

Subject to the requirements of applicable Card Network Rules, Paysafe Merchant Services Corp. ("**ISO**") and Merrick Bank Corporation ("**Bank**") may and hereby do allocate certain of their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Bank may jointly or individually assert or exercise the rights or remedies provided to the Bank hereunder. For purposes of this Agreement, Bank and ISO are collectively referred to hereinafter as the "Bank".

The Bank and Merchant agree as follows:

## ARTICLE I – DEFINITIONS

- 1.01 "**Account**" means a commercial checking or demand deposit account maintained by Merchant referred to in Section 5.17 for the crediting of collected funds and the debiting of fees and charges under this Agreement.
- 1.02 "**ACH**" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.
- 1.03 "**Agreement**" means these terms and conditions, any supplementary documents referenced herein, and valid schedules and amendments to the foregoing.
- 1.04 "**American Express**" means the Cards bearing the Marks of, and Card Network operated by, American Express Travel Related Services Company, Inc. or its affiliates.
- 1.05 "**Authorization**" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
- 1.06 "**Card**" means (i) a valid credit card or debit card in the form issued under license from a Card Network ("**Bank Card**"); or (ii) any other valid credit card or debit card accepted by Merchant by agreement with Bank.
- 1.07 "**Card Issuer**" means the financial institution or company which has provided a Card to a Cardholder.
- 1.08 "**Card Networks**" means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., American Express Travel Related Services Company, Inc., DFS Services LLC (the owner of Discover), or any other Card Issuers that provide Cards accepted by Merchant by agreement with Bank.
- 1.09 "**Card Network Rules**" means the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Networks and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBT, the Quest Operating Rules and with respect to PIN debit cards, the rules, regulations, policies and procedures of the applicable debit network).
- 1.10 "**Card Not Present (CNP)**" means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.11 "**Cardholder**" (sometimes referred to as "Card Member" in certain Card Network materials) means the person whose name is embossed upon the face of the Card.
- 1.12 "**Cardholder Information**" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number or credit or debit card number, or other bank account number.
- 1.13 "**Cash Over**" means a Transaction using a Discover Card whereby the Cardholder elects to receive additional cash in excess of the purchase price, all as provided by Network Rules of Discover.
- 1.14 "**Chargeback**" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.15 "**Company**" or "**Merchant**" means the business entity or sole proprietor that has authorized this Agreement to be signed and is fully responsible for abiding by all provisions of the Agreement as now written or as may be modified in the future.
- 1.16 "**Credit Voucher**" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.17 "**Discover Card**" means a Card bearing the Discover Marks and accepted as part of the DFS Services Network.
- 1.18 "**Imprint**" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.19 "**ISO**" means the Independent Sales Organization or Member Service Provider sponsored by Merrick Bank and providing limited services to the Bank and on behalf of the Bank to Merchant and which is a party to this Agreement as specified.
- 1.20 "**Mid- or Non-Qualifying Transaction**" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Network for Merchant's standard card industry code and which may be charged fees as set forth in Schedule A.

- 1.21 **"Officer"** means the person or persons duly authorized by the Company to sign this Agreement and obligate the Company to fully abide by all provisions of the Agreement as now written or as modified in the future.
- 1.22 **"Sales Draft"** means the paper form, whether electronically or manually imprinted or otherwise, evidencing a sale Transaction.
- 1.23 **"Transaction"** means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Bank for collection.
- 1.24 **"Voice Authorization"** means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

## ARTICLE II – CARD ACCEPTANCE

- 2.01 **Honoring Cards.** Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Network Rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit cards. Merchant's election is set forth in the Application. Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. Merchant may not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a Cardholder to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to Cardholders for cash purchases. Merchant may not engage in a Transaction (other than a mail, Internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.
- 2.02 **Advertising.** Merchant will prominently display the promotional materials provided by Bank in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the Bank's direction. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately cease use and return any inventory to Bank upon termination thereof. Merchant may not use any promotional materials or Marks associated with a Card Network in any way which suggests or implies that either endorses any goods or services other than Bank Card services.
- 2.03 **Card Acceptance.** When accepting a Card, Merchant will follow the steps provided by Bank for accepting Cards and will: (a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, Internet, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) offer the Sales Draft to Bank for purchase according to Bank's procedures and the terms of this Agreement; and (g) make a Card Imprint, if the Transaction is not based upon a mail, Internet, phone or pre-authorized order.
- 2.04 **Authorization.** Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Bank may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization or approval code has been recorded on the Sales Draft; (b) if Bank determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; (c) if Bank has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement; or (d) if Merchant submits any travel and entertainment card ("T&E") transaction for processing by Bank without a valid agreement with the respective T&E Card company, such as American Express. For the T&E Card transactions designated on Schedule A, upon transmission of such Sales Data by Merchant, Bank will forward the Sales Data to the appropriate T&E Card company on Merchant's behalf. Payment of the proceeds due Merchant will be governed by whatever agreement Merchant has with that T&E Card company, and neither ISO nor the Bank bears any responsibility for the performance of the T&E card company nor is responsible for providing support to the

Merchant for such services. If Merchant's agreement with a T&E Card company requires the T&E Card company's consent for the Bank to perform the limited processing services contemplated by this Agreement, Merchant is responsible for obtaining that consent Merchant will use, and may not circumvent, fraud identification tools requested by Bank, including Address Verification System processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.

