

SUB-MERCHANT AGREEMENT

This Sub-Merchant Agreement (“Agreement”) is a legal agreement between Vantage Card Services, Inc. (“Vantage”), and the business entity (“Merchant”) set forth on the Merchant Application form (“Merchant Application”). This Agreement governs Merchant’s use of Vantage’s payment processing services (“Services”) and must be agreed to in order to use the Services.

1. PAYMENT CARD SERVICES.

1.1 DESCRIPTION.

The Services allow Merchant to accept payment from its customers using credit and debit cards or other payment devices or credentials (collectively “Card(s)”) validly issued by Visa U.S.A. Inc. (“Visa”), MasterCard International Incorporated (“MasterCard”), and DFS Services LLC (“Discover”). If Merchant elects and is approved, the Services may also allow Merchant to accept payment from its customers using Cards validly issued by American Express Travel Related Services Company, Inc. (“American Express”) as further set forth in this Agreement. Visa, MasterCard, Discover, and American Express are collectively the “Card Brand(s)”. Merchant must only use the Services for the business purpose described in Merchant’s Application and not for personal, family, or household use. Upon Vantage’s approval of Merchant’s Merchant Application and this Agreement, which shall be as of the date Vantage issues a merchant identification number to Merchant through which Merchant may submit Card transactions to Vantage for processing (“Effective Date”), Vantage grants Merchant use of the Services subject to and in accordance with the terms set forth in this Agreement. Merchant will be deemed to have accepted this Agreement and will thereby be bound by this Agreement upon the earliest to occur of either (i) the Effective Date; the date of Merchant’s (or Merchant’s representative’s or agent’s) electronic acceptance of this Agreement, as set forth in Section 12.9; or the date of Merchant’s submission of any transaction to Vantage for processing.

1.2 CARD ACCEPTANCE.

When accepting Cards, Merchant will follow all procedures and rules set forth in the Policies and Rules. Merchant is responsible for identifying the person in whose name a Card is issued (“Cardholder”), such identification to be completed only in accordance with the Rules (defined below), and upon submission of a transaction for authorization Merchant warrants the identity of the customer as the Cardholder. Except as set forth in this Agreement, Merchant will honor, without discrimination, any valid Card properly tendered by a Cardholder for bona fide transactions for the purchase of goods or services from Merchant. Merchant may, in accordance with the applicable limited acceptance Rules, elect not to accept Visa and/or MasterCard branded credit or debit cards, but must provide Vantage with prior written notice of such election. If Merchant elects not to accept certain Cards as set forth in the previous sentence, Merchant will be solely responsible for ensuring it only accepts those Cards which meet its acceptance election and Vantage may process any transaction (and Merchant will be responsible for and pay all fees associated with such transaction) submitted to Vantage. Merchant will properly disclose to the Cardholder at the time of the Card transaction, the Merchant’s name, return policy, refund policy, and other limitations Merchant may have on accepting returned merchandise. Merchant’s refund policies for purchases made with a Card must be at least as favorable as its refund policy for purchases made with any other form of payment. Merchant will identify the Cardholder when accepting payment and will request the Card expiration date and ZIP code or postal code from the Cardholder’s billing address. To reduce the likelihood of fraud it is recommended that Merchant obtain the security code from each Card, but Merchant must not store this information.

1.3 CARD AUTHORIZATION.

No later than 72 hours from the time Merchant initiates a transaction, but prior to completing such transaction, Merchant will request an authorization for such transaction using either equipment meeting specifications determined by Vantage or a third party software solution approved by Vantage. This authorization request must include Merchant’s name and account identifier, the Card expiration date, the ZIP code of the customer’s billing address, and the total amount of the transaction, including taxes. Vantage may also require additional information in Merchant’s authorization request, including but not limited to: (a) the Card’s CVV2 code or the equivalent; (b) a brief description of the goods or services involved; (c) the transaction authorization number; and, (d) if applicable, adjacent to the signature line, a notation that all sales are final or other return policy. For the avoidance of doubt, Merchant is responsible for displaying or requesting all applicable or required information, and Vantage may but shall not have any obligation to decline any transaction for which Merchant has not obtained sufficient information. Authorizations are not a guarantee of acceptance or payment of a transaction and do not waive any provision of this Agreement, or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. Vantage may refuse to authorize any transaction. Vantage’s name will appear in conjunction with Merchant’s name on Cardholders’ statements. Under no circumstance will Vantage be responsible for processing credits or adjustments related to transactions not originally processed by Vantage. All transactions and deposits are subject to Vantage’s audit and final verification, and may be adjusted for inaccuracies without notice to Merchant. All credits (including the proceeds from processed transactions) provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Rules, whether or not a transaction is charged back by the Card issuer.

1.4 SALES TRANSMITTALS.

Merchant will retain a copy of the sales transmittal for the completed transaction and other evidence of each transaction in accordance with the Rules for 25 months or such longer period as the Rules may require. Within two business days after the transaction date, two business days after the delivery of merchandise for a delayed merchandise delivery, or such shorter time set forth in the Rules, Merchant will provide all sales transaction records (or credit vouchers) to Vantage. Within three business days of Vantage’s request, Merchant will produce and provide to Vantage copies of all requested sales transmittals and other transaction evidence. In addition to other Chargeback rights set forth in this Agreement and in the Rules, Vantage may chargeback any transactions for which a copy of the sales transmittal and other evidence is not provided in accordance with this section. The preparation and delivery to Vantage by Merchant of transactions shall constitute an endorsement to Vantage by Merchant of each such transaction. Vantage may refuse to process any transaction which, in whole or in part, it could charge back to the Merchant. Vantage’s performance of the Services, including but not limited to any compliance case responses, interchange qualification, or transaction stand-in shall not affect Merchant’s obligations or liability under this Agreement.

1.5 MULTIPLE ACCOUNTS.

Merchant may request multiple accounts with Vantage to allow for easier reporting of transactions. If Vantage approves additional accounts, Merchant is responsible for any applicable additional fees or costs, as such may be set forth in the Membership Application. These additional accounts collectively count toward the underwriting limits Vantage sets for Merchant. If Merchant requests multiple accounts on behalf of any other entity (each such entity receiving an account being a "Sub-Entity"), then the following terms apply: Merchant warrants that it has a valid agreement in effect with each Sub-Entity granting Merchant the authority to execute the Merchant Application and this Agreement on Sub-Entity's behalf and take all actions necessary to obtain and maintain a merchant account for Sub-Entity on the terms set forth herein, with such Sub-Entity being a "Merchant" for all purposes under this Agreement and such Merchant Application. Merchant will provide evidence of such authority upon request by Vantage. Merchant acknowledges and agrees that it has verified the identity, organization, and ownership of Sub-Entity to the extent necessary for Vantage to be able to provide payments to a Sub-Entity's depository account, and that Vantage will be relying on the accuracy of Merchant's verification to provide the Services. By including information about a Sub-Entity in a Membership Application or a boarding file submitted to Vantage in conjunction with a Membership Application, Merchant is binding such Sub-Entity to such Membership Application and this Agreement as if such Sub-Entity had executed and submitted such Membership Application and this Agreement itself. Merchant further agrees that if the above statements are not true, it will be liable to Vantage for Sub-Entity's obligations under this Agreement, together with any damages and losses incurred by Vantage as a result of Merchant's misrepresentation. Merchant will not open or use a processing account, or otherwise receive payment processing services or any other services similar to the Services from any party other than Vantage during the term of this Agreement without first providing Vantage of notice of the same.

1.6 PROCESSING LIMITS.

There are no monthly processing minimums, but Vantage will assign a maximum dollar amount per sales ticket and an aggregate maximum dollar amount of Card transactions per calendar month. Merchant may request to increase these limits, but any increase shall be at Vantage's sole discretion. Vantage may also decrease such maximum amounts at any time, even if such amounts were previously authorized or increased. If Merchant submits one or more transactions which would cause Merchant to exceed any maximum set by Vantage, Vantage may at its sole discretion either: (a) process the transactions; (b) process the transactions but cause all or a portion of the proceeds of such transactions to be placed in a Reserve Account (defined below); or (c) return a decline code for each such transaction.

1.7 ENSUREBILL.

- a) **DESCRIPTION.** EnsureBill Services include enrolling Merchant, submitting information to the Card Brands for updating, and providing updated account information to Merchant as received by the Card Brands, subject to the terms and conditions of this Agreement. An update means a match between a submitted card and the applicable Card Brand resulting in the provision of a new card number; a notification that the account has been closed; a new expiration date; or a "contact cardholder" message. If Merchant elects to enroll in the EnsureBill Services, Merchant authorizes Vantage to enroll Merchant with the Card Brands to receive the EnsureBill Services and to provide information about Merchant and its customers to Vantage's service providers, including the Card Brand and Vantage's processor, in order for Vantage to provide the EnsureBill Services.
- b) **USE WITHOUT PROTECTPAY.** For Cards not stored in the ProtectPay service, Merchant must:
 - i. Request an update for every participating account in its customer database at least once every 180 calendar days;
 - ii. Submit requests only for those accounts with which it has an ongoing customer relationship that would require the use of the EnsureBill Services, e.g., subscription services, "express checkout" services, membership (club) services, or recurring payment services;
 - iii. Update its customer account database within five business days of receiving an update from Vantage;
 - iv. Ensure that information received from the EnsureBill Services is properly incorporated into its customer database for utilization in future transactions;
 - v. Correct erroneous account information within five business days of receipt of error notification from Vantage, its vendor, or the Card Brands; and
 - vi. Correct operational errors within five business days of receipt of error notification from Bank, Vantage, or the Card Brands.
- c) **USE WITH PROTECTPAY.** Vantage or its vendor will perform the EnsureBill Services for Cards stored in ProtectPay.
- d) **LIMITATIONS.** Merchant may use EnsureBill Services (and the data associated therewith) solely for updating cardholder information in order to complete its future pre-authorized transactions in accordance with the Card Brands and will not use the EnsureBill Services (nor the data associated therewith) for any other purpose, including use of data with transactions for a different card type (or in connection with the development of any other service or product). Merchant must not request authorization or an update on accounts that have returned a response of "Closed Account" or submit inquiries for the EnsureBill Services on behalf of any other entity.

2. ACH SERVICES.**2.1 DEFINITIONS.**

Any capitalized term used but not defined in Section 2 of this Agreement shall have the meaning set forth in the NACHA (defined below) Rules. Each ACH Entry will be considered a transaction for purposes of this Agreement.

2.2 DESCRIPTION.

Subject to the terms and conditions in this Agreement, the Services will allow Merchant to originate ACH Entries as an Originator, and Vantage will submit or cause to be submitted into the ACH system such Entries.

2.3 ENTRY REQUIREMENTS.

Merchant assumes all responsibilities of an Originator under the NACHA Rules. Merchant will ensure that all proper authorizations are obtained and that all Laws are complied with regarding each Entry, including ensuring each authorization is understood by the counter-party and providing the counter-party with a copy of the executed authorization. Merchant will provide the counter-party with

appropriate prior written notice when required by the NACHA Rules, including but not limited to notice of any amount changes or billing day changes associated with previously authorized or recurring Entries. Merchant will under no circumstances submit an Entry to Vantage which is not authorized or which is under dispute. Merchant will obtain and maintain all information regarding or related to an ACH transaction which may be required by Vantage or under the NACHA Rules. Merchant will retain the original authorization for the longer of: five (5) years after such authorization has expired; or the period of time required by the NACHA Rules or any Laws. To the extent it prepares the Entries, Merchant will format each Entry in accordance with the NACHA Rules and the Policies (defined below) by the cutoff time established (and as may be modified) by Vantage. Entries not received by the cutoff time will be processed on the next business day. Each Entry must specify Merchant as the Originator. Vantage may refuse to process any Entry which Vantage, in its sole discretion, believes to violate any Rule, lacks sufficient records or authorization, or otherwise is not prepared in accordance with this Agreement. Vantage may, at its sole discretion, process the Entries in any order and select the routes and ODFIs for the processing of the Entry and the transfer of related funds. Vantage may, at its sole discretion, establish or modify limits on the aggregate dollar volume of unsettled Entries permitted to be outstanding at any time, and will communicate such limits to Merchant. Merchant will not submit any Entry which would cause the aggregate dollar volume of unsettled Entries to exceed such limits. If Merchant does submit an Entry which would cause the aggregate dollar volume of unsettled Entries to exceed such limits, Vantage may, in its sole discretion, reject such Entry or suspend such Entry and process the Entry once a sufficient amount of the outstanding Entries have settled such that submission and processing would not cause Merchant to exceed the set limits. Vantage may, on a case by case basis and at its sole discretion, make an exception and process one or more Entries which would cause Merchant to exceed its limits.

2.4 COMPLIANCE

Merchant will comply with all obligations under all applicable Laws, including but not limited to the Bank Secrecy Act, the Electronic Funds Transfer Act, anti-money laundering regulations, and the regulations of the Office of Foreign Asset Control. Merchant will immediately notify Vantage of any regulatory enforcement actions or any actual or suspected failure to comply with any applicable Laws. Merchant will maintain the confidentiality of all passwords, codes, security devices, and related instructions provided to Merchant for the Services, ACH or otherwise. Merchant authorizes Vantage to act on each Entry or request and Merchant will be obligated to pay Vantage the corresponding fees. Vantage may place a hold on or interplead any proceeds or other funds of any transaction if Vantage receives a request to do so or other demand or claim with respect to such proceeds or other funds.

2.5 ACH REPRESENTATIONS AND WARRANTIES

In addition to all other representations and warranties of Merchant set forth in this Agreement, for each Entry submitted by, on behalf of, or through Merchant to Vantage, Merchant represents and warrants at the time of submission of each Entry: (a) Merchant has obtained the written authorization of each individual or entity whose account is debited or credited by an Entry prior to originating such entry; (b) the obtained authorization is in effect at the time the Entry was submitted; (c) the obtained authorization will remain in effect until such Entry is processed; (d) the obtained authorization is for the date and dollar amount set forth in the Entry; (e) such Entry is authentic, accurate, and conforms to all NACHA Rules; (f) such Entry complies with all Policies and Laws; (g) each debit in an Entry is for an amount due and owing to Merchant on the date specified in the Entry for posting to the counter-party's account; and (h) Merchant has not used any third party other than Vantage and/or any Vantage approved third party software solution to assist with the origination of any Entry pursuant to this Agreement.

2.6 LIABILITY

Merchant will be solely liable and responsible for any inaccuracy in any information provided to Vantage in connection with this Agreement, including but not limited to the information contained in any Entry, and any fees, fines, penalties, losses, damages, or other amounts resulting from the processing of any Entry pursuant to this Agreement. Merchant understands that any inaccuracy in information provided to Vantage may result in unintended processing, inaccurate processing, or the failure to process any transaction, and that all liability associated with the foregoing is the responsibility of Merchant. Vantage has no responsibility to detect or report any errors or inaccuracies in information provided by Merchant and will not be liable for any information provided by Merchant which is inaccurate, incomplete, or otherwise incorrect. Merchant's obligation to pay for an Entry is not excused if such Entry describes an authorizing party inconsistently or incorrectly by name or account number, even if the RDFI identifies a person different than the named party associated with the account. Vantage may credit Merchant's depository account, set off against amounts due to Merchant, or otherwise demand from Merchant and Merchant shall immediately pay the amount of any credits due under an Entry, return, reversal, adjustment, reclamation, claim, or amount incurred by Vantage in connection with any Entry (including but not limited to any fines or penalties associated with the breach of any applicable Laws). Merchant's obligation to pay all such amounts to Vantage shall not be subject to any reduction, setoff, defense, counterclaim, deferment, or right of recoupment. If information supplied by Merchant, including but not limited to an ABA routing number or account number, is incorrect, Vantage may attempt to assist Merchant in the recovery of such funds but will have no liability as to restitution of the same.

2.7 ENTRY RIGHTS.

Merchant authorizes Vantage to receive, process, and initiate Entries prepared by Merchant in accordance with Merchant's requests or instructions. Vantage's processing of any Entry does not constitute a representation or endorsement that such Entry is complete, accurate, or compliant with the Rules, Laws, or Policies. Vantage will not be liable for any rejected Entry and Merchant is responsible for modifying and resubmitting such Entry or otherwise handling the payments or charges with the counter-party. Vantage may, but will have no obligation to, remake or resubmit any rejected Entry on behalf of Merchant. Merchant understands that the RDFI or Receiver may stop payment on, return, or decline any Entry or portion thereof in accordance with the NACHA Rules and any applicable Laws. Vantage will not be responsible for any Entry which is returned or declined and Merchant is solely responsible for remaking and resubmitting the Entry in accordance with the NACHA Rules or otherwise handling the payments or charges with the counter-party. Merchant will not resubmit any Entry in violation of the NACHA Rules. Merchant shall immediately reimburse Vantage for all funds Merchant received in connection with any Entry subject to a stop payment, return, or decline, or other reversal and Vantage may immediately debit Merchant's depository account for such amounts. Vantage will endeavor to promptly submit and cause the processing of any Entry prepared by Merchant that is complete, accurate, and compliant with the Rules, Laws, and Policies, but shall have no obligation to timely submit or cause the processing of any Entry and will not be liable for any delay for any reason. Merchant will have no right to cancel or revoke any Entry after submission of such Entry or a request that Vantage prepare such Entry. Vantage may, at its sole discretion, use reasonable efforts to act on a cancellation or revocation request received from Merchant with respect to an Entry, but will have no liability if such cancellation or revocation is not successful, and Merchant will reimburse Vantage for all expenses, losses, damages, or other amounts Vantage incurs in connection with its reasonable efforts to effectuate Merchant's

request. If permitted by the NACHA Rules, Merchant may submit reversing Entries or adjustment Entries, and Vantage is authorized to debit or credit Merchant's depository account in accordance with all such Entries.

