated data and may rent, license, sell or otherwise use such aggregated data with third parties. Furthermore, by Merchant selecting or using the Go Mobile, Social Sharing or other Online Gifts Gift Card Program features, Merchant agrees that Valutec may provide Merchant's name, contact information, location, website address, and other Merchant credentials to Facebook for use in Facebook's gift card marketplace or other online social media program designed to drive consumers to local merchants.

B. **Confidentiality.** Except as otherwise set forth in this Agreement, Merchant and Valutec each agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data owned by the other party (or for which the other party has an obligation of confidentiality) (including, without limitation, the terms of this Agreement, and any other information related to Valutec's administration of the Gift Card Program and the Services, all of which the parties agree belong to Valutec) and that it will safeguard such information and data by using the same degree of care and discretion that it uses to protect its own confidential information, which shall in no case be less than a commercially reasonable standard of care. No party will be obligated to maintain the confidentiality of information: (i) that is released in the public domain through no act of the receiving party in breach of this Agreement, (ii) that was in the possession of the receiving party prior to its disclosure under this Agreement, and the receiving party can prove such possession, (iii) that is received from another source that has no restriction on use or disclosure, or (iv) that is required to be disclosed by any Rule, provided that the receiving party provides the disclosing party with notice and an opportunity to oppose or condition the disclosure. Valutec shall have the right to inspect Merchant's premises to ensure that confidential information is properly protected from disclosure, damage or theft. Each party agrees to destroy or return any confidential information of the other party, upon the request of the other party or the termination of this Agreement, except that either party may retain a copy to comply with applicable Rules so long as such party continues to maintain the confidentiality of such confidential information.

13. **Gift Card Production.** The Gift Card order form specifies certain production-related prices for magnetic stripe Gift Cards to be used in connection with the Gift Card Program. Pricing for Gift Card orders shall be at Valutec's applicable pricing in effect at the time of the order (which shall be available from Valutec upon request at the time of the order). Notwithstanding anything to the contrary set forth in Section 3.F, Merchant shall not be obligated to purchase Gift Cards from Valutec; provided, however, that Gift Card data, transaction and other Fees (as set forth on the Application), as applicable, still apply to such Gift Cards. If Merchant elects to purchase Gift Cards from Valutec, Valutec will arrange for the Gift Card production, and Merchant will be charged for the Gift Cards. The form and content of, and any language on, Gift Cards shall be subject to Valutec's approval, which approval shall not be unreasonably withheld. To the extent permitted by applicable Rules, Merchant may provide for an expiration date for any Gift Card, so long as that expiration date and any other required disclosures are clearly printed on the Gift Card in compliance with all applicable Rules. Merchant shall be solely responsible for complying with all applicable Rules relating to the Gift Cards and the Gift Card Program. Valutec's approval of any or all limits, policies or procedures pertaining to the Gift Card Program or any language on, or content or form of, any Gift Cards shall in no way constitute or be construed as Valutec's warranty or endorsement that the Gift Card Program or such Gift Cards comply with any Rule.

14. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, THE SERVICES AND PRODUCTS ARE PROVIDED BY VALUTEC WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER THIS AGREEMENT NOR ANY DOCUMENTATION FURNISHED UNDER IT (INCLUDING, WITHOUT LIMITATION, ANY GIFT CARD ORDER FORM OR OTHER FORM PROVIDED BY VALUTEC TO MERCHANT) IS INTENDED TO EXPRESS OR IMPLY ANY WARRANTY BY VALUTEC THAT THE SERVICES OR PRODUCTS WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS. ANY SECURITY MECHANISMS INCORPORATED IN THE SERVICES HAVE INHERENT LIMITATIONS, AND MERCHANT AGREES THAT IT HAS INDEPENDENTLY DETERMINED THAT SUCH MECHANISMS ADEQUATELY MEET ITS SECURITY AND RELIABILITY REQUIREMENTS. FURTHERMORE, MERCHANT AGREES THAT IN THE EVENT THE CERTAIN OR ALL OF THE SERVICES AND/OR GIFT CARD PROGRAM IS DOWN OR OTHERWISE NON-FUNCTIONAL AND NOT ABLE TO VERIFY GIFT CARD TRANSACTIONS FOR CUSTOMERS, VALUTEC WILL NOT PROCESS SUCH TRANSACTIONS. MERCHANT ACKNOWLEDGES THAT VALUTEC SHALL NOT BE RESPONSIBLE FOR LOST PROFITS OR SALES DUE TO THE MALFUNCTION OF THE SERVICES AND/OR GIFT CARD PROGRAM. MERCHANT AGREES THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY TRANSACTIONS THAT ARE AUTHORIZED BY MERCHANT WITHOUT THE KNOWLEDGE OR WRITTEN CONSENT OF VALUTEC, AND, IN ADDITION TO THE PROVISIONS OF SECTION 15, WILL WHOLLY INDEMNIFY AND HOLD HARMLESS VALUTEC FROM AND AGAINST ANY AND ALL DAMAGE, LOSS, LIABILITY, CONSEQUENTIAL DAMAGE, EXPENSE, CLAIM OR OBLIGATION ARISING IN CONNECTION THEREWITH.

15. **Indemnification.** Valutec and Merchant agree that they shall, as the "Indemnifying Party", each indemnify and hold harmless the other party and its officers, directors and shareholders, as the "Indemnified Party", from any and all loss, cost, expense, claim, damage and liability (including attorney's fees and court costs) paid or incurred by the Indemnified Party, to the extent it arises from third party claims, caused by, or is attributable to (a) the failure or breach by the Indemnifying

Party or its representatives to abide by the terms and/or provisions of this Agreement; (b) the violation by the Indemnifying Party or its representatives, of any applicable laws, regulations or court orders relating to this Agreement; or (c) gross negligence, willful misconduct or any act or omission by the Indemnifying Party or its representatives.

**16. Term and Termination.**

A. **Term.** The term of this Agreement shall commence on the date of execution of the Application by Merchant and continue in effect for the initial term set forth in the Application or where no such initial term is expressly provided in the Application, for a period of thirty-six months (36) months (the "Initial Term") and, after the Initial Term, automatically renew for consecutive twelve (12) month terms, unless either party provides written notice of termination to the other no less than sixty (60) days prior to the end of the then-current twelve (12) month term.

B. **Early Termination Fee.** If Merchant terminates this Agreement before the end of the Initial Term or any renewal term, unless otherwise prohibited by law, Merchant shall be liable for and charged an early termination fee of an amount equal to the average monthly fees assessed to Merchant under the Agreement for months during which Merchant processed any transactions multiplied by the number of months remaining in the then-current Initial Term or renewal term, as applicable.

C. **Valutec Termination, and Conversion.** Valutec may, in its sole discretion, terminate this Agreement at any time upon thirty (30) days' prior notice to Merchant. It is the sole responsibility of Merchant to accomplish the conversion of its Gift Card processing upon the termination of this Agreement.

D. **Post-Termination Duties.** Following the termination of this Agreement for any reason, Merchant will immediately cease selling Gift Cards. Valutec shall provide Merchant, at Merchant's expense, assistance to facilitate the orderly transition of the Gift Card Program to Merchant or its designee ("Conversion Assistance"). Before providing any Conversion Assistance, Merchant agrees to pay Valutec a conversion assistance fee equal to the greater of: (a) \$495.00 per location; or (b) up to a maximum of \$1,500.00, 10% of the aggregate amount of all unused account balances of all Gift Cards issued by Merchant for Valutec's standard conversion assistance plus, where applicable, the amount of Valutec's good faith estimate for any custom programming or other custom services requested by Merchant. Merchant agrees that, prior to or upon the termination of this Agreement, Merchant must either (A) refund the unused account balances of Gift Cards issued by Merchant to the Cardholders, (B) transfer the unused account balance of each Gift Card issued by Merchant to another gift card program providing the Cardholder with access to such unused account balance, or (C) reach a mutual agreement with Valutec to provide continuation of the Gift Card Program; provided, however, that, in the event there are one or more other Participating Merchants, Merchant must, prior to or upon the termination of this Agreement, pay the aggregate amount of all unused account balances of all Gift Cards issued by Merchant, in the form of a lump sum payment, to any other Participating Merchant or other third party designated by Valutec, for the benefit of the other Participating Merchants, so that funds will be available for all unused account balances of Gift Cards issued by Merchant to be redeemed at the other Participating Merchants. Merchant agrees and acknowledges that solely it is liable to the Cardholders of Gift Cards issued by Merchant for all account balances during and after the term of this Agreement.