- 2.05 Retention and Retrieval of Cards. Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. Merchant's obligations under this section do not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.
- 2.06 Multiple Transaction Records; Partial Consideration. Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery, or advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.
- 2.07 Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Bank to accept mail, Internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Bank determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom held as provided in Article IV. Unless approved by Bank, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, Internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder's signature.
- 2.08 Lodging and Vehicle Rental Transactions. Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.
- 2.09 Returns and Adjustments; Credit Vouchers. Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with the Card Network Rules of the applicable Card Networks. Merchant will disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. Any change in Merchant's return or cancellation policy must be submitted in writing to Bank not less than 14 days prior to the change. Bank may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Bank has not been notified as required herein.
- 2.10 Cash Payments. Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.
- 2.11 Cash Advances; Scrip Purchases. Merchant may not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and may not accept any Card at a scrip terminal, and either action will be grounds for Bank's immediate termination of this Agreement.

- 2.12 Duplicate Transactions. Merchant may not deposit duplicate Transactions. Bank may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.
- 2.13 Deposit of Fraudulent Transactions. Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Bank may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to the applicable Card Network under Section 4.04. Merchant's employees' actions are chargeable to Merchant under this Agreement.
- 2.14 Collection of Pre-existing Debt. Merchant may not prepare and present to Bank for purchase any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.
- 2.15 Data Security/Personal Cardholder Information. Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different from that of the Cardholder. Any and all cardholder information is confidential and the sole property of the applicable issuer, the Card Network or its affiliates. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Bank or the applicable Card Network, other than to facilitate SALES at MERCHANT's business locations and websites in accordance with the AGREEMENT or except as expressly authorized in writing by the Cardholder, or as required by Law or the Card Network Rules.
- (a) Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant or Bank in accordance with applicable Law and Card Network Rules
- (b) Compliance with Card Network Rules. Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Network Rules to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI"), MasterCard's Site Data Protection Program ("SDP"), Visa's Customer Information Security Program ("CISP"), the American Express Data Security Requirements ("DSR," which can be obtained online at [www.americanexpress.com/dsr](http://www.americanexpress.com/dsr)), and Discover Information Security Compliance ("DISC"), in effect and as may be amended, supplemented or replaced. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP, DSR, DISC, and CISP requirements at all times. Merchant will report any non-compliance immediately to Bank. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.
- (c) Annual Certification. Merchant will provide an annual certification to Bank if requested by Bank (in a form acceptable to Bank) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Network requirements such as PCI, SDP, DSR, DISC and CISP. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.
- (d) Information Use Limitations. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Bank's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or as may be required by legal process or applicable Law and have entered into a written agreement with Merchant containing Merchant's and such individuals' or entities' agreement to the foregoing data security provisions including compliance with Card Network Rules.
- (e) Response to Unauthorized Access. Merchant will notify Bank within 24 hours after it knows of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Bank, the issuing bank of any Cardholder, and their regulators and the Card Networks deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Bank and the issuing bank(s) or the Card Networks to investigate the incident and provide assistance and cooperation to: (i) file suspicious activity reports (as applicable); (ii) notify their regulators (as applicable); and (iii)



notify the affected Cardholder (as required). Unless the unauthorized access was due to Bank's acts or omissions, Merchant will bear the cost of notifying affected Cardholder.

(f) Miscellaneous. Merchant may not make a claim against Bank or hold Bank liable for the acts or omissions of other merchants, service providers, Card Networks, financial institutions or others that do not have a written contractual relationship with Bank or over which Bank has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section and each of its subsections will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Card Network Rules. Merchant agrees that Bank may disclose to a Card Network information regarding Merchant and Merchant's Transactions with that Card Network, and that such Card Network may use such information to perform its responsibilities in connection with its duties as a Card Network, promote such Card Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters such Card Network Card acceptance, and transactional or relationship communications from such Card Network. A Card Network may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with the Card Network marketing and administrative purposes. Merchant agrees it may receive messages from a Card Network, including important information about Card Network products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent emails or fax communications.