2.8 PAYMENTS

All payments made to Merchant or any other recipient of funds in connection with an Entry are provisional until receipt of final settlement which is not subject to reversal, return, or other dispute. If the funds are not settled, RDFI will be entitled to a refund from Merchant or any other recipient of funds and Vantage may immediately withdraw from Merchant's depository all such amounts. Merchant authorizes Vantage or its third-party service providers to debit or credit Merchant's depository account to effect settlement of any Entry, or offset any amount due to Vantage from the proceeds of any Entry due to Merchant. Merchant will monitor all ACH activity on a daily basis and immediately notify Vantage of any discrepancy between Merchant's records and any transaction or any reporting when made available. Vantage will have no liability for, and will not reimburse Merchant for, any loss, error, or other obligation related to such discrepancy which is not reported to Vantage within one business day of the corresponding ACH transaction. This one business day timeframe is imposed due to the time limits imposed by NACHA on reversing ACH transactions, shall apply only for ACH transactions, and will, only with respect to ACH transactions, supersede the general thirty-day notice period set forth in Section 4.8 of this Agreement.

3. COMPLIANCE WITH THE RULES AND LAWS.

3.1 LAWS, RULES & POLICIES.

The Card Brands have established guidelines, merchant monitoring programs, and reports to track merchant activity such as excessive credits, Chargebacks (defined below), and increased deposit activity. If Merchant exceeds the guidelines or submits suspicious transactions, Merchant may be subject to: (a) fee increases; (b) settlement delay or withholding; (c) termination of this Agreement; (d) an audit and imposition of fines; or (e) required implementation of transaction monitoring or risk mitigation programs. Merchant must comply with all applicable rules, regulations, policies, procedures, guidelines, and other requirements issued by the Card Brands (including but not limited to Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program), the PCI Security Standards Council, LLC ("PCI Standards" which shall include, without limitation, the Payment Card Industry Data Security Standards and the Payment Application Data Security Standards), and the National Automated Clearing House Association ("NACHA") (collectively, "Rule(s)"). An abridged version of the Visa, MasterCard, American Express, and NACHA Rules may be viewed at each of their respective websites. Merchant agrees to comply with all applicable federal, state, and local laws, rules, and regulations ("Law(s)"). Merchant further agrees to comply with the then-current terms of Vantage's privacy policy, high risk/acceptable use policy, merchant guidelines, rules, and its other policies as found at <http://www.vantagecard.com/resources/index.html> ("Policies"), each of which may be changed or updated by Vantage from time-to-time by Vantage at its sole discretion. Merchant is responsible for monitoring such website and any modifications to such Policies, as Vantage may, but is not required to, provide Merchant notice of any change or modification to the Policies. Vantage may, in its sole discretion, suspend Merchant's use of the Services to investigate suspicious or unusual activity, and Vantage will have no liability for any losses Merchant may attribute to this suspension. Vantage may reverse ACH or Card transactions it deems to violate this Agreement, the Laws, Rules, or Policies, or as otherwise required by the Card Brands, and Merchant agrees to reimburse Vantage for such reversals. If any terms of this Agreement conflict with the Rules, the Rules will govern. Vantage will not be obligated to take any action which Vantage believes would cause it to violate any Rule or Law, nor will Vantage be prohibited from taking any action which Vantage believes is necessary to comply with any Rule or Law. In accordance with the Rules and Policies, the descriptor field for processed transactions will include Vantage's name, the name of the software solution company through which the Services are provided, and/or abbreviations thereof.

3.2 RECURRING TRANSACTIONS.

Merchant must obtain each customer's prior written consent for recurring transactions, including without limitation a description of the product or service and the frequency and duration of the recurring charge, and the amount of the charge (if known) or provide adequate statements and notice prior to such charge if the amount is unknown. Merchant must notify the Cardholder that he or she may cancel recurring billing charges at any time and provide a copy of the signed consent to the customer. Merchant must retain evidence of such written consent for 24 months from the date Merchant submit the last recurring billing charge. Merchant will honor any customer cancellation, and if this Agreement is terminated for any reason, Merchant will, at its own cost, be responsible for any and all obligations associated with communicating the same to its customers, including without limitation advising all customers to whom Merchant submits recurring billing charges that it no longer accepts Cards or ACH transactions for amounts owed through Vantage and the Services.

3.3 USE OF TRADEMARKS.

During the Term, Merchant may, and if required will, use Card Brand trademarks and logos pursuant to the terms of the Rules. At any time Vantage, Sponsor Bank, or any Card Brand may, in its sole discretion, prohibit Merchant's use of these marks or require changes to Merchant's use of the marks. The Card Brands are the sole and exclusive owners of their marks. Merchant's right to use the Card Brand marks will immediately cease upon termination of this Agreement.

3.4 INFORMATION SECURITY.

Merchant will be solely responsible for the security, quality, accuracy, and adequacy of all transactions and information supplied under this Agreement and will maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the foregoing, Merchant must remain in compliance with the PCI Standards and take all steps necessary to ensure customer data (including but not limited to Cardholder data, bank account information, and any other personally identifiable or sensitive information) is not disclosed, misused, or subject to unauthorized access. This includes, but is not limited to, keeping secure all systems and media containing account, Cardholder, or transaction information (physical or electronic) and destroying in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. Merchant represents and warrants that Merchant shall, within thirty days of the Effective Date, and on an annual basis thereafter (or more frequently if so required by Vantage) conduct a self-audit to ensure (i) that Merchant is compliant with all applicable PCI Standards; and (ii) that all customer data (including but not limited to Cardholder data, bank account information, and any other personally identifiable or sensitive information) is protected by commercially reasonable security practices and procedures that include adequate levels of (1) physical security to protect against theft, (2) personnel and access controls, and (3) network security. If and to the extent required by Laws, Rules, Sponsor Bank, Card Brands, or if specifically required by Vantage at its sole discretion, Merchant shall, within thirty days of the Effective Date, and on an annual basis thereafter (or more frequently if so required by Vantage), obtain from an independent

third party acceptable to Vantage a certification of compliance with the PCI Standards and submit a copy of such certification to Vantage. Vantage's acceptance of such certification does not constitute a representation or certification that Merchant is compliant with the PCI Standards, nor does it relieve Merchant of any of its obligations or liabilities related to compliance with the PCI Standards or any other data security obligations in this Agreement, including without limitation any indemnification obligations set forth herein with respect to such compliance with the PCI Standards or other data security obligations. If Merchant stores Cardholder account numbers, expiration dates, bank account information and other personally identifiable data in a database, Merchant must follow Card Brand guidelines on securing such data to the extent applicable. Merchant may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. If there is an actual or suspected breach of or unauthorized access to customer data or other personally identifiable information, Merchant must immediately: notify Vantage and any software solution company through which the Services are provided; cooperate with Vantage's, said software solution company's, Sponsor Bank's, and Card Brand's requests for information; take any action designated by Vantage, said software solution company, or Sponsor Bank to remedy and/or address the breach; prevent further unauthorized access or use of such information; and comply with all Rules and applicable Laws. Merchant shall maintain all industry "best practices" applicable to Merchant regarding continuity procedures and systems to ensure security of customer account information, including but not limited to restricting access to such information to those employees which need to know for the sales and transaction process, maintaining security hardware and software (such as firewalls, anti-malware, anti-virus, and encryption), and storing such data in systems without a direct internet connection. Merchant must ensure all customer data is protected from unauthorized access or use in the event of a disruption, disaster, or failure of its respective data storage system and/or facility. Merchant agrees to display its consumer privacy policy on its website as well as its security method for transmission of payment data, and will include in such policy the right to provide such data to Vantage, Sponsor Bank, and the Card Brands for each of their respective uses in accordance with this Agreement.

3.5 THIRD PARTY SERVICE PROVIDERS.

Merchant may use services, equipment, or software provided by a third party in connection with, or to assist Merchant in, processing transactions, including but not limited to gateways, terminals, fraud identification software, accounting software, sales management or operations software, and other value-add services, equipment, and software. Merchant must notify Vantage prior to using any third party that will have access to payment data, and Merchant hereby represents and warrants that it is solely responsible for ensuring each such third party's compliance with Rules, Laws and Policies, including but not limited to registration with the Card Brands and compliance with the PCI Standards. Merchant will be solely responsible for the costs and expenses of registering or certifying such third party, if registration or certification is necessary, and maintaining such registration or certification. Merchant is solely responsible for performing all due diligence regarding the fitness and suitability of any third-party service provider, and Vantage shall have no responsibility or liability to Merchant or any third party for the actions or omissions of such third party, even if Vantage or Sponsor Bank introduced, recommended, approved, or never objected to such third party service provider. Vantage may, but is under no obligation to, prohibit any third-party services, equipment, or software which Vantage, in its sole discretion, deems: harmful to Vantage's systems or operations; in violation of any applicable Rules, Laws, or Policies; a security risk; or otherwise undesirable.

3.6 CONFIDENTIALITY.

The terms of this Agreement, all communications regarding the Services, all Cardholder data, all customer payment information, all customer bank account information, and all information and data belonging to or relating to Vantage's business, Sponsor Bank, or the third party services providers Vantage or Sponsor Bank uses (including but not limited to finances, systems, methods, techniques, policies, marketing material, plans, strategies, records, credentials, user names, access codes, manuals, software, documentation, product specifications, service plans, account numbers, systems, programs, devices, operations, source code, objective code, APIs, SDKs, and all other non-public information) are Vantage's confidential information ("Confidential Information"). Merchant will safeguard and retain in strictest confidence such confidential information using the same degree of care, but no less than a reasonable amount of care, that Merchant uses to protect its own confidential information or the degree of care required by any applicable Laws, Rules, or Policies. In all cases Merchant will protect the Confidential Information in accordance with the PCI Standards. Merchant will not disclose or use, directly or indirectly, any such confidential information except as necessary to fulfill its obligations under this Agreement. Except to the extent specifically permitted by the Rules, or as approved in writing by Vantage, Merchant will limit disclosing such confidential information to its employees with a specific need to know such information solely to fulfill Merchant's obligations under this Agreement. Merchant will not, and will ensure any of its applicable third-party service providers do not, retain any portion of the magnetic strip data subsequent to the authorization of a transaction, nor any other data the retention of which is restricted by the Rules. Merchant understands and agrees that, other than to the extent prohibited by Laws, nothing in this Agreement will reduce or impair Vantage's ability to use or disclose any information obtained by Vantage pursuant to this Agreement, and that Vantage is contractually obligated to provide copies of all such information upon request to Sponsor Bank and certain of Vantage's third-party service providers.

3.7 AUDIT

At any reasonable time upon notice to Merchant, Merchant shall allow auditors, including but not limited to the auditors of any Card Brand, Sponsor Bank, or those third-party auditors appointed by Vantage, to review the files held and the procedures followed by Merchant at any or all of Merchant's offices or places of business, as such files and procedures may pertain to any of Merchant's actions, omissions, or obligations hereunder. Vantage agrees that should it conduct an audit which is not required by the Rules, Laws, or Policies, or which is not requested by a Card Brand, Sponsor Bank, or regulatory agency, such audit will be at Vantage's sole expense (unless such audit uncovers a breach of this Agreement in which case Merchant shall reimburse Vantage for the costs of such audit), otherwise the audit shall be at Merchant's expense. Merchant will assist all such auditors as necessary for them to complete their audit. To the extent applicable, Merchant will arrange for a qualified independent third party to perform an annual NACHA audit of Merchant (at Merchant's sole expense) or any other such audit which fulfills all of Merchant's audit requirements set forth in the NACHA Rules and promptly provide evidence of such audit and its results to Vantage. If Merchant fails to fulfill this obligation, Vantage may, but will not be obligated to, cause such audit to be conducted at Merchant's expense.

4. MERCHANT OBLIGATIONS.

4.1 MONITORING, DISPUTES & REFUNDS.

- (a) MERCHANT'S DUTY TO MONITOR ACCOUNT & NOTIFY VANTAGE OF UNAUTHORIZED ACCESS OR TRANSACTIONS.

Vantage will not, and has no obligation to, confirm the validity of the recipient or transaction Vantage receives. Vantage assumes no liability for any unauthorized transfer request and the attendant transfer of funds. If Vantage receives appropriate and timely notice by Merchant of an unauthorized transfer request prior to the completion of such transfer and with enough time to act on such notice, Vantage will use commercially reasonable efforts to prevent such unauthorized transfer, provided however that Vantage will have no liability associated with any failure to prevent such unauthorized transfer. Merchant must inspect and reconcile its transaction history and deposits daily. Merchant must immediately report any possible errors or unauthorized access to its account by sending an email to support@vantagecard.com that includes: (1) Merchant's name and account number; (2) the dollar amount of the asserted error; (3) a commercially reasonable description of the asserted error (referencing specific transactions if applicable); and, (4) an explanation of why Merchant believes an error exists and, if known, the cause of the error. The email notice must not include any full Social Security Number, Card number, or verification number. Under no circumstances will Vantage have any liability for an unauthorized transaction (Card, ACH, or otherwise). Under no circumstances will Vantage have any liability for an unauthorized ACH transaction that is originated through Vantage, and Merchant will have full responsibility and liability for each such transaction.

(b) VANTAGE'S INVESTIGATION & RESOLUTION.

Merchant may not make a claim against Vantage for any loss or expense relating to any asserted error or unauthorized transaction for 60 days following Vantage's receipt of your email notice referenced above. During that 60-day period, Vantage will be entitled to investigate the asserted error or unauthorized transaction. Vantage will advise Merchant of the results of our investigation and if Vantage has made an error, Vantage will correct it promptly. However, Vantage reserves the right, in its sole discretion, to take up to 90 days to investigate your complaint or question (95 days for transactions at a point of sale terminal or outside the United States). Should Vantage elect to extend the time it takes to investigate your complaint or question, Vantage may, but will not be obligated to provisionally re-credit Merchant for the amount Merchant thinks is in error, so that Merchant will have use of the money during the time it takes Vantage to complete our investigation. If Vantage determines that there was no error, Vantage will send Merchant an explanation via email of the determination and Vantage may debit any provisional credit, any fees, and/or interest provisionally credited in relation to the alleged error. If Vantage discovers a processing error, Vantage will rectify the error. If the error results in Merchant receiving more money than to which Merchant was entitled, then Vantage reserves the right to correct the transactions that were incorrectly executed, including but not limited to debiting Merchant's account, regardless of the nature and cause of the error.

(c) DISPUTES, INQUIRIES, AND CHARGEBACKS.

Merchant is responsible for resolving any disputes between Merchant and a Cardholder. Vantage and/or its third-party service providers will handle inquiries from a Card Brand, the Card Brand dispute resolution process (if applicable) between Merchant and any Cardholder, and credits. Based on Cardholder disputes Vantage, Sponsor Bank, the Card Brands, or any Cardholder may reverse Card transactions ("Chargebacks"), and Vantage will offset the value of such Chargebacks from amounts due to Merchant (including but not limited to the proceeds of transactions processed) or otherwise withdraw the amount of such Chargebacks from Merchant's depository account on file with Vantage through an ACH transaction. Absent written instructions otherwise provided prior to any Chargeback, Merchant hereby authorizes Vantage or its third-party service providers to resolve Chargebacks and respond to retrieval requests and inquiries once Vantage has determined it has all necessary information and instructions related to such Chargeback without further inquiries of or consultation with Merchant. Merchant will not ask or require any Cardholder to waive their dispute rights. Merchant agrees to maintain a sufficient balance in its depository account on file with Vantage to cover all Chargebacks incurred by Merchant. Merchant must not reenter or reprocess any transaction that has been charged back, but instead allow the chargeback process to proceed to its conclusion as described in each Card Brand's Rules. If Merchant disagrees with a chargeback, Merchant may request a chargeback reversal within the applicable Card Brand's timeline in its Rules. "Excessive Activity" means: Chargebacks in excess of .50% of the transaction ratio of Merchant's Card transactions; Chargebacks in excess of .50% of the transaction ratio of the dollar amount of Merchant's Card transactions; returns in excess of 3% of the transaction ratio of Merchant's Card transactions; or, denied transactions in excess of 5% of the transaction ratio of Merchant's Card transactions. The existence of Excessive Activity will be a breach of this Agreement that may result in additional action as Vantage deems necessary, such as suspension of processing privileges, creation of a Reserve Account, or an increase in the amount required to be retained in a Reserve Account. Vantage may decline, revoke, or reverse any credit given to Merchant where: (1) the transaction (Card or ACH) was not made in compliance with this Agreement and the Laws, Rules, and Policies; (2) the customer or Cardholder disputes liability for any reason, including but not limited to those Chargeback or return rights enumerated in the Rules; (3) the transaction was not directly between Merchant and the Cardholder; or (4) a deposit to Merchant's account was made erroneously.