E. **Merchant's Responsibility for Gift Card Usage.** Merchant understands and agrees that it shall be solely responsible and liable for all Gift Card usage including usage resulting from stolen, lost, expired or unauthorized Gift Cards. Notwithstanding anything in this Agreement to the contrary, Merchant further hereby understands and agrees that Valutec will not be responsible or liable for any funds incorrectly or not transferred as a result of: (A) insufficient funds in the account of Merchant or any of the Participating Merchants; (B) any change or changes in banking or bank account information of Merchant or any of the Participating Merchants; (C) errors that directly result from information provided by Merchant, any of the other Participating Merchants or any other third party; or (D) other unintentional errors made by Valutec in providing the Services.

**17. Limitation of Liability.** Neither Valutec nor anyone acting on Valutec's behalf shall be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control, which shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communications failures, unavoidable delays, the errors or failures of third-party systems, or other similar causes beyond such party's control. The liability of Valutec and anyone acting on Valutec's behalf for any loss arising out of or relating in any way to this Agreement, including, but not limited to, the unavailability or malfunction of the Services, shall, in the aggregate, be limited to actual, direct, and general money damages in an amount not to exceed the greater of:

(A) \$900.00; or (B) the aggregate amount of Fees paid by Merchant to Valutec for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of liability of Valutec and anyone acting on Valutec's behalf arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the basis on which any legal or equitable action may be brought against Valutec or anyone acting on Valutec's behalf, and the foregoing shall constitute Merchant's exclusive remedy. Under no circumstances shall Valutec or anyone acting on Valutec's behalf be liable for any lost profits, lost interest, or special, consequential, punitive or exemplary damages arising out of or relating in any way to this Agreement. It is agreed that in no event will Valutec or anyone acting on Valutec's behalf be liable for any claim, loss, error, damage, or expense arising out of or relating in any way to this Agreement that is not reported in writing to Valutec by Merchant within forty-five (45) days of the act or omission to act that resulted in such claim, loss, error, damage, or expense. Merchant expressly waives any such claim not brought within the time period set forth in the immediately preceding sentence.

**18. Taxes.** All fees and prices charged to Merchant in connection with this Agreement, any Gift Card order form, or any other form provided by Valutec to Merchant, are exclusive of sales tax. Merchant shall be responsible for any federal, state, and local sales, use, property, and other taxes that may be imposed as a result of this Agreement, any Gift Card order form, or other form provided by Valutec to Merchant, or the Gift Card Program (except taxes imposed upon Valutec's taxable net income).