- 2.16 Compliance with Laws and Card Network Rules. Merchant will comply with and conduct its Card activities in accordance with all applicable local, state, and federal statutes, regulations, ordinances, rules and other binding law, as the same may be enacted or amended from time to time, including without limitation all state and federal consumer credit and consumer protection statutes and regulations (collectively, "**Laws**") and all applicable Card Network Rules. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Network and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file ("MATCH"). Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) establish a minimum or maximum transaction amount as a condition for honoring a Card; (c) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (d) add any surcharge to transactions; (e) add any tax to transactions, unless applicable Law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (f) enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Network system); (g) request or use an account number for any purpose other than as payment for its goods or services; (h) disburse funds in the form of travelers checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (i) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers checks, Cards, or foreign currency, or (iii) Merchant is participating in the Card Network cash back service; (j) accept a Card for the purchase of scrip; (k) accept a Card for manual cash disbursement; (l) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; (m) enter into a Transaction that represents collection of a dishonored check; or (n) accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Network fines, fees, penalties and all other assessments or indebtedness levied by Card Networks to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.
- 2.17 Merchant's Business. Merchant will notify Bank immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; (f) change its return policies or to use another fulfillment house different from those identified in Merchant Application; or (g) make changes to its Account. Merchant will notify Bank promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Bank's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Bank may immediately terminate this Agreement.
- 2.18 Merchant's Warranties. Merchant represents and covenants that: (a) all information contained in the Merchant Application or any other documents delivered to Bank in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers; (b) Merchant has power

to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of Law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at Law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Bank for collection is genuine and is not the result of any fraudulent activity, or a Transaction prohibited by a Card Network, or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Bank's procedures for accepting Cards, and the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Networks' rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank; (j) Merchant will maintain Chargebacks and fraud transactions below the permitted limits established by the Card Networks or the limits that are established by the Bank in any period, whichever is lower; (k) Merchant has read and understands the terms of this Agreement; (l) Merchant has obtained all required consents from Cardholders in respect of their personal information to be accessed, collected, used or transferred by Bank or ISO in providing the services under this Agreement; and (m) it has read, understood and hereby accepts ISO privacy policy on behalf of itself and the Cardholders at: <https://www.paysafe.com/paysafegroup/privacy-policy/>. In addition, to the extent that Merchant has been introduced to ISO and entered into this Agreement through a referral partner of ISO or a software platform provider integrated to ISO (collectively referred to as the "**Platform Partner**"), Merchant acknowledges and agrees that ISO may share transaction information with the Platform Partner on a need to know basis.

- 2.19 **Third Parties.** Merchant may desire to use a third-party service provider to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Bank previously in writing, and unless such third party is fully compliant with all Laws and Card Network Rules. Any third party used by Merchant must be registered with the Card Network prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any third-party service provider and Merchant will be responsible for compliance by such third party service provider with all Laws and Card Network Rules. Merchant will indemnify and hold harmless Bank from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including third-party service providers. Bank is not responsible for any third-party service provider used by Merchant, nor is Bank required to process any Transaction which Bank receives from Merchant or its service providers in any format not approved by Bank. Bank has no responsibility for, and shall have no liability to Merchant in connection with, any hardware, software or services Merchant receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Merchant and a third party.
- 2.20 **Recourse.** Merchant acknowledges that ISO performs the services contemplated by this Agreement and ISO is responsible to Merchant for any failure to perform such services in accordance with the terms of this Agreement. While Bank satisfies settlement files pursuant to instructions provided by ISO, Bank is not responsible for independently verifying the accuracy of such settlement files. Accordingly, to the greatest extent permitted by the Network Rules, Merchant's sole recourse for any failure by Bank under this Agreement is against ISO (and not Bank).
- 2.21 **Pre-Authorized Transactions.** If Merchant agrees to accept a pre-authorized order, the Cardholder shall execute and deliver to Merchant a written request for such pre-authorization which will be retained by Merchant and made available upon request to Bank. Merchant will not deliver goods or perform services covered by a pre-authorization after receiving specific notification that the pre-authorization is cancelled or that the card covering the pre-authorization is not to be honored.
- 2.22 **Pre-Authorization Health Care Transactions.** If Merchant is a "Health Care Merchant" as indicated on the Merchant Application and accepts a pre-authorized health care Transaction(s) from a Cardholder, Merchant agrees to comply with any requirements in the Card Network Rules related to such Transactions.
- 2.23 **Recurring Transactions.** If Merchant agrees to accept a recurring transaction from a Cardholder for the purchase of goods or services which are delivered or performed periodically (a "**Recurring Transaction**"), the Cardholder shall complete and deliver to Merchant an order form containing a written request for such goods or services to be charged to the Cardholder's account, the frequency of the recurring charges and the duration of time for which such Cardholder's permission is granted. In the event a Recurring Transaction is renewed, the Cardholder shall complete and deliver to Merchant a subsequent order form for continuation of such goods or services to be charged to the Cardholder's account. A Recurring Transaction may not include partial payments made to Merchant for goods or services purchased in a single Transaction, nor may it be used for periodic payments of goods or services on which Merchant assesses additional finance charges. A copy of the order form must be retained for the duration

of the recurring charges and provided in response to Bank's request. In addition, Merchant must record, retain, and promptly produce upon request the "ship to address" and address verification service code (where applicable) for each transaction. Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, the Card Issuer, Bank or other party or a response that the Card is not to be honored.