(d) REFUND CREDITS.

Merchant must issue a credit memorandum rather than making a cash advance, disbursement, or refund on any Card transaction. Vantage will debit from the amounts owing Merchant for the total face amount of each credit memorandum or withdraw the amount of such credit memorandum from Merchant's bank account on file with Vantage through an ACH transaction. Merchant will maintain a sufficient balance in its bank account to cover all issued credit memorandums. Merchant will not submit a credit memorandum relating to any Card transaction not originally submitted to Vantage, nor will Merchant submit a credit memorandum that exceeds the amount of the original Card transaction. Merchant will, within the time period specified by Law, provide Vantage with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that were the subject of a Card transaction.

4.2 PROHIBITED PRACTICES.

Merchant will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction between Merchant and a Cardholder, or any transaction Merchant knows or should know to be fraudulent or not authorized by the Cardholder. Vantage will refer perpetrators of fraudulent transactions to law enforcement. Merchant must not honor any Card that is expired or listed on a current Electronic Warning Bulletin file, even if authorization has been obtained. Merchant must not accept any payments from a Cardholder relating to previous charges for merchandise or services, and if Merchant receives such payments it must promptly remit them to Vantage. Merchant must not attempt authorization on a Card twice for the same transaction, or reenter or

reprocess any transaction that has been charged back. Merchant may not split a transaction into multiple Card transactions except when: (a) partial payment is entered on the transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction; or, (b) the amount represents an advance deposit in a Card transaction completed in accordance with the Rules. Merchant will not use the Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of a Cardholder. Merchant must not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to a third party. Merchant must not engage in any activity that is deceptive, unfair, abusive, predatory, or otherwise violates any applicable Law. Merchant must not submit transactions for products or services other than those set forth on the Merchant Application and will immediately notify Vantage of any events which, individually or collectively, would cause material changes in Merchant's ability to fulfill its obligations under this Agreement. Merchant must not use the Service for high risk transactions or illegal activities, as per the High Risk Transactions/Acceptable Use Policy ("High Risk Policy") found at <http://www.vantagecard.com/acceptable-use-policy> and Merchant acknowledges liability for any violation of that policy. Merchant's violation of the High Risk Policy could incur substantial liability and/or damages, including, without limitation, fines and other related expenses from the Sponsor Bank, Card Brands, payment processors, and service providers, the amount of which may be extremely difficult and impracticable to ascertain. As such, if Merchant violates the High Risk Policy, Vantage may (1) fine Merchant \$500.00 USD, which Merchant acknowledges is a reasonable minimum estimate of our damages, (2) invoke Vantage's security interest set forth in Section 10, (3) take legal action against Merchant and/or (4) take any other action permitted under this Agreement to recover any and all losses, expenses and fines levied on Vantage or Sponsor Bank in excess of the amount fined.

4.3 TRANSACTION RESTRICTIONS.

Merchant will not submit any transaction to Vantage which (a) adds any surcharge, unless Merchant has properly notified Vantage and the Card Brands and such surcharge is compliant with the Rules and Law; (b) adds any tax to the transaction, except for those taxes allowed or required by Law, and all such required or allowed taxes must be included in the transaction amount and not separately collected; (c) received any authorization response other than "approved" or for which an authorization was not obtained; (d) is for products that have not yet shipped or services have not yet been performed, as applicable; (e) is made up of multiple authorization requests for amounts less than the total sale amount; (f) results in the disbursement of cash, scrip, or cash equivalents; or (g) involves any goods or services which are counterfeit or infringe on any party's intellectual property rights. Merchant will not submit any refund or credit to Vantage which: does not result from a sales transaction processed by Vantage; exceeds the amount shown on the original sales transaction; is not credited to the Card used in the original sale transaction (or for which the original sales transaction did not involve a Card); would result in an overdraft; or more than two days after a non-disputed request or a regulatory requirement granting the customer a right to a refund. If Merchant, or any third party service provider or vendor of Merchant, adds any surcharge to a transaction submitted to Vantage, Merchant represents and warrants to Vantage that (x) Merchant has reviewed and approved such surcharge; (y) such surcharge is compliant with all Rules and Law; and (z) Merchant has fully complied with the requirements set forth in part (a) of this Section 4.3.

4.4 AMERICAN EXPRESS.

This section applies only if Merchant elects to accept American Express Cards. If there is a conflict between this section and any other section of this Agreement as it applies to American Express Cards, then this section governs.

A. CUSTOMER SERVICE INFORMATION.

Merchant must maintain customer service information that is readily available for review by American Express Cardholders transacting with Merchant. The customer service information should provide clear instructions on how to contact Merchant, including without limitation an active customer service email address and telephone number.

B. THIRD-PARTY BENEFICIARY.

Merchant understands and covenants that it is not a third-party beneficiary under Vantage's (or Vantage's third-party service provider's) agreement with American Express, including all schedules and exhibits and the American Express Rules. Merchant acknowledges and agrees that American Express is a third-party beneficiary under this Agreement between Merchant and Vantage. This means American Express has the rights, but not the obligation, to enforce the terms of this Agreement against Merchant.

C. AUTHORIZATIONS.

If and when appropriate, Merchant authorizes Vantage to submit American Express Card transactions to, and receive payment from, American Express on Merchant's behalf. Merchant authorizes Vantage to disclose Card transaction data and data about Merchant to American Express, its affiliates, agents, subcontractors, and employees, and further authorize these entities to use such information to perform services, operate and promote the American Express network, perform analytics and create reports, and for any other lawful business purpose, including without limitation, as such may be described in the American Express Rules. Merchant authorizes American Express to use Merchant's name, address, and website address in any media.

D. AMERICAN EXPRESS ARBITRATION

Any dispute between Merchant and American Express shall be resolved on an individual (not class) basis by binding arbitration in accordance with the rules of the American Arbitration Association or JAMS. Merchant will be responsible for paying its share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a claim in court. American Express will be responsible for any additional arbitration fees. American Express will not elect arbitration for any claim Merchant properly files in a small claims court so long as such claim is pending only in that court.

4.5 RESERVE.

Vantage reserves the right to require additional reserves (as set forth in the Section 6.4) or impose other conditions on Merchant in Vantage's sole discretion, including but not limited to cash collateral, guarantors, additional underwriting, or any condition required by the Rules or Card Brands. Merchant will not be entitled to any interest on amounts held in a Reserve Account.

4.6 OBLIGATIONS

Notwithstanding anything to the contrary in this Agreement: (a) Merchant is solely liable for all transactions submitted in connection with

this Agreement, including but not limited to all acts, omissions, cardholder disputes, or any related fees, fines, assessments, or charges which arise in connection with such transactions; (b) Merchant will only submit transactions to Vantage which were originated in the United States; (c) Merchant represents and warrants that it will maintain at all relevant times during and after the applicable term of this Agreement reasonable insurance coverage based on its business type, size, and operations, including but not limited to an errors and omissions policy and a data/computer security and privacy policy, in not less than commercially reasonable amounts which cover all of Merchant's activities, obligations, and potential liability for both its business and its specific activities, obligations and potential liabilities in connection with this Agreement, including without limitation all indemnification obligations of Merchant hereunder, and Merchant shall promptly provide Vantage a true and correct copy of its then current certificate of insurance upon Vantage's request to Merchant of the same; and (d) Merchant will ensure transaction amounts and billing process, including without limitation any service fees, convenience fees, transaction fees, or other surcharges charged by Merchant are fully compliant with the Law and Rules. Merchant understands and agrees that Vantage may refuse to process any transaction, Chargeback, or other credit in Vantage's sole discretion. If Merchant is reasonably anticipated to, or actually does process more than \$1,000,000 in Visa transactions or more than \$1,000,000 in MasterCard transactions in any twelve-month period, as such amounts may be adjusted by Visa and MasterCard from time-to-time, Merchant, by their acceptance of this Agreement, hereby understands, acknowledges, and agrees that Merchant shall automatically become party to the Tri-Party Agreement set forth below. Merchant hereby understands, acknowledges, and agrees that Merchant is solely responsible for monitoring its processing volume and immediately upon reaching said transition point or said processing threshold (as applicable), Merchant's continued use of the Services shall be deemed Merchant's knowing and explicit consent to be bound by the terms of said Tri-Party Agreement.

4.7 REPORTING

Reporting and invoices will be provided by Vantage through the software solution through which transactions are submitted to Vantage in accordance with Vantage's standard operating procedures or the standard operating procedures of the provider of such software solution. It is Merchant's obligation to print and retain each report and invoice. Vantage makes no representation or guaranty as to the availability of such reports or invoices and they may be removed from the software solution Merchant uses at any time. The structure and organization of reports and invoices may be modified by Vantage and/or the software solution Merchant uses at any time in its sole discretion. Merchant will timely review all reports, notices, and invoices prepared by Vantage and/or its third-party service provider which are provided or accessible through the software solution used by Merchant. In addition to the other notification rights provided in this Agreement, Vantage may send notice of any price changes permitted under this Agreement through written notice or through a posting or notification in the software system used by Merchant. Merchant's failure to notify Vantage that it has not received settlement funds within two (2) business days from the date that settlement was due to occur, or failure to reject any report, notice, or invoice within thirty (30) days from the date such report, notice, or invoice was made available to Merchant shall constitute Merchant's acceptance of the same. For the avoidance of doubt, and in addition to all other limitations on Vantage's liability under this Agreement, Vantage will have no liability for any error, omission, or inaccuracy not reported to Vantage within thirty (30) days of Vantage's issuance of an invoice or report on which such error or inaccuracy is included or from which any amount or other consideration is omitted (and it is Merchant's sole responsibility to ensure the provider of the software solution Merchant uses, licenses, or purchases provides all such invoices, reports, and notices to Merchant).

4.8 IMPLEMENTATION

Merchant will, at Merchant's sole expense, take all necessary steps to, and shall, promptly convert to use of Vantage's Services under this Agreement no later than thirty (30) days after the execution of this Agreement. Merchant understands that the Services will be provided in accordance with Vantage's and, as applicable, any third party software solution provider's current systems, standards, and procedures, and Vantage and, as applicable, any third party software solution provider shall not be required to perform any special programming or provide any special hardware or software to implement any other system, program, or procedure for Merchant. Unless otherwise agreed in writing by Vantage, all transaction, settlement, and other data will be provided in Vantage's, and, as applicable, any third party software solution provider's, then-current data formats using Vantage's, and, as applicable, any third party software solution provider's then-current protocols and methods. Vantage and, as applicable, any third party software solution provider providing some part of the Services may make changes to the Services at any time in its sole discretion, including but not limited to changes associated with technological developments, legislative or regulatory changes, or the introduction of new services. Merchant will comply with all time deadlines, equipment and software maintenance, and upgrade requirements Vantage may reasonably impose from time-to-time.

5. RIGHTS

5.1 VERIFICATION.

Merchant authorizes Vantage to make business and personal credit inquiries (including, but not limited to, credit reports for Merchant's directors, officers, and principals), identity-verification inquiries, transaction-verification inquiries, and any other inquiries required by Rules, Laws, or Policies or otherwise considered necessary or desirable by Vantage relating to this Agreement, and to provide any information and documentation to Sponsor Bank and/or the Card Brands as required by them, including but not limited to transaction information, financial information, personal information, credit reports, and copies of any and all other materials in Vantage's possession. Merchant also authorizes any person or credit reporting agency to compile information to answer those inquiries of Vantage and to furnish all requested information to Vantage, Sponsor Bank and/or the Card Brands. Merchant agrees to include the address of its permanent establishment on its website and prominently inform its customers of its identity at all points of interaction in using the Services. Vantage may review Merchant's books and records to confirm or assess compliance with the terms and conditions of this Agreement. Any such review will be conducted during normal business hours at a place reasonably designated by Merchant.

5.2 DATA OWNERSHIP AND USE.

Vantage will own all data associated with Merchant's use of the Services. Merchant grants Vantage a perpetual, irrevocable, sub-licensable, assignable, worldwide, royalty-free license to use, reproduce, electronically distribute, and display this data for the following purposes: (a) providing and improving the Services; (b) internal usage, including but not limited to, data analytics so long as such data is anonymous and aggregated with other merchant data; (c) complying with legal requirements and assisting law enforcement agencies; and (d) any other purpose for which Merchant provides consent. Vantage may provide copies of all such data to those third-party service providers and processors who facilitate the Services, the Card Brands, and for any given transaction to the financial institution which issued the Card. Vantage may also use or disclose all such data as necessary to enforce its rights under this Agreement. Merchant will not use any transaction information or cardholder information for any purpose not authorized by this Agreement or disclose any such information to any third party without Vantage's prior written consent.

5.3 SERVICE OWNERSHIP

Merchant is acquiring only a nontransferable and nonexclusive right to use the Services under this Agreement, subject to payment of all fees and monies owing by Merchant pursuant to this Agreement, as such are set forth herein. Title to and ownership of the Services, including without limitation any materials delivered to Merchant under this Agreement and any innovation, development, product, trade name, trademark, service mark, software program, or derivative thereof, developed by either party, will remain the exclusive property of Vantage or its third party service providers and no right or interest in the foregoing will be transferred to Merchant, by operation of law, custom, use, or any other method. Merchant shall not rent, lease, assign, pledge, disclose, sell, sublicense, distribute, or otherwise transfer for any purpose the Services, Policies, or other information or documentation provided by Vantage. Merchant shall not attempt to disassemble, decompile, reverse engineer, derive, or otherwise reproduce any part of the source code or trade secrets of the Services. Merchant shall not modify, alter, translate, or create derivative works based on the Services. Merchant will not remove any notices of proprietary or copyright restrictions from any documentation or information provided by Vantage. To the extent provided by Vantage, Merchant shall not use or disclose to any third party any application program interface ("API") or software development kit ("SDK") made available by Vantage, whether belonging to Vantage or a third-party service provider of Vantage, for any reason other than accessing the Services provided under this Agreement. Merchant will adhere to all instructions and limitations associated with and set forth in such API and SDK. To the extent Merchant uses any API or SDK made available by Vantage, whether belonging to Vantage or a third-party service provider of Vantage, Merchant is solely responsible for the implementation of and integration of its software and systems to Vantage's, and for the security of all data used or transmitted through such process. Merchant may not copy, translate, modify, distribute, publicly display, or otherwise disclose to any third party the API, the SDK, or any related materials, all of which is Confidential Information hereunder. Merchant understands that the API and/or SDK, or certain portions thereof, may not be provided unless Merchant agrees to the terms and conditions of Vantage's third-party service providers.

5.4 REQUIRED INFORMATION.

In order to use the Services, Merchant must provide Vantage with the information and documentation Vantage requests in connection with the Merchant Application or at any time during or after the term of this Agreement, including but not limited to information relating to Merchant's identity, customers, transactions, financial statements and tax returns. Vantage may request that Merchant provide its financial statements and other information more frequently than annually. Merchant will provide accurate and complete information and keep the information up-to-date by immediately notifying Vantage of any change in such information. Merchant will not present any information in a manner which is misleading. Vantage relies on this information for underwriting and to meet its obligations under applicable Laws, Rules, and Policies, and other regulatory requirements. On an ongoing basis, Merchant will provide Vantage with the current address of each of its offices, all "doing business as" (DBA) names it uses, and a complete description of goods sold and services it provides. If the scope or nature of Merchant's business or the type of products or services Merchant offers changes, or if Merchant is subject to any change in control (whether through the issuance, sale, or other transfer of ownership interests), Merchant must notify Vantage at least thirty (30) days prior to the effective date of such change. Merchant is liable to Vantage for all losses and expenses incurred by Vantage, the financial institution identified on the Merchant Application ("Sponsor Bank"), or any third party arising out of Merchant's failure to report changes to Vantage. Vantage reserves the right to decline the submitted Merchant Application for any or no reason.