**19.**

**Attorneys' Fees/Jury Trial Waiver/Choice of Law/Venue.**

If Valutec defends or enforces any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Valutec for all costs and expenses, including reasonable attorneys' fees, as a result of such collection or legal action. Merchant waives trial by jury with respect to any litigation arising out of or relating to this Agreement. Valutec and Merchant agree that any other parties. Merchant further agrees that Valutec may provide a copy of this Agreement and any and all amendments to any other Participating Merchant, who will be deemed a third-party beneficiary of this Agreement, for the purpose of bringing an action under this Agreement in the name of such Participating Merchant solely to enforce any breach by Merchant of a representation, warranty, term or provision in this Agreement. Complete Agreement. This Agreement (including any Gift Card order forms or other form provided by Valutec to Merchant subsequently submitted by Merchant and accepted by Valutec) embodies the parties' final, complete and exclusive agreement with respect to the Gift Card Program and the Services. This Agreement shall supersede all prior and contemporaneous agreements, understandings and representations, written or oral, with respect to the and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of or in connection with or relating to (A) this Agreement, (B) the relationships that result from this Agreement, or (C) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of Ohio notwithstanding any conflicts of laws rules and shall be brought in either the state or federal courts in Cincinnati, Ohio or Hamilton County, Ohio, and Valutec and Merchant expressly agree to the exclusive jurisdiction of such courts. Valutec and Merchant also agree that any and all such disputes or controversies shall be resolved on an individual basis without resort to any form of class action and shall not be consolidated with the claims of Gift Card Program and the Services.

**20. Notices.** All notices required by this Agreement shall be in writing. All notices sent to Valutec shall be sent by overnight courier, or regular or certified mail and shall be effective upon actual receipt by the General Counsel of Valutec at 8500 Governors Hill Drive, Symmes Township, Ohio 45249 (or at such other address provided in writing by Valutec to Merchant). All notices sent to Merchant shall be sent by email, facsimile, overnight courier, or regular or certified mail and shall be effective upon actual receipt at the email address, facsimile number, or physical address provided by Merchant in the Application (or at such other email address, facsimile number, or physical address for Merchant on file with Valutec).

**21. Assignability.** Merchant shall not assign, subrogate or transfer any interest, obligation or right arising out of this Agreement without prior written

consent from Valutec, which shall not be unreasonably withheld.

**22. Amendments.** This Agreement may only be amended in a writing signed by Valutec and Merchant. Notwithstanding the previous sentence: (a) any and all fees and charges payable under this Agreement may be changed immediately by Valutec upon notice to Merchant in accordance with Section 8; and (b) Valutec may provide Merchant either an amendment to this Agreement or an entirely new Gift Card Terms and Conditions, which amendment or new Gift Card Terms and Conditions will be binding upon Merchant if Merchant or any other Participating Merchant submits to Valutec a Gift Card Transaction after the effective date of such amendment or new Gift Card Terms and Conditions.

**23. Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement, the following terms when used in this Agreement will have the meanings set forth in this Section.

**ACH Transfer Services** means the processing by Valutec of ACH transfers between accounts of Participating Merchants in connection with Gift Card Transactions pursuant to the terms set forth in Section 7.

**Cardholder** means a person possessing a Gift Card.

**Cardholder Data** means the consumer profile information, if any, collected by the Gift Card Program software.

**Card Services Agreement** shall have the meaning set forth in Section 16.

**Gift Card** means any valid unexpired stored value card (in physical or digital form) bearing the name or trade name of Merchant issued as part of the Gift Card Program or the name or trade name of any other Participating Merchant issued as part of such Participating Merchant's Gift Card Program administered by Valutec.

**Gift Card Program** means the programs and systems administered and services provided by Valutec as set forth in this Agreement that allow (i) Cardholders to purchase goods or services from Participating Merchants using Gift Cards and consists of a POS-based authorization system for activating Gift Cards and authorizing subsequent Gift Card Transactions and (ii) Merchant to select certain or all of the Services and features set forth in the Application or other form provided by Valutec to Merchant.

**Gift Card Transaction** means a transaction in which a Cardholder via a Valutec Integration (i) purchases a Gift Card, (ii) adds monetary value to a Gift Card, (iii) debits the monetary value on a Gift Card by purchasing goods or services from Participating Merchants, and/or (iv) returns goods for a credit to the Gift Card.

**Participating Merchant** shall have the meaning set forth in Section 4.

**POS** means point-of-sale.

**Rules** shall have the meaning set forth in Section 3.D.

**Valutec Integration** means the integrated or stand-alone POS terminals, on-line gateways, or other integrated manual or automated transaction processing systems necessary to electronically transmit Gift Card Transaction information to Valutec and to route Valutec's electronic authorization to Merchant.