#### 2.24 Limited Acceptance.

(a) If appropriately indicated on the Merchant Application, Merchant shall be a limited acceptance merchant, which means that Merchant has elected to accept only certain Visa and MasterCard Card types as indicated on the Merchant Application, or via later notification. The Visa or MasterCard credit acceptance option on the Merchant Application refers to Visa credit and business transactions, and is what MasterCard refers to as "Other Card" transactions. Notwithstanding anything to the contrary in the merchant application forming part of this Agreement, Merchant can elect (i) to accept only Visa or MasterCard non-PIN based debit/stored value/electronic benefit transactions (sometimes referred to as "signature debit" transactions, whether or not an actual signature is required), (ii) to accept only Visa or MasterCard Credit transactions, or (iii) to accept all Visa or MasterCard credit and signature debit transactions; provided, however, that a Merchant who accepts any Visa or MasterCard Card types must accept all valid Visa or MasterCard Card types issued by a non U.S. issuer. Merchant is not required to accept Cards of Card Networks other than Visa or MasterCard in order to accept Visa or MasterCard Cards (except that transactions using Diner's International Cards which also carry the MasterCard Mark must be accepted if Merchant accepts MasterCard Card transactions of the same type). Bank has no obligation other than those expressly provided under the Card Network Rules and applicable Law as they may relate to limited acceptance. Bank's obligations do not include policing card types at the point-of-sale. Merchant will be solely responsible for the implementation of its decision for limited acceptance including but not limited to policing the Card Network type(s) of transactions at the point-of-sale submitted for processing by Bank. Should Merchant submit a Transaction for processing for a card type it has indicated it does not wish to accept, Bank may process that Transaction and Merchant will pay the applicable fees, charges, and assessments associated with that Transaction. Merchant will comply with any applicable Laws and Network Rules and other applicable rules and regulations for the Card Network type processed.

(b) If Merchant has chosen to accept Discover Cards in the Merchant Application, Merchant must accept Discover Cards at all Merchant establishments, including in payment for purchases of goods and services, for charitable contributions and for Cash Over Transactions (subject to the terms of the Network Rules and other applicable rules and regulations), when properly presented for payment by a Cardholder. Subject to this section, Merchant must create a Transaction Record for each Discover Card Transaction and deliver at least one copy of the Transaction Record to the Cardholder. A Merchant may issue a Cash Over (subject to the terms of the Card Network Rules) in connection with a Discover Card Transaction. Merchant must deliver a single Authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount. In addition, the Transaction Record must include both the purchase amount and the Cash Over amount.

### **ARTICLE III – PRESENTMENT, PAYMENT, CHARGEBACK**

- 3.01 Acceptance. Bank will accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection thereof and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Network. Bank will only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch deposits and items for which Bank did not receive final payment.
- 3.02 Endorsement. By presenting Sales Drafts to Bank for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Bank's acceptance procedures and constitutes an endorsement by Merchant to Bank of such Sales Drafts. Bank may supply such endorsement on Merchant's behalf.
- 3.03 Prohibited Payments. Bank may receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically unauthorized in writing by Bank, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Bank and promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.
- 3.04 Chargebacks. Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Network Rules, or a Card issuer or Bank determines that Merchant has in any way failed to comply with Card Network Rules or Bank's procedures in accepting a Card and presenting the resulting

Sales Draft to Bank for purchase. Section 2.03 notwithstanding, Bank may charge back the amount of a Card sale for which the Cardholder disputes authorizing the charge if Merchant failed to obtain the Card Imprint or the Cardholder's signature. Merchant may not initiate a sale Transaction in an attempt to collect a Chargeback. Merchant will pay the current published fees for each Chargeback as listed on Schedule A. Bank will send Merchant any requests received from Issuing Banks or the Networks resulting from Merchant's transactions ("Retrieval Request") if the Bank cannot satisfy the inquiry with the information retained by Bank concerning any Card sale. In response to the Retrieval Request Merchant must provide by certified or overnight mail or by confirmed fax or scanned documents (or by other means as agreed by Bank) the results of Merchant's investigation of such Retrieval Requests and include legible copies of any documentation required by the Retrieval Request within seven (7) business days after the Bank dispatched the Retrieval Request to Merchant (or such shorter time as the Card Network Rules may require and of which Merchant will be notified). Merchant acknowledges that failure to fulfill a Retrieval Request in accordance with Card Network Rules may result in an irreversible Chargeback. Merchant has full liability if any Sales Data for which Bank has given Merchant's Account provisional credit is the subject of a chargeback. Merchant may be allowed to resubmit applicable sales data for a second presentation of a response to a chargeback in accordance with the Card Network Rules. To the extent that Bank has paid or may be called upon to pay a Chargeback or refund/adjustment for or on the account of a Cardholder and Merchant does not reimburse Bank as provided in this Agreement, then for the purpose of Bank obtaining reimbursement of such sums paid or anticipated to be paid, Bank has all of the rights and remedies of such Cardholder under applicable Law and Merchant authorizes Bank to assert any and all such claims in Bank's own name for and on behalf of any such Cardholder customer individually or all such Cardholder customers as a class.