6. FEES, ACCOUNTS, RESERVES, TAXES & IRS REPORTING.

6.1 FEES.

Fees for the Services are set forth in the Merchant Application and in this Agreement. Additional fees, surcharges, or markups may be charged by the provider of Merchant's software solution and will be set forth in the agreement between Merchant and the provider of Merchant's software solution. Merchant will be invoiced for the Fees as set forth in Section 4.7. All amounts due to Vantage from Merchant, including without limitation fees, Chargebacks, credits, returns, refunds, fines or assessments imposed by Card Brands, charges associated with compliance cases, insufficient fund fees, penalties, loss allocations, other losses or damages, and all other amounts incurred by Vantage or Sponsor Bank pursuant to this Agreement or Merchant's use of the Services (whether from the Card Brands or any third party) will be Merchant's sole responsibility and will be, at Vantage's or Sponsor Bank's sole discretion: netted out from funds due Merchant under this Agreement; withdrawn from Merchant's depository account in accordance with this Agreement (such amounts to be withdrawn when due and/or on a periodic basis specified by Vantage, at Vantage's sole discretion); paid to Vantage by Merchant immediately upon demand (by wire transfer or such other method specified by Vantage); or billed and collected by the provider of the software service provider used by Merchant on behalf of Vantage or Sponsor Bank. If any setoff or withdrawal is not sufficient to cover all amounts then due, Merchant shall pay to Vantage all remaining amounts immediately upon demand by wire transfer or such other method specified by Vantage. Vantage may suspend the Services and stop releasing funds represented by Card or ACH transactions to Merchant until Merchant pays all fees and other expenses. Merchant may be granted processing credit, which may only be used to offset processing fees Merchant may owe to Vantage, and Vantage may cancel any such processing credit. If Vantage or its third-party service providers are required to investigate, assist, or respond to Merchant or governmental agencies' inquiries about the Services provided to Merchant or any transaction thereunder, Merchant will pay to Vantage an administration fee equal to the number of hours expended by Vantage in such efforts multiplied by an hourly rate of \$200, plus actual attorneys' fees incurred by Vantage. Merchant understands and agrees that the fees may be modified by Vantage upon thirty (30) days prior written notice but may be immediately modified without notice to pass through to Merchant any increases in those fees charged to Vantage by the Card Brands, Sponsor Bank, processors, or any third-party service providers.

6.2 DEPOSIT OF FUNDS TO MERCHANT OPERATING ACCOUNT.

Sponsor Bank will deposit to a non-interest bearing pooled account titled in the name of Sponsor Bank for the benefit of all Vantage merchants all amounts of authorized and approved Card transactions, provided however that authorization or approval of any transaction does not constitute a representation, warranty, or guaranty that such transaction complies with the terms of this Agreement and the Rules. This account is maintained by Sponsor Bank for the clearing and settlement of transactions of all Vantage merchants, including Merchant. All amounts owing to Merchant will be transferred from this account to Merchant's bank account or a Reserve Account as detailed below. The funds in this merchant operating account may be eligible for FDIC pass-through insurance up to the maximum amount as set forth in FDIC regulations, as amended from time to time.

6.3 BANK ACCOUNT.

Merchant must establish and maintain a depository account to facilitate the transfer of amounts due Merchant from Card transactions. This account must be a checking account at a bank reasonably approved by Vantage. Merchant authorizes Sponsor

Bank and Vantage to credit monies due to Merchant to this account and also to debit this account for any and all fees, expenses, and other amounts due to Vantage or Sponsor Bank. Merchant agrees to maintain a balance in such account sufficient to cover all of Merchant's obligations under this Agreement. Merchant agrees that this authorization will remain in place at all times during the term of this Agreement and after termination of this Agreement until all of Merchant's obligations to Vantage have been paid in full. Merchant will not modify or change such account without providing Vantage with thirty (30) days prior written notice and obtaining Vantage's prior written approval. Merchant will be charged an ACH reject fee for each transaction attempted by Vantage or Sponsor Bank which is rejected for any reason, such fee to be the amount set forth on the Merchant Application. Merchant will not, directly or indirectly, block, prevent, or otherwise preclude Vantage from debiting Merchant's depository account in accordance with this Agreement. Deposits made to such depository account are provisional and may be reversed or charged back by Vantage until the settlement of such deposited amounts cannot be reversed, returned, refunded, or charged back under the Rules applicable to such transaction. Merchant agrees that Vantage and Sponsor Bank will not incur any liability for any loss, costs, or fees incurred by Merchant that are the result of such debits by Vantage or Sponsor Bank. Merchant acknowledges that if a financial institution name and number are incorrect or inconsistent, Vantage may rely on the identifying number alone, even if the number identifies a financial institution, person, or account other than the one named. Vantage will not, and has no obligation to, confirm the validity of the transaction. In accordance with all applicable Laws, Rules, and Policies and for anti-fraud and anti-money laundering purposes, Vantage reserves the sole and exclusive right to review any electronic transfer of funds to or from Merchant's account before releasing the funds and to refuse any transfer of funds at Vantage's discretion. Merchant's obligation to pay all amounts due to Vantage under this Agreement shall survive termination of this Agreement and will apply to all amounts incurred in connection with this Agreement or Merchant's use of the Services, whether such amounts are incurred before or after termination of this Agreement. All amounts due to Vantage will be paid by Merchant without setoff or deduction, and will be due on the earlier of the due date set forth on any invoice or the date Vantage originates an ACH debit from Merchant's depository account. Any amounts due from Merchant but not received by Vantage will accrue interest, which will be due and payable by Merchant to Vantage, at the lesser of one and a half percent (1.5%) per month or the highest rate allowed by Law.

6.4 RESERVE AND SET OFF

For the purposes of providing a deposit and source of funds to pay Vantage for any and all amounts owed by Merchant, Vantage may (or may cause one of its third party service providers or Sponsor Bank to) at any time at its sole discretion establish one or more reserve accounts (each a "Reserve Account") in Vantage's name or Sponsor Bank's name at a depository institution and (a) fund such Reserve Account with amounts due to Merchant under this Agreement (including but not limited to proceeds from processed transactions); (b) withdraw by ACH transactions funds from Merchant's depository account and deposit such amounts into the Reserve Account; or (c) require Merchant to deposit a specified amount into the Reserve Account which Merchant will do within two days of Vantage's request. The amount of the Reserve Account shall be the amount Vantage determines, at its sole discretion, reasonable to cover all anticipated fees, Chargebacks, returns, assessments, actual or anticipated liabilities, or other amounts Vantage deems necessary to protect its interests. The ability to establish and fund a Reserve Account is a specifically bargained for inducement for Vantage to enter this Agreement and Vantage would not enter this Agreement without such right. Vantage may, without notice to Merchant, set off against or recoup from the Reserve Account, any amounts due to Merchant under this Agreement (including but not limited to the proceeds of processed transactions), and/or the Secured Assets any amount due to Vantage from Merchant. The Reserve Account will be held by Vantage past the expiration of this Agreement until the later of one hundred eighty (180) days after expiration of this Agreement or such time as all actual and potential liabilities associated with Merchant's transactions and use of the Services have been fulfilled by Merchant or otherwise expired.

6.5 TAXES & IRS REPORTING.

Merchant is obligated to pay all taxes and other charges imposed by any governmental authority on the Services provided under this Agreement. Merchant understands that this does not obviate Merchant's responsibility for your tax liability incurred with the sale of goods or services regarding transaction activity associated with Merchant's account. To comply with IRS 1099-K reporting requirements, Vantage may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). Vantage may collect federal backup withholding upon transaction settlement, on behalf of the IRS, from Merchant if Merchant does not supply its legal name, SSN or EIN, or if Merchant fails to respond to a request from Vantage to verify the same. All withholdings will be remitted to the IRS as required by law.

7. TERM & TERMINATION.

7.1 TERM AND RENEWAL.

This Agreement will become effective on the Effective Date, will remain in effect for one calendar month ("Initial Term"), and will automatically renew for successive terms the same length as the initial term ("Renewal Term"), unless terminated earlier according to this Agreement. Either party may terminate this Agreement effective as of the end of the Initial Term or any Renewal Term if it provides at least thirty (30) days prior written notice of non-renewal to the other party.

7.2 TERMINATION.

If (a) a party breaches the Agreement and such default continues for 30 days after receipt of written notice thereof from the other party (setting forth in reasonable detail the nature of the default); or (b) a party makes a general assignment for the benefit of creditors; a receiver is appointed and not removed within 30 days after such appointment; a party files a petition for bankruptcy or reorganization under the provisions of any applicable bankruptcy laws; or a party declares its insolvency or becomes insolvent; then the other party may terminate this agreement immediately upon written notice. In addition to the foregoing, provided that the non-defaulting party provided the defaulting party with the notice set forth in 7.2(a) above for any first default, the non-defaulting party may terminate this Agreement immediately upon written notice (conforming to the requirements of 7.2(a) above) to the defaulting party following the second default of a similar nature as any such noticed first default which occurs within any 12-month period of such noticed first default.

7.3 ADDITIONAL TERMINATION RIGHTS.

In addition to those other termination rights set forth in this Agreement, Vantage may terminate this agreement immediately and without prior notice to Merchant if: (a) Merchant is violating or has violated any Rule, Law, or Policies; (b) Merchant is subject to any adverse legal or regulatory actions by governmental or non-governmental entities; (c) Merchant fails to timely mitigate, remediate, or resolve risks identified by Vantage to Vantage's satisfaction; (d) Vantage reasonably believes there has been a material deterioration in Merchant's financial condition, (e) Merchant is listed on the MATCH list by any other processing entity; (f)

Vantage is instructed to terminate Merchant by a Card Brand, Sponsor Bank, or any of its vendors used in connection with this Agreement; (g) Merchant is subject to a change of control or ownership which is not approved by Vantage in accordance with this Agreement; (h) Vantage determines that the provision of the Services to Merchant subjects Vantage to substantial risk of losses; (g) Vantage loses its standing with any Card Brand or its sponsorship for such standing by Sponsor Bank and despite reasonable efforts is unable to obtain a suitable alternative Sponsor Bank; or (h) Vantage determines that its association with Merchant could negatively impact Vantage's reputation. If Vantage believes Merchant will be unable to pay amounts due to Vantage under this Agreement, that Merchant has engaged in fraudulent activity, or that Merchant has engaged in activities prohibited by any Rules, Laws, or Policies, Vantage may immediately terminate this Agreement and/or hold all funds of Merchant. Merchant understands that under certain conditions Vantage may be required to submit Merchant's name and identity for the MATCH list or such other list required by the Card Brands or Sponsor Bank, and Merchant hereby knowingly and explicitly waives any and all claims related to its inclusion on any such list, including without limitation any claim against Vantage, the Card Brands or Sponsor Bank for such inclusion on any such list.

7.4 ACCOUNT INACTIVITY.

Vantage may, but will not be obligated to, terminate this Agreement if Merchant fails to present any transaction for clearing and settlement in any calendar month.

7.5 SUSPENSION

Vantage may, at its sole discretion, suspend the Services immediately and without prior notice to Merchant if, in Vantage's reasonable opinion: (a) one or more events have or likely have occurred which would allow Vantage to terminate this Agreement; (b) Vantage is investigating the business, operations, or activities of Merchant due to a belief Merchant has violated this Agreement; (c) Merchant is accused by any federal state, or local government or agency of violating any statute, regulation, or other Law; (d) Merchant creates an undue financial, security, or regulatory risk to Vantage; or (c) provision of such Services would result in the processing of a high risk transaction, violate Vantage's underwriting criteria, or would be likely to result in Chargebacks.

7.6 EFFECT OF TERMINATION.

If this Agreement is terminated for any reason, all amounts due to Vantage from Merchant will become immediately due and payable. Termination of this Agreement will not relieve Merchant of any liabilities or obligations which arise related to the Services or any transaction processed under this Agreement, whether such liabilities or obligations arise before or after termination of this Agreement, including but not limited to any transaction accepted and processed by Vantage or Sponsor Bank and all fees, fines, penalties, or other amounts due to Vantage or Sponsor Bank under this Agreement.

8. MERCHANT WARRANTIES & INDEMNIFICATION.

8.1 REPRESENTATIONS AND WARRANTIES.

Merchant represents and warrants to Vantage: (a) that all information in the Merchant Application or any other document submitted to Vantage in connection with the Merchant Application and the Services is true, accurate, and complete, and fully and accurately describes and details (i) the nature, type, and scope of the business in which Merchant is engaged; (ii) the financial condition and legal status of Merchant; and (iii) the principals, partners, owners, and officers (as applicable) of Merchant; (b) that all information provided to Vantage during and after the term of this Agreement by Merchant or its representatives is, at the time such information is presented, true, accurate, and complete, and not misleading; (c) that Merchant was validly formed, registered, in good standing, and duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on Merchant's business; (d) that Merchant has and will fully comply with all Laws, Rules and Policies in the provision and sale of all goods and services that are the subject of each transaction; (e) that the individual executing this Agreement has the authority to sign on behalf of Merchant and legally bind Merchant to the terms and conditions of this Agreement and such individual is authorized to execute any documents and to take any action which may be required by us now or in the future on behalf of Merchant; (f) that there is no action, suit, or proceeding pending or to Merchant's knowledge, threatened, which if decided adversely would impair Merchant's ability to carry on its business substantially as now conducted or which would adversely affect Merchant's financial condition or operations; (g) that Merchant has never been terminated at the request of a Card Brand, placed on the MasterCard MATCH system or placed on the Combined Terminated Merchant File, and if so, Merchant has clearly disclosed this to Vantage in writing; (h) that all transactions submitted to Vantage pursuant to this Agreement are bona fide and no transaction involves the use of a Card or ACH transaction for any purpose other than the purchase of goods or services from Merchant and does not involve a Cardholder obtaining cash from Merchant unless allowed by the Rules and agreed upon in writing with Vantage; (i) that Merchant will immediately notify Vantage if there are any changes to its business, ownership or the nature of its operations that make any information contained in the Merchant Application, Merchant's representations and warranties, or information otherwise provided to Sponsor Bank or Vantage inaccurate, incomplete, incorrect or misleading; (j) that Merchant has read and agrees to be bound by this Agreement, the Rules, and the Policies; (k) that entering into, and the performance of, this Agreement will not violate any law, or conflict with any other agreement to which Merchant is subject; and (l) that this Agreement is valid and fully enforceable against Merchant in accordance with its terms.

8.2 INDEMNIFICATION.

Merchant will indemnify, defend, and hold Vantage, Sponsor Bank, and the Card Brands and their respective employees, officers, directors, shareholders and agents, harmless for and from any and all loss, costs, expenses, claims, proceedings, actions, damages, demands, fines, penalties, issuer reimbursement, fraud reimbursement and recovery, or any other liabilities (including attorneys' fees and costs, and collections costs) paid or incurred by any one or more of them, arising out of, caused by, or attributable to, any of the following: (a) any of Merchant's acts or omissions with respect to Merchant's business or use or misuse of the Services; (b) any information provided to Vantage regarding Merchant which is false, incomplete, or misleading; (c) Merchant's failure to provide information to Vantage in accordance with this Agreement; (d) Merchant's failure to adhere to any instructions or requirements of Vantage or Sponsor Bank or Vantage's or Sponsor Bank's acting in accordance with any instructions by Merchant regarding Merchant's use of the Services; (e) any transaction processed under this agreement, including but not limited to any transaction which is fraudulent, subject to a Chargeback, not processed for any reason, or not settled for any reason, (f) any breach of this Agreement by Merchant or Merchant's employees, agents, or representatives; (g) any bankruptcy proceeding; (h) willful misconduct, fraud, intentional tort or negligence by Merchant or Merchant's employees, agents or representatives; (i) theft, embezzlement, or unauthorized use of the Services; (j) Merchant's or Merchant's employees', agents', or representatives' breach of any Rules, Laws, or Policies; (k) any unauthorized access or use of Confidential Information, transaction information, Cardholder data, or any other personally identifiable information; (l) any action or omission by any third party service provider used by Merchant

in connection with this Agreement; (m) any transaction fee, service fee, convenience fee or other surcharge, whether charged by Merchant or any third party, including without limitation any third party service provider; (n) action by Vantage exercising any right we have under this Agreement or any Laws, Rules, or Policies; or (o) any violation of any third-party right by Merchant or Merchant's employees, agents, or representatives.

9. VANTAGE'S LIABILITY & DISCLAIMER OF WARRANTIES.

9.1 LIABILITY FOR ERRORS.

Vantage will have no liability under this Agreement for any errors associated with Merchant's processing, and Merchant will take all such risk, including, but not limited to, errors resulting from: (a) Merchant not having sufficient funds to make a transaction; (b) any terminal, system, or software solution failing to function properly, not being used properly, or not being compatible with Vantage's systems, including without limitation any software solution through which the Services are provided; or (c) circumstances beyond Vantage's control, despite Vantage's reasonable precautions.

9.2 LIMITATION OF LIABILITY.

Under no circumstances shall Sponsor Bank's or Vantage's cumulative financial responsibility arising out of, relating to, or in connection with this Agreement or the Services, including but not limited to liability for its failure to perform any obligation under this Agreement and whether brought in contract, tort, or any other cause of action, exceed the fees received and retained by Vantage from Merchant over the prior three month period accruing as of the date of the harm less interchange and pass-through costs. Except as otherwise provided for in this Agreement, in no event will each of Sponsor Bank or Vantage or their respective directors, officers, employees, agents, or affiliates, be liable for any special, incidental, indirect, consequential, or punitive damages, including without limitation any lost profits, loss of production, loss of goodwill, lost business opportunities, or any loss, theft, disappearance, corruption or any other damage to data transmitted electronically arising out of, relating to, or in connection with this Agreement, regardless of whether such liability arises from any claim based on contract, warranty, tort (including without limitation negligence), product liability, or otherwise and regardless of whether or not each of Sponsor Bank or Vantage or their respective directors, officers, employees, agents, or affiliates have been advised of the possibility of such loss or damage. Vantage will have no liability for any damages or losses that are partially or wholly caused by Merchant or its employees, agents, or third-party service providers or software solution providers. Vantage will have no liability for any damages or losses that were not reported to Vantage by Merchant within thirty (30) days of when such damages or losses first occurred, whether or not discovered or discoverable. For the avoidance of doubt, Vantage's liability, if any, under this Agreement will be limited solely to direct, actual damages. Vantage will have no liability or responsibility for any action or inaction taken by any financial institution or other entity which issued any Cards. Vantage will have no liability or responsibility for the data security, or lack thereof, by any third-party service provider used by Vantage pursuant to this Agreement. All the limitations set forth in this Section 9 will survive any termination of this Agreement and will apply under all circumstances.