- 3.05 **Chargeback Reserve Account.** Notwithstanding anything to the contrary in this Agreement, Bank may establish (without notice to Merchant) and Merchant agrees to fund a non-interest bearing chargeback reserve account (the "**Reserve Account**"), or demand other security or raise any discount, transaction or other fees. This account may be established at any time or for any reason if, in the Bank's reasonable consideration, Bank suspects Merchant's transaction processing history is or perhaps will create liabilities for refunds, chargeback reimbursements or Card Network fines that will be owed to Bank by Merchant and the Bank determines, in its sole but reasonable consideration, such obligations may not be collectible from Merchant in a timely manner without such Reserve Account being established or the amounts within the Reserve Account increased. Specific examples of conditions that might prompt the Bank to establish or increase the balances in a Chargeback Reserve Account might include, but will not be limited to: (a) Merchant engaging in any charge processing that creates an overcharge to a Cardholder by duplicating charges; (b) Merchant engaging in any activity designed by Merchant to circumvent a "call center" message when attempting to process a transaction; (c) Merchant breaching this Agreement, violating any representation, covenant or warranty herein, or violating any applicable Card Network Rule or applicable Law; (d) Merchant's application is in any way inaccurate or becomes inaccurate subsequent to Bank's approval of the application; (e) Merchant changes its type of business without Bank's prior written approval; (f) fraud, Merchant processes an unauthorized charge, or other action that violates Bank's applicable risk management standards or is likely to cause a loss; (g) Merchant has Chargebacks exceeding a percentage of total transactions, total settlement amounts that could exceed the limits for chargeback or fraud transactions permitted by the Card Networks or as such limits as are established by the Bank in any period (h) creating an excessive numbers of requests from consumers or card issuing banks to retrieve documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Merchant terminating this Agreement for any reason. Once the Reserve Account is established, collected funds will be placed in the Reserve Account. Before releasing funds after this Agreement is terminated, Merchant will pay any equipment cancellation fees and any outstanding charges, losses or amounts, and Chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank may require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. Once established, unless Bank determines otherwise at its sole discretion, the Reserve Account will remain in place for 180 days and a reasonable period thereafter during which Cardholder disputes may remain valid under applicable Card Network Rules. The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until Bank terminates the Reserve Account. Any balance remaining after chargeback rights have expired and all of Bank's other expenses, losses and damages have been paid will be disbursed to Merchant.

#### **ARTICLE IV – TERMINATION AND EFFECT OF TERMINATION**

- 4.01 **Term.** This Agreement will be effective once Bank accepts it and, unless otherwise terminated, will continue for two (2) years (the "**Initial Term**") with automatic two (2) year renewal terms thereafter (each a "**Renewal Term**," and together with the Initial Term, the "**Term**") unless and until Merchant provides written notice of non-renewal to Bank not less than thirty (30) days before the end of the then-current Term.
- 4.02 **Termination.**
- (a) **Without Cause.** Bank may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant.
- (b) **For Cause.** Bank may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Bank reasonably determines that any of the



following conditions exists: (i) Merchant has violated any provision of this Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) if any case or proceeding is commenced by or against Merchant under any Law dealing with insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Bank, including if Application information, was false, incomplete or misleading when received; (v) at any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total transactions or dollar value exceeding Card Network or Bank requirements; (vi) an overdraft in the settlement account exists for more than three days; (vii) Merchant or any of Merchant's officers or employees has been involved in processing transactions arising from fraudulent or otherwise unauthorized transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable Law or Card Network Rules; (ix) Merchant has failed to pay Bank in a timely manner any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under its settlement account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given; (xii) Merchant has defaulted on any agreement it has with the Bank; (xiii) Bank is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Network Rules are amended in any way so that the continued existence of this Agreement would cause Bank to be in breach of those rules; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Network; (xvii) termination is necessary to prevent loss to Bank or Card Issuers; (xviii) Merchant's type of business indicated on the Application or as conducted by Merchant could endanger the Bank's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with the Bank and that relationship is terminated, (xx) Merchant appears on any Card Network's security reporting; or (xxi) Bank's security for repayment becomes impaired. If a notice of Merchant's intent to discontinue using Bank's services is received from Merchant by Bank prior to 30 days before the end of the then-current Term of the Agreement, or if Merchant ceases normal processing activity (defined as the average processing for the previous 6 month period) or the Merchant enters an Agreement with another processor during the initial or additional terms of this Agreement, such circumstances will be material breaches of this Agreement ("**Early Termination**") and the Merchant will be subject to the relevant provisions of Section 4.04, below.

- 4.03 **Effect of Bankruptcy.** Any account or security held by Bank will not be subject to any preference, claim or stay by reason of bankruptcy or similar Law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Bank will be excused from performance hereunder.
- 4.04 **Effect of Termination.** When termination becomes effective, the parties' rights and obligations existing under this Agreement survive. If this Agreement is terminated, regardless of cause, Bank may withhold and discontinue the disbursement for all Cards and other Merchant Transactions in the process of being collected and deposited. If Merchant is terminated for cause, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by the Card Networks. Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring listing on the MATCH file. Merchant waives and will hold harmless Bank from any claims that Merchant may raise as a result of Bank's MATCH file reporting. Merchant will also immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, Merchant will return all Bank property, forms, or equipment. All obligations for Transactions prior to termination (including paying for Chargebacks and Bank's expenses relating to Chargebacks) survive termination. Bank is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request provide Bank with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Bank will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Bank. In consideration for the special terms offered merchant, the Bank's cost of initiating and administering the Merchant's processing privileges and for other good and valuable consideration which hereby is acknowledged by Merchant, the parties agree that if this Agreement is terminated before completion of the initial term of this Agreement for any reason other than material uncured breach by Bank, Merchant hereby agrees Bank may debit Merchant's Account for liquidated damages ("Cancellation Fees") for Early Termination and de-conversion of the Merchant's processing services by Merchant. Upon any Early Termination, Merchant agrees to return all POS processing equipment in a complete and entirely undamaged condition and in the original packaging, within 7 business days following the date of Termination or ceasing transaction processing and agrees to pay a shipping and restocking charge of no less than \$200 to the Bank. If all POS equipment is not returned within the time allowed, ISO and Bank will be entitled to debit the Merchant's Account for the full cost of all equipment when the equipment was new, plus a restocking charge of at least \$200 (or \$600 for any mobile POS equipment). In addition, the Merchant agrees to pay Bank's actual costs and attorneys', accountants' or investigators' fees (if any) plus the greater of: i) the number of remaining months in the Agreement after notice of termination or discontinuation of processing by Merchant, times \$35.00 per month; or ii) the number of remaining months in the Agreement after notice of termination or discontinuation of processing by Merchant, times 0.5% the

average Card Network monthly amounts settled to the Account during the prior six months (or, if less than six full months have elapsed, then all previous months' amounts settled to the Account ); or iii) a flat termination fee of \$500.00. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of this Agreement. Bank's rights of termination are non-cumulative.

#### **ARTICLE V – MISCELLANEOUS**

- 5.01 Account Monitoring. Merchant acknowledges that Bank will monitor Merchant's daily deposit activity. Bank may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Bank will make good faith efforts to notify Merchant promptly following suspension. Bank is not liable to Merchant for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.
- 5.02 Forms. Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by Bank, and Merchant may not use such forms other than in connection with card transactions.
- 5.03 Indemnification. Merchant will defend, indemnify and hold Bank and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees and costs ("Damages"), asserted against or incurred by Bank arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant; (c) the negligence, gross negligence or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable Laws and guidance and Card Network Rules by Merchant; and (e) all third party claims arising from the foregoing. Notwithstanding the preceding, Merchant is not liable to Bank if Damages are caused by, related to or arise out of Bank's negligence, gross negligence or willful misconduct, or Bank's breach of this Agreement. Merchant will promptly reimburse Bank for any assessments, fines, fees or penalties imposed by the Card Network in connection with this Agreement, including the data security provisions, and authorizes Bank to deduct any such sums from amounts to be cleared and settled with Merchant.
- 5.04 Records. In addition to any records Merchant routinely furnishes to Bank under this Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for the longer of the following: (a) two years after the Transaction is completed, (b) the period required by Law or the Card Network Rules, (c) if a dispute is pending, until such dispute is resolved.
- 5.05 Requests for Copies. Immediately after Merchant receives the request by Bank, Merchant will provide to Bank either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Bank reasonably requests to meet Bank's obligations under Law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.
- 5.06 Intentionally deleted.
- 5.07 Fees and Charges. Merchant will pay to Bank the fees and charges set forth on Schedule A including any additional charges applied to transactions that fail to meet Card Network requirements for the lowest interchange levels. Merchant's Account will be debited through ACH or withheld from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Bank may change fees, including adding fees for additional services utilized by Merchant, upon 30 days' written notice to Merchant.
- 5.08 Merchant Statement. Bank shall make available a Merchant Statement or similar information on no less than a monthly basis. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement. Delivery of the Merchant Statement may be in written or electronic form.
- 5.09 Security Interest. To secure payment of Merchant's obligations under this Agreement, Merchant grants to Bank a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Bank for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with the Bank or any institution other than Bank, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under this Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Bank or any institution other than Bank, including the Reserve Account; (e) all deposits and all other property and funds deposited by Merchant or withheld by Bank, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. If Bank reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future card sales are unlikely to compensate the Bank for anticipated Chargebacks, credits, fees or fines and adjustments, as reasonably