9.3 DISCLAIMER OF WARRANTIES.

The Services are provided "as is," "as available," and, accordingly, to the maximum extent permitted by applicable law, and except as otherwise specifically set forth in this Agreement, each of Sponsor Bank and Vantage hereby disclaim all representations and warranties, express or implied, regarding the Services, including without limitation, any and all warranties of merchantability, fitness for a particular purpose, quality, suitability, non-infringement, availability and otherwise (regardless of any course of dealing, custom, or usage of trade), and regarding any other services provided under this Agreement (including without limitation any services provided by any third party software solution provider) or any goods provided incidental to all such services. Merchant understands that there are risks associated with the acceptance of Cards and origination of ACH transactions and Merchant hereby assumes all such risks except as otherwise set forth in this Agreement. Each party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein.

10. SECURITY INTEREST & RECOUPMENT.

This section of the Agreement will constitute a security agreement under the Uniform Commercial Code wherein to secure Merchant's due and punctual performance of all of its obligations to Vantage under this Agreement Merchant grants to Vantage a first priority security interest in and lien upon: (a) all funds representing amounts owing Merchant under this Agreement, regardless of the source of such funds; (b) all funds at any time in the Reserve Account, regardless of the source of such funds; (c) any amount which may be due to Merchant under this Agreement, including, without limitation all rights to receive any payments under this Agreement; and (d) upon Vantage's request, any other security to secure Merchant's obligations under this Agreement (collectively, the "Secured Assets"). On Vantage's request Merchant agrees to execute financing statements or other documents to evidence this security interest. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements now existing or later entered into between the parties and Vantage will have all rights afforded under the Uniform Commercial Code, Law, and in equity. Vantage may exercise this security interest without notice or demand by making an immediate withdrawal or freezing of Merchant's Secured Assets. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets and Merchant agrees to obtain from Vantage written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Vantage has the right of recoupment and to offset any outstanding or uncollected amounts Merchant owes to Vantage from Merchant's account and from any amounts Vantage owes to Merchant under this Agreement or any other agreement. Merchant agrees that this is a contract of recoupment and as such, Vantage is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Merchant hereby agrees not to contest or object to any motion for relief from the automatic stay filed by Vantage.

11. GOVERNING LAW, JURISDICTION, WAIVER OF JURY TRIAL & REIMBURSEMENT OF COSTS AND EXPENSES.

This Agreement will be governed by and construed in accordance with the laws of Georgia, exclusive of its rules regarding conflicts of laws. Merchant agrees that the exclusive jurisdiction and venue for any disputes hereunder shall be an appropriate court located in Cherokee County, Georgia. Merchant and Vantage waive any right to trial by jury in any action concerning any rights or dispute under this Agreement. The prevailing party in an action brought against the other to enforce the terms of this Agreement or any rights or obligations hereunder, will be entitled to receive its reasonable costs and expenses of bringing such action including without limitation its reasonable attorney's fees and any collection costs in addition to any other recoverable damages.

12. MISCELLANEOUS.

12.1 AGENCY RELATIONSHIP.

Merchant authorizes Vantage to act as its agent for the limited purposes of holding, receiving, and disbursing funds on Merchant's behalf. Merchant's authorization permits Vantage to generate an electronic funds transfer to process each payment transaction. This authorization will continue until the later to occur of either (i) one hundred eighty days after Merchant's Vantage account is closed or terminated; or (ii) until that certain date that all amounts due to Vantage under this Agreement, whether occurring before or after termination of this Agreement, have been satisfied. Merchant agrees that Vantage's receipt of transaction proceeds satisfies Merchant's customers' obligations to you, the Merchant. Vantage will remit to Merchant funds actually received by Vantage on your behalf, less amounts owed to Vantage, Sponsor Bank, or other third-party service or software solution providers, subject to any Chargebacks or reserve withheld or applied as per this Agreement. If any overpayment to Merchant or other error occurs, Vantage may debit or credit Merchant's depository account without notice, and if such depository account does not contain sufficient funds, Merchant agrees to immediately remit the amount owed directly to Vantage.

12.2 FORCE MAJEURE.

Vantage will not be liable for delay in performing any of its obligations insofar as the performance of such obligation is delayed by an event that is beyond its reasonable control. Vantage will notify Merchant of any such delay in reasonable detail as soon as possible and will endeavor to mitigate the impact of such event.

12.3 SEVERABILITY AND WAIVER.

If any provision of this Agreement is held invalid, illegal, void, or unenforceable by reason of any judicial decision, all other provisions of this Agreement shall nevertheless remain in full force and effect. No course of dealing, delay, or failure to enforce any provision or exercise any right under this Agreement by Vantage shall be construed as a waiver or estoppel of such provision or right, nor shall it amend this Agreement or affect the validity of this Agreement or curtail Vantage's ability to enforce such provision or exercise such right in the future. All waivers must be in writing and signed by Vantage.

12.4 RIGHTS AND REMEDIES CUMULATIVE.

The rights conferred upon Vantage, Sponsor Bank, and the Card Brands in this Agreement are not intended to be exclusive of each other or of any other rights and remedies we have under this Agreement, at law, or in equity. Rather, each right we have at law or in equity will be cumulative and concurrent and in addition to every other right. No customer, officer, director, or employee of Merchant will be deemed a third-party beneficiary under this Agreement. Sponsor Bank and the Card Brands will be deemed third party beneficiaries under this Agreement, which means they have the right, but not the obligation, to enforce any of the obligations of this Agreement against Merchant, but they will have no responsibility under this Agreement, including without limitation any responsibility to Merchant hereunder.

12.5 ENTIRE AGREEMENT.

This Agreement, including the Policies, the completed Merchant Application, the Rules, Laws, and any amendment or supplement to this Agreement or other referenced agreements, all of which are incorporated into this Agreement, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded by this Agreement.

12.6 RESPONSIBILITY.

Merchant will be responsible for all actions and omissions of its owners, directors, officers, employees, agents, contractors, vendors, affiliates, and third-party service or software providers with regard to or in connection with any transaction or this Agreement.

12.7 ASSIGNABILITY.

This Agreement may be assigned by Vantage, but may not be assigned by Merchant without Vantage's prior written consent. If Merchant sells its business, the original owner and any original guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.

12.8 AMENDMENTS.

This Agreement may be amended or revised by Sponsor Bank or Vantage updating the terms at <http://www.vantagecard.com/resources/index.html>. While Vantage may notify Merchant of these amendments, it is Merchant's sole responsibility to review and maintain familiarity with the Agreement, Rules, Law and Policies. If Merchant does not agree to the terms of any such amendment, modification or revision, Merchant may cease using the Services and terminate this Agreement by providing written notice to Vantage within 30 days of the date such amendment is posted. Merchant's failure to terminate this Agreement or continued use of the Services shall be deemed to be Merchant's acceptance of and agreement to any such amendment. Notwithstanding the foregoing, any fee or rate increase imposed on Vantage, or any modification to this Agreement which is required, by one or more of the Card Brands, Sponsor Bank, a payment processor, or a service provider used by Vantage in connection with this Agreement may be passed on to Merchant and shall be effective upon the date of Merchant's receipt of notice of such increase or modification without giving rise to the right to terminate.

12.9 CONSENT TO DO BUSINESS ELECTRONICALLY, ELECTRONIC SIGNATURE, COMMUNICATION, AND NOTICES.

Merchant consents to do business electronically, which means that Merchant agrees that all Vantage agreements and Policies, including amendments thereto and documents referenced therein, as well as any notices, instructions, or any other communications regarding transactions and Merchant's agreements with Vantage (all of which are referred to herein as the "Communications") may be presented, delivered, stored, retrieved, and transmitted electronically. Merchant must keep Vantage informed of any change in its electronic or mailing address or other contact information by contacting Vantage Customer Service at www.vantagecard.com/contact. Merchant's electronic signature, including without limitation clicking "Agree and Continue" or an action of similar meaning or significance, shall be the legal equivalent of Merchant's manual signature. The person signing on behalf of Merchant (including without limitation clicking "Agree and Continue" or an action of similar meaning or significance) represents and warrants to Vantage that his, her, or its actions are authorized by Merchant and that such person has all required power and authority to bind Merchant to this Agreement. Such individual also agrees that the electronic signatures that he/she provides online will be binding upon him/her and Merchant, and will not be construed by a court of law to have any less effect than a standard ink or paper signature. Merchant understands, acknowledges, and agrees that: Merchant is able to print a complete and legible copy of this Agreement; Merchant was capable of opening, reading, printing, downloading and/or saving this Agreement prior to acceptance of this Agreement; and Merchant had reasonable opportunity to consult with appropriate professionals prior to electronically signing this Agreement. Any written notice under this Agreement will be deemed given and delivered upon the earlier of, as may be applicable: (a) actual receipt, (b) five days after being deposited in the United States mail, and addressed, if to us, to: Vantage Card Services, Inc., 2230 Towne Lake Parkway,

Building 400 Site 110, Woodstock, GA 30189; and if to Merchant: to the last address shown on our records (which shall be the address set forth on the Merchant Application unless such address is updated by providing notice to Vantage in accordance with this section), (c) one business day after being sent by email or other electronic communication: if sent by Vantage to Merchant at the last email address provided by Merchant to Vantage (which shall be the email address set forth on the Merchant Application unless such email address is updated by providing notice to Vantage in accordance with this section) or through the software system used by Merchant to submit transactions; and if sent by Merchant to Vantage, to the address, support@vantagecard.com (which address may be updated by providing notice to Merchant), or (d) the date of publication of the update and/or change to our website. Vantage's business days are Monday through Friday, excluding federal holidays.

12.10 MOBILE CONSENT

You authorize your wireless operator to disclose your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber details, if available, to Vantage and its agents and service and software providers ("Vantage") for the duration of the business relationship, solely for identity verification and fraud avoidance. See our Privacy Policy for how we treat your data.

12.11 AGENT OF MERCHANT

To the extent that any person or other third party executes or accepts this Agreement on behalf of Merchant and (a) any representation or warranty of such person or other third party, including without limitation those representations and warranties set forth on the Merchant Application and in Section 12.9 of this Agreement, are untrue or incorrect in any manner, (b) such person or third party is not authorized to enter into this Agreement on behalf of Merchant, or (c) Merchant alleges it is not bound by this Agreement or is found to not be bound by this Agreement, such person or third party hereby agrees to be personally responsible for and liable to Vantage and Sponsor Bank for all of Merchant's obligations and liabilities under this Agreement, including without limitation: any damages or losses incurred by Vantage or Sponsor Bank as a result of Merchant not being bound by this Agreement; all fees, fines, penalties, or assessments by any Card Brand, government, or governmental agency; the costs and expenses payable by Merchant under this Agreement, including without limitation any reasonable attorneys fees and all collection costs; the indemnification obligations set forth in this Agreement; and losses incurred as the result of any Chargebacks, returns, refunds, or other credits submitted for processing.

12.12 INTERPRETATION

The headings used in this Agreement are for convenience only and will not affect the interpretation of any provision. Merchant and Vantage acknowledge the limitations and exclusions in this Agreement have been subject to active and complete negotiations between the parties and represent the parties' voluntary agreement. 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 a party or its advisors participated in the preparation of this document.

12.13 COUNTERPARTS

This Agreement may be executed in delivered in one or more counterparts (electronic or otherwise), each of which will be deemed an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic means in accordance with Section 12.9 and the parties agree that such electronic execution and delivery will have the same force and effect as delivery of an original document with original signatures, and that each party may use such electronic signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

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Sub-merchant Tri-Party Agreement

APPLICABILITY

If your transaction volume exceeds \$1,000,000 in Visa transactions or in MasterCard transactions per year or you are deemed to be a commercial entity under the Card Brand Rules, you agree to the terms of this Sub-merchant Tri-Party Agreement. This agreement is between the Merchant (“**you**”, “**your**”), ProPay, Inc. (“**ProPay**”), and Wells Fargo Bank, N.A. (“**Member Bank**”) and it governs your use of our payment processing services (“**Service(s)**”). “**We**” “**our**” and “**us**” refers to both ProPay and Member Bank. Member Bank may enforce any provisions of this agreement that relate to payment processing provided by Member Bank. The Services are being offered in conjunction with your agreement with your service provider (“**Provider Partner**”) and may not be used separately from that agreement. To the extent there is a conflict in the terms between the Sub-merchant Agreement above and this Sub-merchant Tri-Party Agreement, the Sub-merchant Tri-Party Agreement will govern.

1. THE SERVICES

1.1 GRANT OF USE

The Services allow you to accept payment from your customers via bankcards (“**Cards**”) validly issued by Visa, MasterCard, Discover, and American Express (the “**Card Brands**”) and also, if approved, via automated clearing house transactions (“**ACH**”). The Services may include TSYS EnsureBillSM and ThreatMetrix®, where applicable. You may inquire with your Provider Partner as to whether these Services are available to you. You must only use the Services for a business purpose and not for personal, family, or household use. We hereby grant you use of the Services according to the terms found herein.

1.2 REQUIRED INFORMATION

In order to use the Services, we may require that you provide us with certain information such as information relating to your identity, customers, transactions, and financial statements. You must provide us with accurate and complete information and keep the information up-to-date. We rely on this information for underwriting and to meet our obligations under applicable laws and other regulatory requirements. If the scope or nature of your business or the type of products or services you offer changes, you must notify Provider Partner prior to the change. You are liable to us for all losses and expenses incurred by us arising out of your failure to report changes to us. We reserve the right to refuse to allow you to use the Services for any reason.

1.3 VERIFICATION

You authorize us to make, from time to time, any business and personal credit inquiries (including, but not limited to, credit reports for your directors, officers, and principals), identity-verification inquiries, transaction-verification inquiries (including, but not limited to, with customers), and any other inquiries considered necessary relating to this agreement, and to provide any information and documentation to our sponsor banks and/or the Card Brands as required by them. You also authorize any person or credit reporting agency to compile information to answer those inquiries and to furnish that information to us.

1.4 PROCESSING LIMITS

We will assign a maximum dollar amount per sales ticket and an aggregate maximum dollar amount of Card and ACH transactions per calendar month. If certain Card processing volume thresholds are met by your use of the Services we may notify you that you must enter into an additional agreement with our sponsor bank.

1.5 DATA OWNERSHIP

ProPay will own all data associated with your use of the Services and you hereby grant us a perpetual, irrevocable, sub-licensable, assignable, worldwide, royalty-free license to use, reproduce, electronically distribute, and display this data for the following purposes: (a) providing and improving the Services; (b) internal usage, including but not limited to, data analytics so long as such data is anonymous and aggregated with other customer data; (c) complying with applicable legal requirements and assisting law enforcement agencies; and (d) any other purpose for which you provide consent.

2. CARD ACCEPTANCE

2.1 ACCEPTANCE

You will honor, without discrimination, any valid Card properly tendered by a person asserting to be the person in whose name the Card is issued (“**Cardholder**”). You may elect not to accept Visa and/or MasterCard branded debit cards, but you must provide ProPay with prior written notice of such election. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services, and if you receive such payments, you will promptly remit them to us.

2.2 YOUR DISCLOSURES

You will properly disclose to the Cardholder, at the time of the Card transaction, your name, return policy, and other limitations you may have on accepting returned merchandise. Your refund policies for purchases made with a Card must be at least as favorable as your refund policy for purchases made with any other form of payment.

2.3 REQUEST AT TIME OF PAYMENT

When accepting payment you will request the Card expiration date and ZIP code or postal code from the Cardholder’s billing address. It is also highly recommended that you obtain the security code from each Card, but you must not store this information permanently.

2.4 CARD AUTHORIZATION

No later than 72 hours from the time you initiate a transaction, but prior to completing it, you will request an authorization for the transaction using equipment meeting specifications determined by ProPay. This authorization request must include your name and account identifier, the Card expiration date, the ZIP code of the customer’s billing address, and the total amount of the transaction, including taxes. ProPay may also require additional information in your request, such as: (a) CVV2 code or the equivalent; (b) a brief description of the goods or services involved; (c) the transaction authorization number; and, (d) if applicable, adjacent to the signature line, a notation that all sales are final. When authorization is obtained, you will be deemed to warrant the identity of the customer as the Cardholder. Authorizations are not a guarantee of acceptance or payment of a transaction and do not waive any provision of this agreement, or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. We may refuse to authorize any transaction.

2.5 CARDHOLDER STATEMENTS

Our name will appear in conjunction with your name on Cardholders' statements. Under no circumstance will we be responsible for processing credits or adjustments related to transactions not originally processed by ProPay.

2.6 ADJUSTMENTS

All transactions and deposits are subject to our audit and final verification, and may be adjusted for inaccuracies. All credits provided to you are provisional and subject to chargebacks and adjustments in accordance with the Rules, whether or not a transaction is charged back by the Card issuer.

2.7 SALES TRANSMITTALS

You will retain a copy of the sales transmittal for the completed transaction in accordance with the Rules for 25 months or such longer period as the Rules may require. Within three business days of our request, you will produce copies of sales transmittals and other transaction evidence, otherwise ProPay will have chargeback rights with respect to such transactions.

3. COMPLIANCE WITH THE RULES AND LAWS

3.1 COMPLIANCE WITH RULES

You must comply with the applicable Card Brand rules and operating regulations and the National Automated Clearing House Association rules ("**NACHA**") (collectively, "**Rules**"). An abridged version of the Visa, MasterCard and American Express Rules may be viewed at usa.visa.com/merchants/operations/op_regulations.html, www.mastercardmerchant.com, and www.americanexpress.com/merchanttopguide. Copies of the NACHA Operating Rules and Guidelines are available for review online at www.achrulesonline.org. You specifically acknowledge and agree that this Tri-party Sub-merchant Agreement is deemed to include the provisions required by: (i) the Visa International Operating Regulations relating to the Merchant Chargeback Monitoring Program, the Merchant Agreement Requirements, and Merchant Card Acceptance; and (ii) Section 5.1 and Sections 5.6 through 5.12 of the MasterCard Rules; and (iii) chapter 4, "transaction processing", chapter 11, "chargebacks and inquiries," and chapter 12, "specific industries" of the American Express Merchant Regulations – U.S. Copies of the Visa Regulations (<http://corporate.visa.com/about-visa/our-business/operating-regulations.shtml>) and the MasterCard Rules (http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf) are available for review online. The American Express Merchant Reference Guide, US, which is a summary of the above-referenced American Express regulations, is available at www.americanexpress.com. In the event of any conflict between the terms of this Agreement and the terms of the Card Brand Rules, the terms of this Agreement shall prevail. You: (i) represent and warrant that you have reviewed in full the contents of the Card Brand Rules applicable to you (in particular, those sections referenced above); and (ii) covenants that you will, from time to time, review the contents of the Card Brand Rules to ensure you remain aware of, and are capable of performing, your duties and obligations under this Tri-party Sub-merchant Agreement. ProPay is a Payment Card Industry ("**PCI**") level 1 service provider and is qualified to handle Cardholder data (i.e., information associated with a Card, such as account number, expiration date, and CVV2) in connection with the Services. ProPay will comply with the Payment Card Industry Data Security Standards ("**PCI DSS**") to the extent ProPay possesses or otherwise stores, processes, or transmits Cardholder data on your behalf. If you possess or otherwise store, process, or transmit Cardholder data, then you must comply with PCI DSS.

3.2 COMPLIANCE WITH LAWS AND POLICIES

You further agree to comply with applicable federal, state, and local laws, rules, and regulations (collectively, "**Laws**"). You also agree to the terms of the Privacy Policy, High Risk/Acceptable Use Policy, and other policies as applicable found at <https://www.propay.com/legal-agreements/> ("**Policies**"). You will assist us if we are required to ascertain your compliance with any Rules, Laws, PCI DSS, or Policies. We may, within our sole discretion, suspend the Services for a reasonable period of time required to investigate suspicious or unusual activity, and we shall have no liability for any losses you may attribute to any suspension of funds disbursement. We may reverse Card transactions we deem to violate this agreement, the Laws, Rules, PCI DSS, or Policies, and you agree to reimburse us for any such reversal. If any terms of this agreement conflict with the Rules, including PCI DSS, the Rules will govern.

3.3 DATA SECURITY

You must keep secure all systems and media containing account, Cardholder, or transaction information (physical or electronic) and destroy in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. If you store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, you must follow Card Brand guidelines on securing such data. You may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. You shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of Cardholder account information in the event of a disruption, disaster, or failure of your respective data storage system and/or facility. You agree to display your consumer privacy policy on your website as well as your security method for transmission of Cardholder data.

3.4 PROHIBITED PRACTICES

You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. We will refer perpetrators of fraudulent transactions, in our discretion, to the appropriate law enforcement agency. You must not honor any Card that is expired or listed on a current Electronic Warning Bulletin file, regardless of whether authorization has been obtained. You must not request an ACH transfer that violates the Rules or Laws. You agree not to initiate any ACH debits or credits to or from a savings account, or a foreign bank or the branch of a foreign bank in a U.S. territory. The term foreign bank does not include: (i) A U.S. agency or branch of a foreign bank; and (ii) An insured bank organized under the laws of a U.S. territory. You may not split transactions into multiple Card transactions except where: (a) partial payment is entered on the transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction; or, (b) the amount represents an advance deposit in a Card transaction completed in accordance with this agreement and the Rules. You will not use the Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of a Cardholder. You may not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to a third party. You must not use the Service for high risk transactions or illegal activities, as per the Policies.

3.5 RECURRING TRANSACTIONS

You must obtain the Cardholder's prior written consent for recurring transactions, including a description of the product and the frequency and duration of the recurring charge, and notify the Cardholder that he or she may cancel recurring billing charges at any time. You must

retain evidence of such written consent for 24 months from the date you submit the last recurring billing charge. You will honor any Cardholder cancellation, and if this agreement is terminated for any reason, you will, at your own cost, advise all Cardholders to whom you submit recurring billing charges that you no longer accept the Card for amounts owed.

3.6 ACH PROCESSING

To enable you to make and accept ACH payments, you authorize us to originate credit or debit records for the purpose of a funds transfer ("**Entries**") into the ACH network. We will use reasonable efforts to originate Entries on your behalf in accordance with this agreement. You must only submit Entries for bona fide transactions with your customers made in the ordinary course of business in accordance with this agreement, the Rules, and Laws. You shall obtain and maintain appropriate authorizations in accordance with the Rules from each of your customers for each ACH transaction. All disputes between you and any of your customers relating to any ACH transaction must be resolved between you and that customer. If ProPay receives any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. ProPay bears no financial responsibility for any disputed transaction. You must maintain an unauthorized return rate, as described in the NACHA Regulations, below 0.5% of originating debits.

3.7 USE OF TRADEMARKS

The Card Brands are the sole and exclusive owners of their marks and your use of their marks must comply with the Rules. We are the sole and exclusive owner of our marks and your use of our marks will fully comply with our policies and instructions. At any time we may prohibit your use of the marks or require changes to your use of the marks as we deem necessary or appropriate. Your right to use our marks and the Card Brand marks will cease upon termination of this agreement and you agree not to contest the ownership of the marks for any reason.

3.8 THIRD PARTY SERVICE PROVIDERS

You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You must make sure that such third parties comply with the Rules (including PCI DSS) and Laws. You must notify Partner Provider if you use third party service providers. If there is unauthorized access to Cardholder data in the possession of you or your agents, you must immediately notify Partner Provider and cooperate with us regarding reasonable requests for information regarding the compromise.

3.9 CONFIDENTIALITY

You must retain in strictest confidence all information and data belonging to or relating to our business, and will safeguard such information and data by using the same degree of care, but no less than a reasonable amount of care, that you use to protect your own confidential information.

3.10 DISPUTES

a. YOUR DUTY TO MONITOR

ProPay will not, and has no obligation to, confirm the validity of the recipient or the underlying transaction pursuant to which funds are transferred. We assume no liability for any unauthorized transfer request and the attendant transfer of funds, unless and until we receive appropriate and timely notice by you of the unauthorized transfer requests. You must promptly and consistently inspect your transaction history. Immediately report any possible errors.

b. DISPUTES, INQUIRIES, AND CHARGEBACKS

All disputes between you and any of your customers relating to any ACH transaction must be resolved between you and that customer. If ProPay receives any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. Working with Provider Partner, we will handle Card Brand inquiries about your card transactions, in addition to disputes between you and a customer involving card payment transactions. Based on customer disputes we may reverse Card transactions ("**chargebacks**"), and we will offset the value of such chargebacks from monies owed to you. You must not reenter or reprocess any Card transaction that has been charged back, but instead allow the chargeback process to proceed to its conclusion as described in each Card Brand's Rules. If you disagree with a chargeback, you may request a chargeback reversal within the applicable Card Brand's timeline in its Rules. "**Excessive Activity**" means: chargebacks in excess of .50% of the transaction ratio of your Card transactions; or, chargebacks in excess of .50% of the transaction ratio of the dollar amount of your Card transactions; or, returns in excess of 3% of the transaction ratio of your Card transactions; or, denied transactions in excess of 5% of the transaction ratio of your Card transactions. The existence of Excessive Activity will be a breach of this agreement and may result in action as we deem necessary, including, but not limited to, termination or suspension of processing privileges or creation or maintenance of a reserve. We may revoke or reverse any credit given to you where: (i) the Card transaction was not made in compliance with this agreement and the Laws, Rules, and Policies; (ii) the Cardholder disputes liability to us for any reason, including but not limited to those chargeback rights enumerated in the Rules; (iii) the Card transaction was not directly between you and the Cardholder; or (iv) a deposit to you was made erroneously.

c. REFUND CREDITS

You will issue a credit memorandum instead of making a cash advance, a disbursement, or a refund on any Card transaction. We will debit from amounts owing you for the total face amount of each credit memorandum submitted. You will not submit a credit relating to any Card transaction not originally submitted to us, nor will you submit a credit that exceeds the amount of the original Card transaction. You will, within the time period specified by the Rules, provide us with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that were the subject of a Card transaction.

4. FEES, TAXES & IRS REPORTING

4.1 FEES

Fees for the Services are set out in a fee schedule provided to you by Provider Partner.

4.2 DEPOSIT OF FUNDS TO MERCHANT POOL ACCOUNT

Our sponsor banks will deposit to the non-interest bearing pooled account titled in the name of our sponsor bank for the benefit of all ProPay merchants ("**Merchant Pool Account**") all amounts of Card transactions complying with the terms of this agreement and the Rules. We will instruct our sponsor bank to move funds owed to you from the Merchant Pool Account to an account designated by your

or your Provider Partner (“**Designated Account**”). You acknowledge that the Designated Account may be an account owned by Provider Partner and that ProPay may rely on the information provided by the Provider Partner with respect to the Designated Account. You agree that ProPay’s deposit of funds to the Designated Account discharges ProPay of its settlement obligations to you. Any disputes concerning the amount of funds or their receipt in the Designated Account will be between you and Provider Partner.

4.3 ELECTRONIC FUNDS TRANSFER AGREEMENT

You authorize ProPay to initiate, process, transmit, and settle through our sponsor bank ACH debits or credits to the Designated Account. Your authorization will remain in effect after termination of this agreement and until ProPay has received written notice terminating this authorization and all your obligations to ProPay have been paid in full. You irrevocably authorize us to immediately debit the Designated Account for the amounts of any chargebacks, ACH returns, fines, losses, and costs we may incur because of your use of the Services. You may change the Designated Account, but no more than once every 90 days, and must promptly notify Provider Partner of any changes.

4.4 RESERVE

ProPay may, in its reasonable discretion, establish a reserve if it believes there is a risk of potential chargebacks, returns, or any other risk or liability associated with your use of the Services or to ensure current or future payment owed to ProPay. We will provide you with notice of the reserve and the terms of the reserve. ProPay may require that a certain portion of your transaction proceeds be held by us in reserve for a certain period of time, or that you make a lump sum payment for the reserve. ProPay may change the terms of the reserve at any time by providing you with notice of the new terms. ProPay has the right to use your funds in the Merchant Pool Account or funds otherwise owed to you to establish, increase, or maintain funds in reserve. We may hold a reserve as long as we deem necessary to mitigate risks associated with your transactions. You understand and agree that if you are required to establish a reserve, you have an obligation under this agreement to maintain at all times the balance in the reserve set by ProPay. ProPay may, without notice, apply funds designated as reserves against any outstanding amounts owed to us under this agreement. ProPay may also debit the reserve to exercise its rights under this agreement to collect any amounts due to us including, without limitation, rights of set-off and recoupment. You agree that you are liable for all obligations associated with your use of the Services even after the release of any reserve. You will not be entitled to a return of any sums remaining in reserve for up to 270 days following termination of your use of the Services.

4.5 TAXES & IRS REPORTING

To comply with IRS 1099-K reporting requirements, we may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). We may collect federal backup withholding upon transaction settlement, on behalf of the IRS, from you if you do not supply your legal name, SSN or EIN, or if you fail to respond to a request from us to verify the same.

5. YOUR WARRANTIES & INDEMNIFICATION

5.1 REPRESENTATIONS AND WARRANTIES

You represent and warrant to us: (1) that all information you submit to us relating to your application to use and continued use of the Services is correct, complete, and fully describes and details the nature, type, and scope of the business in which you are engaged; (2) that you are at least 18 years of age; (3) that, if an individual account, you are a sole proprietorship validly existing in the United States or its territories, and if an entity, that the entity was validly formed, registered and is in good standing in at least one of the fifty United States or its territories; (4) that you have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, and if so, you have disclosed this to us or to Partner Provider; and (5) that all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from you and does not involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with us.

5.2 INDEMNIFICATION

You agree to indemnify, defend, and hold us harmless for and from any and all loss, cost, expense, claim, damage, and liability (including attorneys’ fees and costs, and collections costs) paid or incurred by us and arising from, caused by, or attributable to, any of the following: (1) any of your acts or omissions with respect to your use of the Services; (2) acting any Card transaction processed under this agreement, (3) any breach by you of this agreement; (4) willful misconduct, fraud, intentional tort or negligence by you or that of your employees, agents or representatives; (5) action by us exercising any right we have under this agreement, Laws, Rules, or Policies.

6. PROPAY’S LIABILITY & DISCLAIMER OF WARRANTIES

6.1 LIMITATION OF LIABILITY

Any liability we have to you under this agreement, whatever the basis of the liability, will not exceed in the aggregate the amount of \$5,000. In no event will we be liable for indirect, special, or consequential damages.

6.2 DISCLAIMER OF WARRANTIES

The Services are provided “AS IS” and “AS AVAILABLE.” We make no warranty, express or implied, regarding the Services, and nothing contained in this agreement will constitute such a warranty. To the extent allowed by Law, we disclaim all implied warranties and conditions, express, implied or statutory, including without limitation those of merchantability and fitness for a particular purpose, the implied warranties of title and/or non-infringement. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimers may not apply to you. Each party acknowledges that it has not entered into this agreement in reliance upon any warranty or representation except those specifically set forth herein.

7. INTELLECTUAL PROPERTY RESTRICTIONS

All materials or intellectual property provided to you in connection with the Services (“**Materials**”) are protected intellectual property of ProPay or its third party providers. You shall not (and shall not permit any agent or third party) to: (a) copy all or any portion of any Materials; (b) decompile, disassemble, or otherwise reverse engineer (except to the extent expressly permitted by applicable law, notwithstanding a contractual obligation to the contrary) the Services or Materials, or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Services or any Materials or any portion thereof; (c) modify, translate, or otherwise create any derivative works based upon the Services or any Materials; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge, or otherwise transfer the Services or any Materials, in whole or in part, to any third party; or (e) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on the Services or in any Materials.

8. SECURITY INTEREST, BANKRUPTCY, PERSONAL GUARANTEE

This agreement will constitute a security agreement under the Uniform Commercial Code wherein you grant to us a security interest in and lien upon: (a) all funds representing amounts owing you under this agreement at any time in the Merchant Pool Account, regardless of the source of such funds; (b) all funds at any time in reserve, regardless of the source of such funds; (c) present and future Card transactions; (d) any amount which may be due to you under this agreement, including, without limitation all rights to receive any payments or credits under this agreement; and (e) upon our request, any other security to secure your obligations under this agreement. (collectively, the "**Secured Assets**"). You agree to execute financing statements or other documents to evidence this security interest. These security interests and liens will secure all of your obligations under this agreement and any other agreements now existing or later entered into between you and us and we will have all rights afforded under the Uniform Commercial Code, any other applicable law, and in equity. We may exercise this security interest without notice or demand by making an immediate withdrawal or freezing of your Secured Assets. You represent and warrant that no other person or entity has a security interest in the Secured Assets and you agree to obtain from us written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and as such, we are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by us.

9. GOVERNING LAW, JURISDICTION, WAIVER OF JURY TRIAL

This agreement will be governed by and construed in accordance with the laws of Utah except where federal law is applicable. You agree that all performances and transactions under this agreement will be deemed to have occurred in Utah and that your entry into and performance of this agreement will be deemed to be the transaction of business within the state of Utah. You agree that the exclusive jurisdiction and venue for any disputes hereunder shall be an appropriate court located in Salt Lake County, Utah. You and we waive any right to trial by jury in any action concerning any rights or disputes under this agreement.