determined by Bank (whether or not this Agreement has been terminated or for any other reason), Bank may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under applicable Laws, including the Utah Uniform Commercial Code, or in equity. In addition to the collateral pledged above, Bank may, in its reasonable discretion, require Merchant to furnish such other and different security as Bank deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Bank or financial institutions other than Bank, pending Bank's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank. Merchant will execute any documents and take any actions required to comply with and perfect any security interest under this paragraph, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Bank's written consent before it grants a lien or security interest in that pledged collateral to any other person. Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Bank, its affiliated entities and/or any other cash advance funding source that partners with Bank or its affiliated entities, without consent from any Card Network. Notwithstanding the foregoing, Bank prohibits Merchant from selling or assigning future Transaction receivables to any third party without Bank's prior written consent.

- 5.10 **Modifications to Agreement.** This Agreement is subject to amendment to conform with Card Network Rules, as amended from time to time. From time to time Bank may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least 30 days prior to the effective date of the amendment, and the amendment will become effective unless Bank receives Merchant's notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Network's Rules or any Law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable Card Network Rule, Law or decision.
- 5.11 **Warranty Disclaimer.** BANK MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND BANK EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 5.12 **Limitation of Liability.** Bank's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges. Bank is not liable for any incidental or consequential damages whatsoever. Merchant waives all claims against Bank for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to Bank of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. Merchant will indemnify and hold Bank harmless from any claim relating to any Sales Draft paid for by Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of or losses that Bank may incur as a result of Merchant's breach of this Agreement. Further, Merchant will reimburse Bank for all expenses and costs, including attorneys' fees, with regard thereto.
- 5.13 **Waiver.** Bank's failure to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 5.14 **Written Notices.** All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand delivered or when sent by email to an email address designated by recipient, or sent via facsimile and the sender obtains a fax confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows:
- a) Paysafe Merchant Services Corp. 3500 de Maisonneuve Blvd. West, suite 700, Montreal, Quebec, H3Z 3C1, Attn. Legal Department; FAX 514-380-2760, email: legalNA@paysafe.com
  - b) If to Bank: Merrick Bank Corporation, 10705 South Jordan Gateway, Suite 200, South Jordan, UT 84095, Attn: SVP Merchant Services, Facsimile: 516-576-8741
  - c) If to Merchant: At the facsimile number or address provided as the billing address and to the contact listed on the Merchant Application.
  - d) Notwithstanding the foregoing, Bank and or ISO may provide written notices and other written communications required under this Agreement, by email to the Merchant. All written notices and other written communications will be deemed delivered on the first business day after which it is so emailed.
- 5.15 **Choice of Law; Jurisdiction.** New York law governs this Agreement. Any claim or cause of action arising out of this Agreement against Bank must be initiated and maintained exclusively in the state or federal courts located in Nassau, New York.

- 5.16 **Entire Agreement; Assignability.** This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Bank and Merchant. This Agreement may not be assigned, directly or by operation of law, without Bank's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.
- 5.17 **Deposit Account.** Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Bank with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Bank. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Bank a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Bank to protect its security interests therein.
- 5.18 **Credit and Financial Inquiries; Additional Locations; Inspections.** Bank may make, at any time, any credit inquiries which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. Upon Bank's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Bank. Additional locations may be added, subject to Bank's approval. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Bank, at any time and from time to time, to inspect locations to confirm that Merchant has adhered or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this paragraph may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement or Card Network Rules. Bank, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with Laws, and Card Network Rules including but not limited to, relating to Card acceptance and Transaction processing, and data security provisions, including Card Network compliance. Merchant will make available its records maintained and produced under this Agreement, and Merchant's facilities will be made accessible, upon notice, during normal business hours for examination and audit. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.
- 5.19 **Marketing of Non-Bankcard Services by ISO.** From time to time, ISO may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. In the event of such offers, Merchant shall indicate its desire to ISO to decline such offers or be deemed to have accepted the offers and be liable for payment therefore. Bank shall have no responsibility or liability to Merchant for performance of such non-credit card transaction services if provided by ISO or a third party, and ISO and Merchant shall enter separate legal Agreements pertaining to such services, if any.
- 5.20 **Force Majeure.** The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation, or priority, or any other similar cause beyond either party's reasonable control.
- 5.21 **No Third Party Beneficiary.** No other person or entity may be deemed to be a third party beneficiary of this Agreement.
- 5.22 **Severability; Conflict with Card Network Rules.** If any provision in this Agreement is for any reason held to be invalid or unenforceable, no other provision shall be effected thereby, and this Agreement shall be construed as if the invalid or unenforceable provision had never been a part of it. In the event of a conflict between this Agreement and the Card Network Rules, the Card Network Rules shall govern and control.
- 5.23 **IRS Reporting Information.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities such as Bank and third-party settlement organizations are required to file an information return reflecting all payment card transactions and third-party network transactions occurring in a calendar year. This requirement applies to returns for all calendar years after December 31, 2010 and Merchant will receive a form 1099-K reporting Merchant's gross transaction amounts for each calendar year. In addition, amounts payable under Section 6050W are subject to backup withholding requirements. Merchant acquirers such as Bank, either itself or