10. MISCELLANEOUS

10.1 AGENCY RELATIONSHIP

You authorize us with respect to the Services to act as your agent for the limited purposes of holding, receiving, and disbursing funds on your behalf. Your authorization permits ProPay to generate an electronic funds transfer to process each payment transaction. This authorization will continue until this agreement is terminated. You agree that ProPay's receipt of transaction proceeds satisfies your customers' obligations to you.

10.2 FORCE MAJEURE

No party will be liable to the other party for any failure or delay in its performance of this agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

10.3 SEVERABILITY AND WAIVER

If any provision of this agreement is held invalid, illegal, void, or unenforceable by reason of any judicial decision, all other provisions of this agreement shall nevertheless remain in full force and effect. No course of dealing, delay, or failure to enforce any provision or exercise any right under this agreement by us shall be construed as a waiver or estoppel of such provision or right, nor shall it amend this agreement or affect the validity of this agreement or curtail our ability to enforce such provision or exercise such right in the future. All waivers must be in writing and signed by us.

10.4 RIGHTS AND REMEDIES CUMULATIVE

The rights conferred upon us in this agreement are not intended to be exclusive of each other or of any other rights and remedies we have under this agreement, at law, or in equity. Rather, each right we have at law or in equity will be cumulative and concurrent and in addition to every other right.

10.5 ENTIRE AGREEMENT

This agreement, including, Policies, the Rules, and any amendment or supplement to this agreement or other referenced agreements, all of which are incorporated into this agreement, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded by this agreement.

10.6 CONSTRUCTION

The headings used in this agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

10.7 ASSIGNABILITY

This agreement may be assigned by us, but may not be assigned by you without our prior written consent.

10.8 AMENDMENTS

You are bound by this agreement as it may be amended or revised at any time upon notice to you. It is your sole responsibility to review and maintain familiarity with the agreement, Rules, Law and Policies. If you do not agree to the aforementioned amendments and do not wish to be bound the terms and conditions thereto, you shall provide written notice to Provider Partner. If you do not agree to the terms of the amendment, your right to use the Services will be terminated.

10.9 CONSENT TO DO BUSINESS ELECTRONICALLY, ELECTRONIC COMMUNICATION, AND NOTICES

You consent to do business electronically, which means that you agree that all ProPay agreements and Policies, including amendments thereto and documents referenced therein, as well as any notices, instructions, or any other communications regarding transactions and your agreements with ProPay (all of which are referred to herein as the "**Communications**") may be presented, delivered, stored, retrieved, and transmitted electronically. You must keep Provider Partner informed of any change in your electronic or mailing address or other contact information. You may withdraw your consent to doing business under the ProPay agreements and policies electronically at any time by contacting Provider Partner and withdrawing your consent to transact business electronically. If you do so, this agreement will be terminated. However, any Communications or transactions between us before your withdrawal of such consent, will be valid and binding. Any written notice to us must be sent to: ProPay, Inc., 3400 N Ashton Blvd, Suite 200, Lehi, UT 84043, and if to you: to the last address shown on Provider Partner's records.

Sub-merchant Check Scanning Processing Agreement

APPLICABILITY

If Merchant elected in their Membership Application or any boarding file associated with their Membership Application to enroll in the check scanning processing services offered by Vantage, then Merchant hereby agrees to the terms of this Sub-Merchant Check Scanning Processing Agreement (the "Agreement").

This Agreement is between the "Merchant" (as such term is defined in the Sub-merchant Agreement above); Jack Henry & Associates, Inc., Profit Stars Division ("Profit Stars"), and "Vantage" (as such term is defined in the Sub-merchant Agreement above) and it governs your use of our check scanning processing services ("Services").

The Services are being offered in conjunction with your agreement with your service provider ("Provider Partner") and may not be used separately from that agreement. Any capitalized terms set forth herein which are not otherwise defined herein shall have the meaning assigned to them in the Sub-merchant Agreement above. To the extent there is a conflict in the terms between the Sub-merchant Agreement above and this Sub-merchant Check Scanning Agreement, the Sub-merchant Agreement will govern.

1. **DEFINITIONS:** The following terms used in this Agreement shall have the meaning specified below:

- (a) "Administrator": The Merchant's employee who has been designated as Merchant's primary contact with Vantage and Provider Partner for the Services and has been appointed by Merchant to manage the administration of Services access, including passwords, and communicate authorizations to Vantage and Provider Partner.
- (b) "Bank of First Deposit": In a Check 21 Transaction, the financial institution which receives the Entry from Profit Stars and transmits the Entry through the Federal Reserve Bank system for transmittal to the Customer's financial Institution for debit or credit to the Customer's account.
- (c) "Check 21": The Check for the 21st Century (Check 21) Act and all regulations pertaining to the Check 21 Act.
- (d) "Check 21 Transaction": An electronic payment transaction utilizing a Substitute Check image permitted by Check 21.
- (e) "Confidential Information": The Software programs and documentation used by each of Vantage, Provider Partner, and Profit Stars to provide the Services to Merchant and passwords and other information or materials of a confidential and proprietary nature that each of Vantage, Provider Partner, and Profit Stars provides to Merchant under this Agreement.
- (f) "Customer": Merchant's customer who submits a payment to Merchant by means of a paper check.
- (g) "Entry": A transaction submitted by Merchant via Vantage and Provider Partner to Profit Stars for processing by the Services and further defined in the NACHA Rules.
- (h) "Image": The image that results from an electronic scan of a paper check by Merchant.
- (i) "NACHA Rules": The then-current rules, regulations and procedural guidelines published by the National Automated Clearing House Association ("NACHA") and/or all regional payment alliances associated with NACHA.
- (j) "Reseller": Vantage, a third party reseller appointed and authorized by Profit Stars to resell and/or deliver the Services to Merchant.
- (k) "Services": The Check 21 processing services provided by each of Vantage, Provider Partner, and Profit Stars to Merchant under this Agreement.
- (l) "Settlement Account": A commercial demand deposit bank account which Merchant has established for Vantage's and Profit Stars' access and use to settle financial payment transactions processed by Merchant through Vantage and Profit Stars and the Services under this Agreement.
- (m) "Software": Software programs and associated documentation and materials that each of Vantage, Provider Partner, and Profit Stars provides to Merchant for use with the Services.
- (n) "Substitute Check": The electronic Image of a paper check, as defined in Check 21.

2. **SET-UP AND DELIVERY OF SERVICES:**

- 2.1 In conjunction with this Agreement, Merchant has completed and submitted, or has previously completed and submitted, to Reseller an initial Merchant Application and certain other associated boarding information and supporting documentation about Merchant's business and financial status for Vantage's, Provider Partner's, and Profit Stars' consideration in the account set-up and provision of the Services to Merchant. Merchant acknowledges that Vantage, Provider Partner, and Profit Stars shall each be entitled to rely upon the validity, accuracy and completeness of the information provided by Merchant in its Merchant Application and associated boarding information and supporting documentation, for each of Vantage's, Provider Partner's, Profit Stars' use in performing its due diligence review of Merchant's status and financial standing for determining (a) if each of Vantage, Provider Partner, and Profit Stars will enter into this Agreement with Merchant; (b) if each of Vantage, Provider Partner, and Profit Stars will provide all or any of the Services to Merchant under this Agreement; and (c) the credit and account processing standards and limits that each of Vantage, Provider Partner, and Profit Stars will apply to the processing of Merchant's Entries. Subsequent to the initial acceptance and set-up of Merchant for Vantage's, Provider Partner's, and Profit Stars' provision of the Services, Vantage, Provider Partner, or Profit Stars, as may be applicable, may from time to time request that Merchant provide updated information and supporting documentation to Vantage, Provider Partner, and Profit Stars to confirm Merchant's then-current business and credit status, which Merchant shall apply best efforts to deliver to Vantage, Provider Partner, and Profit Stars within three (3) business days following receipt of any such written request. Any failure by Merchant to provide the information and supporting documentation requested by Vantage, Provider Partner, and Profit Stars via the Merchant Application or by other means within a timely manner shall be deemed to be a material breach of this Agreement by Merchant.
- 2.2 When Merchant's Merchant Application and associated boarding information and supporting documentation has been accepted and approved by Vantage, Provider Partner, and Profit Stars, Vantage, Provider Partner, and Profit Stars shall provide the Services selected by Merchant in its Merchant Application. Merchant shall utilize and access the Services in accordance with the terms of this Agreement

and any further practices and procedures established by each of Vantage, Provider Partner, or Profit Stars for the Services which have been communicated in writing to Merchant. As part of the Merchant set-up and boarding process:

Vantage will provide Merchant with an administrative gateway user name and password ("Password") to access the Services which are accessed via the services of the Provider Partner. Merchant will designate an Administrator who shall be the sole individual vested with the authority to determine who will be authorized to use the Services; establish separate passwords for each user; and establish limits on each user's authority to access information and conduct transactions. Merchant is responsible for the actions of its Administrator; the authority the Administrator gives others to act on Merchant's behalf; and the actions of the persons designated by the Administrator to use the Services. Merchant shall take reasonable security procedures and practices to safeguard the confidentiality of the passwords; limit access to its passwords solely to persons who have a need to know such information; closely and regularly monitor the activities of employees and its agents who access the Services; and prohibit its employees and agents from initiating entries in the Services without proper authorization and supervision and adequate security controls.

- 2.3 Profit Stars will provide to Merchant processing Services for the Entry types indicated in the Merchant set-up and boarding documentation and/or its contract with Reseller which Merchant wishes to utilize. Profit Stars reserves the right to withdraw the processing Services provided generally to its customers, including without limitation Merchant, for individual Entry types from general market availability and coverage under this Agreement upon ninety (90) days prior written notice to Merchant.
- 2.4 Prior to submitting an Entry to Profit Stars for processing, Merchant shall secure all authorizations and approvals from its Customer and deliver any notifications pertaining to that Entry which are required by the NACHA Rules and/or applicable laws and regulations. Merchant shall be responsible for the accuracy and propriety of all Entries submitted to Profit Stars for processing. If Merchant utilizes a scanner to create Images which are delivered to each of Vantage, Provider Partner, and Profit Stars for processing, Merchant shall be solely responsible to ensure the accuracy and completeness of the Image transmitted to each of Vantage, Provider Partner, and Profit Stars for processing.
- 2.4 Merchant acknowledges that Profit Stars has specific processing deadlines imposed by the Bank of First Deposit for Check 21 Transactions. Files received by the deadline will be transmitted that day to the Federal Reserve Bank for settlement on the effective entry day. Files received after the deadline will be processed the next "Banking Day" as defined in the NACHA Rules.
- 2.6 For Check 21 Transactions, neither Vantage, Provider Partner, or Profit Stars will be responsible for printing any Substitute Checks which may be required by a financial institution in order to receive and process the Entry.
- 2.7 In the event of any conflicts in the instructions received by each of Vantage, Provider Partner, or Profit Stars regarding Merchant or any Entries relating to them, each of Vantage, Provider Partner, or Profit Stars (as may be applicable) may at its option and with or without notice, hold or interplead, comply with the legal process or other order, or otherwise limit access by Merchant or by each of Vantage, Provider Partner, or Profit Stars to the funds, Entries or proceeds thereof.

3. RECOUPMENT AND SET-OFF:

- 3.1 Merchant shall immediately reimburse each of Vantage and Profit Stars, as may be applicable, for any returns or shortfalls that occur in Merchant's Settlement Account. Each of Vantage and Profit Stars, as may be applicable, reserves the right to delay the availability of funds for deposit without prior written notices to Merchant if, in its sole discretion, each of Vantage or Profit Stars, as may be applicable, deems itself at financial or relative risk for any and all Services performed under this Agreement.
- 3.2 Merchant hereby acknowledges and agrees that each of Vantage and Profit Stars, as may be applicable, shall have a right of setoff against:
- (a) any amounts each of Vantage and Profit Stars, as may be applicable, would otherwise be obligated to deposit into Merchant's account, and
 - (b) any other amounts each of Vantage and Profit Stars, as may be applicable, may owe Merchant under this Agreement or under the Sub-merchant Agreement above.

4. USE OF REMOTE DEPOSIT CAPTURE SERVICES: If Merchant utilizes Profit Stars' Remote Deposit Capture Services, the following supplemental terms shall apply to those Services:

- (a) All checks deposited electronically by Merchant through use of the Remote Deposit Capture Services shall be subject to the following requirements:
 - (1) The original paper check will not be deposited through the Remote Deposit Capture Services more than once;
 - (2) All checks will conform to the requirements of Merchant's deposit agreement with its financial institution; and
 - (3) Merchant shall review and validate the accuracy and completeness of the check data being captured, including but not limited to the amount of the check and the legibility of the check Image generated from use of the Remote Deposit Capture Services;

(b) Merchant shall be solely responsible for the selection, use and operation of the scanner equipment used to capture the Image using the Remote Deposit Capture Services, including the quality of the Image results generated from the scanner. Any scanner used by Merchant with the Remote Deposit Capture Services must meet the technical specifications for scanners published by Profit Stars in order to be deemed compatible with the Remote Deposit Capture Services. Profit Stars offers scanners which it has certified are compatible for use with the Remote Deposit Capture Services for purchase or lease to customers of its Remote Deposit Capture Services. Any purchase or lease of scanners by Customer from Profit Stars or Reseller for its use shall be transacted between Merchant and Profit Stars or Reseller in a separate equipment purchase/lease agreement.

(c) Merchant shall be solely liable and responsible for all damages, losses, expenses and claims arising from any of the following:

- (1) Duplication of Images transmitted by Merchant to Vantage, Provider Partner, or Profit Stars through the Remote Deposit Capture Services;
- (2) Alteration of scanned Images not caused by each of Vantage, Provider Partner, and Profit Stars' Services or Software;
- (3) Deposit of checks on accounts with insufficient funds, counterfeit checks, fraudulent checks, or checks bearing unauthorized or forged endorsements;
- (4) Acts of fraud, negligence or willful misconduct committed by employees or agents of Merchant in depositing checks using the Remote Deposit Capture Services;
- (5) Hardware failure not caused by each of Vantage's, Provider Partner's, or Profit Stars' Services or Software; or
- (6) Merchant's failure to properly store original checks once the scanned Image has been captured.

5. PRICING AND PAYMENT:

5.1 Merchant shall pay Reseller all the fees, penalties and charges for the Services shown in the then-current standard published fee schedule for merchants located in the United States which has been provided to Merchant. All amounts are stated and due and payable in U.S. dollars, and are exclusive of any taxes or other charges which may be imposed by a government entity on the Services, except for taxes due on Profit Stars' or Reseller's income. For Services fees invoiced by Reseller directly to Merchant, Reseller reserves the right to require Merchant's payment of these fees due under this Agreement via an ACH debit against Merchant's Settlement Account or other banking account.

6. NACHA RULES AND PROFIT STARS' GUIDELINES: Each party shall comply with the then-current NACHA Rules which apply to Check 21 Transactions processed under this Agreement. In addition, Profit Stars from time to time may publish to Merchant and other merchants its own standard operating and implementation guidelines for the Profit Stars Services with respect to specific NACHA Rules which will govern and apply to this Agreement as if set forth herein.

7. CONFIDENTIAL INFORMATION AND SECURITY PROCEDURES:

- 7.1 Merchant shall protect and maintain the confidentiality of all Confidential Information disclosed by each of Vantage, Provider Partner, and Profit Stars to Merchant under this Agreement and comply with the security procedures described in this Agreement and in any Vantage, Provider Partner, or Profit Stars policies and procedures communicated in writing to Merchant. Merchant acknowledges that the purpose of these security procedures is for verification of authenticity of an Entry and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between each of Vantage, Provider Partner, and Profit Stars and Merchant. Merchant is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions.
- 7.2 Merchant understands that the password and Services access and use instructions provided by Vantage, Provider Partner, or Profit Stars are confidential and agrees to assume all risks of accidental disclosure or inadvertent or wrongful use by any party whatsoever, whether such disclosure of use are on account of Merchant's negligence or are deliberate acts. Merchant acknowledges that no person from Vantage, Provider Partner, or Profit Stars will ever ask for any password and that Vantage, Provider Partner, or Profit Stars employees, contractors, or authorized agents do not need and should not ask for Merchant's password.
- 7.3 Merchant shall change its password periodically and whenever anyone who has had access to a password is no longer employed or authorized by Merchant to use the Services. Each of Vantage, Provider Partner, or Profit Stars may require Merchant to change its password at any time. Each of Vantage, Provider Partner, or Profit Stars may deny access to the Services without prior notice if it is unable to confirm to its satisfaction any person's authority to access the Services or if each of Vantage, Provider Partner, or Profit Stars believes such action is necessary for security reasons.
- 7.4 Merchant acknowledges that the Services and Software provided by each of Vantage, Provider Partner, or Profit Stars under this Agreement incorporates trade secrets of each of Vantage, Provider Partner, or Profit Stars and their respective licensors, and as such is protected by civil and criminal law. Merchant shall notify each of Vantage, Provider Partner, or Profit Stars, as may be applicable, immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Each of Vantage, Provider Partner, or Profit Stars, as

may be applicable, shall have, in addition to any other remedies available to it at law or equity, the right to seek injunctive relief enjoining any wrongful use or possession of the trade secrets contained in the Services or Software by any party. Merchant acknowledges that irreparable harm will occur to each of Vantage, Provider Partner, or Profit Stars in the event of such wrongful use or possession of the trade secrets contained in the Services or Software and that other remedies are inadequate.