through third parties, are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the merchant acquirer; or (b) if the IRS notifies the merchant acquirer that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provides Bank with the correct name and TIN that Merchant uses when filing its income tax return that includes the transactions for Merchant's business. In addition to the fees set forth on the Merchant Application, if Merchant fails to comply with the obligations set forth in this section, Bank may charge Merchant additional amounts determined by Bank and may pass through any additional fines, costs, or expenses incurred by Bank.

- 5.24 **Confidentiality.** Merchant shall protect all information or other items proprietary to Bank that Merchant obtains knowledge of or access to as a result of Bank's provision of the services pursuant to this Agreement (collectively, "Bank Confidential Information") from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion Merchant uses to protect similar confidential information of Merchant's own, but in no event less than reasonable care. Furthermore, Merchant shall not use, reproduce, distribute, disclose, or otherwise disseminate Bank Confidential Information, except in connection with the performance of Merchant's obligations under this Agreement. The Bank Confidential Information described in the previous sentence, shall include, but not be limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information. The obligations of non-disclosure provided hereunder shall continue during the Term and, (i) with respect to Bank Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and, (ii) with respect to Bank Confidential Information that rises to the level of a trade secret under applicable Law, for such period of time thereafter as the Bank Confidential Information shall retain its status as a trade secret under applicable Law, and no less than three (3) years thereafter.
- 5.25 **Third Party of Bank.** Merchant acknowledges that Bank has entered into an agreement with TSYS Acquiring Solutions, L.L.C., which will be providing certain services to Merchant hereunder.

**Terms below are additional terms applicable specifically to the American Express OptBlue® Program ("American Express Card Acceptance") (capitalized terms below not defined elsewhere in the Agreement shall have the meanings assigned in the American Express Network Rules). With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control with respect to American Express transactions only. Merchant shall be bound by American Express Network Rules, including the Merchant Operating Guide: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).**

- A5.26 **Transaction Data.** Merchant authorizes Bank and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant.
- A5.27 **Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Bank. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.
- A5.28 **Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OptBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.



- A5.29 American Express as Third Party Beneficiary. Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card Acceptance to enforce such terms against Merchant.
- A5.30 American Express Right to Modify or Terminate Agreement. American Express has the right to modify the Agreement with respect to American Express Card transactions or to terminate Merchant's acceptance of American Express Card transactions and to require Processor to investigate Merchant's activities with respect to American Express Card transactions.
- A5.31 American Express Opt-Out. Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Networks.
- A5.32 Refund Policies. Merchant's refund policy for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Network, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
- A5.33 Establishment Closing. If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services.
- A5.34 BANK or ISO shall have the right to terminate MERCHANT'S participation in AMERICAN EXPRESS CARD ACCEPTANCE immediately upon written notice to MERCHANT (i) if MERCHANT breaches any of the provisions of this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT or any other terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE, or (ii) for cause or fraudulent or other activity, or upon AMERICAN EXPRESS' request. In the event MERCHANT's participation in AMERICAN EXPRESS CARD ACCEPTANCE is terminated for any reason, MERCHANT must immediately remove all AMERICAN EXPRESS branding and marks from MERCHANT's website and wherever else they are displayed.
- A5.35 MERCHANT must accept AMERICAN EXPRESS as payment for goods and services (other than those goods and services prohibited by this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, this AGREEMENT, or the RULES) sold, or (if applicable) for charitable contributions made at all of its business locations and websites, except as expressly permitted by state statute. MERCHANT is jointly and severally liable for the obligations of MERCHANT's business locations and websites under this AGREEMENT.
- A5.36 In the event that MERCHANT or BANK/ISO is not able to resolve a Claim against AMERICAN EXPRESS, or a Claim against BANK or ISO or any other entity that AMERICAN EXPRESS has a right to join in resolving a Claim, the Merchant Operating Guide explains how Claims can be resolved through arbitration. MERCHANT or AMERICAN EXPRESS may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.
- A5.37 MERCHANT must ensure that it and any third parties it enlists to facilitate SALES processing complies with the American Express Technical Specifications (available at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide)) (valid and accurate data must be provided for all data elements in accordance with the American Express Technical Specifications). Failure to comply with the American Express Technical Specifications may impact Merchant's ability to successfully process SALES. MERCHANTS may be assessed non-compliance fees if MERCHANT fails to comply with the Technical Specifications. To ensure compliance with the Technical Specifications, MERCHANTS should work with BANK/ISO.