8 FORCE MAJEURE:

8.1 **Force Majeure:** If performance by each of Vantage, Profit Stars, Provider Partner, the Bank of First Deposit, or any of their respective affiliates, of any Services or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of acts or events beyond their reasonable control, including but not limited to labor disputes and strikes; acts of nature, fire, floods, lightning, hurricanes, earthquakes or severe weather; utility or communications failures; failures of the Federal Reserve Bank system network; computer-associated outages or delay in receiving electronic data; war, civil commotion or acts of terrorism; or the introduction of any new law, order or regulation which prohibits or restricts performance of this Agreement, then each of Vantage, Profit Stars, Provider Partner, the Bank of First Deposit or any of their respective affiliates affected by the occurrence of such acts or events shall be excused from their performance hereunder to the extent of the prevention, restriction, delay or interference.

9 WARRANTIES:

9.1 In the event that Merchant discovers an error in the Services or Software which has been caused by either Vantage, Provider Partner, or Profit Stars, Merchant shall immediately notify Vantage and Provider Partner of the existence and details of the error. Vantage and Provider Partner (each as applicable) shall apply commercially reasonable efforts to correct the error and/or to work with each other and Profit Stars to correct the error (as applicable) within a reasonable time after Vantage's and Provider Partner's receipt of notification of the error. EXCEPT FOR THE FOREGOING WARRANTY, EACH OF VANTAGE, PROVIDER PARTNER, AND PROFIT STARS MAKES NO OTHER WARRANTIES FOR THE SERVICES PROVIDED BY EACH OF VANTAGE, PROVIDER PARTNER, AND PROFIT STARS, AND EACH OF VANTAGE, PROVIDER PARTNER, AND PROFIT STARS DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Each of Vantage, Provider Partner, and Profit Stars does not guarantee the completeness or accuracy of the information provided from a third-party database. Each of Vantage, Provider Partner, and Profit Stars shall have no liability to Merchant for any invalid Customer information provided by Merchant or Entries returned unpaid to Merchant.

9.2 Merchant warrants that:

- (a) all Entries submitted to each of Vantage, Provider Partner, or Profit Stars for processing will comply with applicable laws and regulations and the NACHA Rules pertaining to the Entries;
- (b) Merchant will comply with all laws, regulations and the NACHA Rules applicable to Merchant's activities covered by this Agreement;
- (c) all information provided by Merchant initially in its Merchant Application and associated boarding information and supporting documentation and subsequently in all updates to its Merchant Application and associated boarding information and supporting documentation provided to each of Vantage, Provider Partner, or Profit Stars pursuant to Section 2.1 above is valid, complete, accurate and up-to-date; and
- (d) the individual signing and submitting this Agreement, the Merchant Application for purchase of the Services from each of Vantage, Provider Partner, or Profit Stars, and all future updates to the Merchant Application and associated boarding information and supporting documentation has the legal authority to make and bind Merchant to the agreements, warranties and commitments stated in this Agreement and the submitted Merchant Application on Merchant's behalf.
- (e) It is each of Vantage, Provider Partner, or Profit Stars corporate policy not to knowingly provide processing Services for any person or organization whose use of the processing Services involves or pertains to any activity which is illegal under U.S. law or involves an activity or business with which each of Vantage, Provider Partner, or Profit Stars, as may be applicable, declines to accept and conduct business generally ("Excluded Activity or Activities"). Merchant warrants that it will not conduct any of the Excluded Activities, which include but are not limited to the following:
 - (1) Check cashers or money services businesses (MSBs)
 - (2) Credit repair services, debt consolidation and forgiveness programs
 - (3) Government grant or will-writing kits
 - (4) Internet gambling or accepting payments in connection with Internet gambling
 - (5) Internet pharmaceutical sales
 - (6) Internet tobacco or firearms sales
 - (7) Magazine subscriptions
 - (8) Organizations residing outside of North America or U.S. Territories
 - (9) Outbound telemarketing
 - (10) Payday or subprime loan business
 - (11) Pornography or other sexually-oriented business

- (12) Prepaid vacation/timeshare solicitation services
- (13) Psychic or horoscope consultation services
- (14) Sweepstakes

Each of Vantage, Provider Partner, or Profit Stars may publish from time to time a more detailed and comprehensive list of businesses and activities which each of Vantage, Provider Partner, or Profit Stars includes within the scope of Excluded Activities. Each of Vantage, Provider Partner, or Profit Stars reserves the right to reject any proposed Customer account or to refuse to process a transaction for a Customer that each of Vantage, Provider Partner, or Profit Stars deems, in its respective sole discretion, may use the processing Services in conjunction with any Excluded Activity. If each of Vantage, Provider Partner, or Profit Stars discovers after accepting a Customer account that the Customer is utilizing the processing Services in conjunction with an Excluded Activity, each of Vantage, Provider Partner, or Profit Stars may immediately terminate its provision of processing Services to that Customer upon written notice to the Customer.

- 9.3 With regard to Check 21 Transactions, the party who prints a Substitute Check shall be wholly liable for all Check 21 warranties and applicable indemnifications associated with the printed Substitute Check. Each of Vantage, Provider Partner, or Profit Stars shall not be liable for the duplicative presentment warranty or any Substitute Check indemnity as they may arise under Check 21. Each of Vantage, Provider Partner, or Profit Stars shall only be responsible for the legal equivalence warranty under this Agreement if each of Vantage, Provider Partner, or Profit Stars is the party who does the initial conversion of Merchant's Entries to a Substitute Check, and in no event shall each of Vantage, Provider Partner, or Profit Stars be liable for any subsequent degradation to the Substitute Check which may occur due to the handling of the Substitute Check by any third party.

10 INDEMNIFICATION:

- 10.1 Merchant shall indemnify, defend and hold Vantage, Profit Stars, Provider Partner, and the Bank of First Deposit harmless from and against all claims, actions, losses and expenses, including reasonable attorney's fees and legal costs, incurred by Vantage, , Provider Partner, Profit Stars, and/or the Bank of First Deposit arising out of (a) Merchant's breach of this Agreement, the NACHA Rules or applicable laws and regulations; (b) return of an Entry due to incorrect or incomplete data or information provided by Merchant in the submission of the Entry to Vantage, Provider Partner, or Profit Stars, a closed Customer account, or insufficient funds in the Customer account, and/or (c) fraudulent activity, wrongful or unauthorized use of the Services, or submission of fraudulent or illegal Entries by Merchant or a third party who has gained access to the Services through the use of Merchant's password.

- 11 **LIMITATIONS OF LIABILITY:** IN NO EVENT SHALL VANTAGE, PROVIDER PARTNER, PROFIT STARS, OR THE BANK OF FIRST DEPOSIT BE LIABLE TO MERCHANT OR ANY OTHER PARTY FOR ANY LOSS OF PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES WAS FORESEEABLE. Except for actual, direct damages arising from any action or omission of action by each of Vantage, Provider Partner, and Profit Stars which constitutes the gross negligence or willful misconduct of each of Vantage, Provider Partner, and Profit Stars (as applicable), each of Vantage's, Provider Partner's, and Profit Stars' aggregate, cumulative liability to the Merchant for all claims of actual direct damages relating to the Services, this Agreement, or the relationship between each of Vantage, Provider Partner, and Profit Stars and Merchant, including any cause of action in contract, negligence, tort, strict liability or otherwise, shall not exceed an amount equal to the total amount of all fees paid by the Merchant to each of Vantage, Provider Partner, and Profit Stars (as applicable) for Services delivered under this Agreement during the three (3) month period preceding the origination of the claim giving rise to liability.

12 TERMINATION:

12.1 Termination For Cause:

- (a) **Termination Due to Material Breach:** This Agreement may be terminated by either party for cause upon giving the other party written notice of the breach of this Agreement committed by the other party and giving the other party a reasonable time to cure the breach. For the purpose of this Agreement, a reasonable time to cure the breach specified in the written notice shall be deemed to be:
- (1) For any breach of Sections 2.1, 2.2, 3.1, 3.2, 5.1, or 7: Five (5) business days from receipt of written notice.
 - (2) For all other types of breach of this Agreement, except as provided below: Thirty (30) calendar days from receipt of written notice of the breach.

Notwithstanding the foregoing, in the event either party materially breaches any provision of this Agreement by fraud, act of intent to defraud, failure to notify the other party of a material change in party's financial structure or a material change in the information originally provided to induce the other party to enter into the Agreement, the non-breaching party may immediately terminate this Agreement in writing without giving the breaching party an opportunity to cure the breach with prior written notice.

- (b) **Termination Due to Changed Circumstances:** Each of Vantage and Profit Stars reserves the right to terminate this Agreement in whole or in part at any time due to the occurrence of any of the following changed circumstances:
- (1) Merchant becomes insolvent, enters into suspension of payments, moratorium, reorganization or bankruptcy, makes a general assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any other judicial or administrative proceeding that relates to insolvency or protection of creditors' rights, any of which in Vantage's or Profit Stars' reasonable judgment (as may be applicable) impairs the ability of Merchant to perform its responsibilities under this Agreement;

- (2) In each of Vantage's or Profit Stars' sole judgment (as may be applicable), there is a deterioration or other materially negative change in Merchant's financial status or structure which increases the financial risk being assumed by Vantage or Profit Stars in processing Merchant's Entries; or
- (3) There is a change in the laws, regulations or NACHA Rules that are applicable to this Agreement and Vantage's, Provider Partner's, or Profit Stars' provision of any of the Services thereunder which restricts or prohibits Vantage, Provider Partner, or Profit Stars from providing the affected Services to Merchant or significantly increases Vantage's, Provider Partner's, or Profit Stars' costs in providing the affected Services to its customers generally;
In these instances, the applicable terminating party will provide written notice of the termination on this basis to Merchant, which shall become effective upon receipt by Merchant.

12.2 Survival of Obligations: The provisions of Sections 7, 9, 10, 11 and 12 of this Agreement and any other provisions of the other Sections of this Agreement which by their nature should reasonably be expected to continue to apply after termination of this Agreement shall survive the termination of this Agreement.

13 **THIRD PARTY PROCESSING**: Reseller's third party processing services partners, including without limitation Profit Stars, the Bank of First Deposit, and Provider Partner, are providing some of the Services specified in this Agreement, and as a result, each of these third party services partners shall be an intended third party beneficiary of this Agreement between Reseller and Merchant. Each third party services partner shall have the right to enforce directly against Merchant, the terms of this Agreement which relate to the provision of the third party services partner's processing services to Merchant and the ownership and protection of the intellectual property rights of the third party services partner and its licensors in and to its processing services. Merchant acknowledge that the third party services partners shall have no responsibility or liability with regard to Reseller's obligations to Merchant under this Agreement.

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VANTAGE CARD SERVICES, INC. DISCLOSURE SCHEDULE

This disclosure schedule sets forth a summary of certain information in the Sub-Merchant Agreement ("Agreement") for your information only and does not provide all information pertinent to the Agreement. Vantage Card Services, Inc. ("Vantage") recommends thoroughly reviewing the Agreement and contacting us with any questions you may have. In the event of any conflict between the terms of the Agreement and the terms of this disclosure schedule, the terms of the Agreement shall control. Capitalized terms not otherwise defined in this disclosure schedule have the meanings set forth in the Agreement.

Date of the Contract:

The Agreement is binding on Vantage on the earlier of (a) Vantage's acceptance of the Agreement or (b) Vantage's processing of transactions delivered to Vantage by Merchant pursuant to the Agreement.

Member:

Unless otherwise specified in the Merchant Application or upon notice to Merchant, the Member is:

Wells Fargo Bank, N.A.
PO Box 6079 Concord, CA 94524
Phone: (844) 284-6834

Vantage:

Vantage Card Services, Inc.
2230 Towne Lake Parkway
Building 400 Site 110
Woodstock, GA 30189
Phone: (800) 397-2380
Email: support@vantagecard.com

Term and Termination:

The Agreement is for a term of one month and will automatically renew for additional one-month terms until terminated. Either party may terminate this Agreement at the end of any such term by providing thirty days prior written notice to the other party. In addition, Vantage may terminate the Agreement at any time, but will generally only do so for cause or if required by Sponsor Bank or a Card Brand.

Payment for Transactions:

Merchant will be provisionally paid for transactions after the expiration of any applicable hold period. The payment amount may be gross, in which case Vantage may withdraw the associated fees from your account when due or on a periodic basis. Alternatively, the payment amount may be net, in which case the deposit will be less credits associated with any prior transactions, fees, assessments, and other amounts due. If a reserve is established on Merchant's account, the amount deposited may be net of the amount allocated to a reserve account. Deposits to Merchant will usually be within one to three business days, but can be up to the full time period in which any transaction processed by Merchant is at risk of Chargeback.

Fees/Rates:

The fees and rates charged to you can be found in the Merchant Application, the Agreement, the Rules, and Merchant's agreement with its software provider. If you are unsure about the calculation or applicability of any fee, please contact us and we will explain it to you in greater detail.

The way the most common fees are calculated is as follows:

“Per ACH Transaction Fees” are a fixed amount charged per each ACH transaction initiated or submitted to Vantage for processing.

“ACH Reject / NSF Fees” are fixed fees charged per each ACH transaction which is rejected or returned for any reason, the most common reason being insufficient funds in the debited account.

“Per Card Transaction Fees” consist of a discount rate and may also include a fixed fee charged per transaction. The discount rate is a percentage of the gross amount of each transaction processed. A portion of the discount rate is the Interchange Rate. The discount rate may be fixed, set by category (e.g., qualified, mid-qualified, and non-qualified), or set based on the Interchange Rate (e.g., the Interchange Rate plus a certain percentage). The category into which a transaction will fall depends on a number of factors, including but not limited to the card type, transaction type, payment method, authorization, and timeliness of submitting the transaction/batch. Vantage can provide information to you about the category applicable to a particular transaction upon your request.

“Chargeback /NSF Fee” is a fixed fee charged for each Chargeback, which may be done by the customer or issuing bank in accordance with the Rules.

Other common fees include the Management Company Monthly Fee which is an administrative fee that will be charged to Merchant on a monthly basis and the Management Company Setup Fee which is a one-time fee due on the Effective Date. Additional fees may apply as set forth in the Agreement and each Card Brand may surcharge one or more transactions based on the type of transaction, method of transaction, transaction classification, and other metrics set forth in the Rules. Merchant is responsible for reviewing the applicable Rules (available on each Card Brand website or upon request from Vantage) regarding applicable surcharges.

If Merchant purchases or leases equipment from Vantage, the payment amount(s), and the calculation for such amounts, will be set forth in a separate purchase or lease agreement between Vantage and Merchant.

Modification:

The Agreement, including but not limited to the fees charged, may be modified upon notice to Merchant or posting such change to Vantage’s website, as set forth in Section 12.8 of the Agreement.

Complaint Handling:

Merchant is responsible for handling any complaint with regard to a customer. If Merchant has a complaint with regard to Vantage, Merchant will immediately notify Vantage of such complaint. Vantage will handle the receipt of complaints in accordance with its current policies and procedures. If Vantage is unable to resolve an issue to Merchant’s satisfaction, the complaint resolution procedures in the Agreement will control the process.

Statements:

Merchant statements are made available to Merchant through the software solution which Merchant uses to submit transactions to Vantage.

Bank Disclosure:

Member Bank Information: Wells Fargo Bank, N.A. – Merchant Services; PO Box 6079 Concord, CA 94524. Phone: (844) 284-6834.

Important Member Bank Responsibilities:

1. Member Bank is the only entity approved to extend acceptance of Card Brand products directly to a Merchant.
2. Member Bank must be the principal (signer) to this Tri-party Sub-merchant Agreement.
3. Member Bank is responsible for and must provide settlement funds to you.
4. Member Bank is responsible for all funds held in reserve that are derived from settlement.
5. Member Bank is responsible for educating you on pertinent Card Brand Rules with which you must comply; but this information may be provided to you by ProPay.

Your Important Responsibilities:

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below Card Brand thresholds.
3. Review and understand the terms of this Tri-party Sub-merchant Agreement.
4. Comply with applicable Card Brand Rules.
You may download Visa Regulations from Visa's website at:
<http://corporate.visa.com/about-visa/our-business/operating-regulations.shtml>
You may download MasterCard Regulations from MasterCard's website at:
<http://www.mastercard.com/us/merchant/support/rules.html>
5. Retain a signed copy of this disclosure page.

The responsibilities listed above do not supersede terms of the ProPay Sub-merchant Tri-Party Agreement and are provided to ensure you understand some important obligations of each party and that the Member Bank is the ultimate authority should you experience any problems.

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