

## AGENT INFORMATION

Agent Name & Office	
Agent Rep Code	
Agent Relationship Manager	
Agent Email	
New Merchant Name (DBA)	
Merchant Descriptor Requested	
Date	

## MERCHANT UNDERWRITING REQUIRED DOCUMENTATION

- A completed Merchant Application and signed Agreement (credit card and ACH as applicable).
- A completed Hemp Cannabidiol (CBD) Merchant Product and Price Listing. This needs to match all lab test results and products on website.
- Testing documentation demonstrating that the test was performed by a qualified lab, and the product contains no more than .3% THC concentration on a dry weight basis. All test results must be labeled to match the product/price list and products on the website. All files MUST be submitted in pdf format. COA can not be more than 1 year old from the test date.
- Disclosure of significant 3rd party relationships, business and supplier relationships. Suppliers listed in a separate document.
- Most recent 3 month processing statements if applicable.
- Copy of driver's license, passport or other government issued picture ID.
- Most recent consecutive 3 months bank account statements, if applicable.
- Copy of preprinted check with Merchant name/address (voided) or bank account reference on bank letterhead.
- Completed MOTO Internet Questionnaire, if applicable.



# CBD MERCHANT APPLICATION AND AGREEMENT

## DBA INFORMATION

MERCHANT NAME (DBA OR TRADE NAME) \_\_\_\_\_

LOCATION ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

CONTACT TELEPHONE \_\_\_\_\_ CONTACT EMAIL \_\_\_\_\_

YRS IN BUSINESS \_\_\_\_\_ MTHS IN BUSINESS \_\_\_\_\_ # LOCATIONS \_\_\_\_\_ MCC/SIC CODE: \_\_\_\_\_

TYPE OF GOODS OR SERVICES: \_\_\_\_\_

DOES THIS LOCATION CURRENTLY ACCEPT VISA/MASTERCARD/DISCOVERNETWORK/AMERICAN EXPRESS?  YES  NO *MUST PROVIDE 3 MONTHS PREVIOUS PROCESSOR STMTS*

WEBSITE ADDRESS www. \_\_\_\_\_

## CORPORATE/LEGAL INFORMATION

CORPORATE/LEGAL NAME \_\_\_\_\_  SAME AS DBA

CORPORATE ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

CONTACT TELEPHONE \_\_\_\_\_ FEDERAL TAX ID \_\_\_\_\_

LEGAL EMAIL ADDRESS \_\_\_\_\_

INDIVIDUAL/SOLE PROPRIETOR  PARTNERSHIP  CORPORATION  GOVERNMENT  LLC  
 NON-PROFIT (MUST PROVIDE 501C3 LETTER)  PUBLICLY TRADED  PA/PC  
PLEASE CHOOSE MAILING ADDRESS  DBA ADDRESS  LEGAL ADDRESS  
**PAYMENT CARD INDUSTRY DATA SECURITY STANDARD: MUST PROVIDE COPY OF SELF ASSESSMENT QUESTIONNAIRE. IF APPLICABLE, MUST PROVIDE CERTIFICATE OF COMPLIANCE.**

## PRINCIPAL(S)

**1. PRINCIPAL NAME (FIRST, MIDDLE, LAST)** \_\_\_\_\_

HOME PHONE \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

SSN \_\_\_\_\_ % OWNERSHIP \_\_\_\_\_ TITLE \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

DRIVERS LICENSE NUMBER \_\_\_\_\_ EXP DATE \_\_\_\_\_

MANAGEMENT RESPONSIBILITY?  YES  NO

HAVE MERCHANT OR OWNERS / PRINCIPALS EVER FILED:  
 BUSINESS BANKRUPTCY  PERSONAL BANKRUPTCY  NEVER FILED

**2. PRINCIPAL NAME (FIRST, MIDDLE, LAST)** \_\_\_\_\_

HOME PHONE \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

SSN \_\_\_\_\_ % OWNERSHIP \_\_\_\_\_ TITLE \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

DRIVERS LICENSE NUMBER \_\_\_\_\_ EXP DATE \_\_\_\_\_

MANAGEMENT RESPONSIBILITY?  YES  NO

HAVE MERCHANT OR OWNERS / PRINCIPALS EVER FILED:  
 BUSINESS BANKRUPTCY  PERSONAL BANKRUPTCY  NEVER FILED

## MANAGEMENT

Complete the following information for one individual with significant responsibility for managing the legal entity listed above, such as: • An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or • Any other individual who regularly performs similar functions. If appropriate, an individual listed above may also be listed in this section. Is this individual already listed as a principal?  Yes  No If No, please complete the next section.

NAME: FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_ LAST \_\_\_\_\_ TITLE \_\_\_\_\_ SSN \_\_\_\_\_

HOME PHONE \_\_\_\_\_ DRIVERS LICENSE NUMBER \_\_\_\_\_ EXP DATE \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

## SALES METHOD (Must Equal 100%)

RETAIL SWIPED \_\_\_\_\_ % KEYED WITH SIGNATURE & IMPRINT \_\_\_\_\_ % MAIL/PHONE \_\_\_\_\_ %  
MAIL/PHONE KEYED WITH SIGNATURE & IMPRINT (INBOUND CALLS \_\_\_\_\_ % OUTBOUND CALLS \_\_\_\_\_ %)  
% INTERNET \_\_\_\_\_ % ACH \_\_\_\_\_ % Stock Symbol \_\_\_\_\_

## BANK ACCOUNT INFORMATION

ACCOUNT NAME \_\_\_\_\_ \* Attach voided check

ROUTING NUMBER \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_

## SITE INSPECTION SURVEY

Inventory maintained:  On site  Warehouse off site  Fulfillment center, provide name & address \_\_\_\_\_ Was the off site location visited?  Yes  No If No, please provide explanation: \_\_\_\_\_

Does the amount of inventory on shelves, floor and in warehouse appear consistent with this type of business and credit card volume?  Yes  No If No, please provide explanation: \_\_\_\_\_

Does location have sufficient staff, telephone lines and other equipment to meet anticipated sales volume?  Yes  No If No, please provide explanation: \_\_\_\_\_

Does the signage inside and outside match the goods or services sold listed on the application?  Yes  No If No, please provide explanation: \_\_\_\_\_

**Type of Building:**  Office Bldg. Suite  Separate Bldg  Shopping Center/Mall  Residence-Home or Apt.  Other: \_\_\_\_\_

**Zoning:**  Commercial  Industrial  Residential Sq. Footage of Business  0-500  500-1000  1001-2000  2001-4000  Other: \_\_\_\_\_ (est. sq. ft.)

Merchant:  Owns  Leases Name & address Landlord/Mgt. Co: \_\_\_\_\_ ATTACH MINIMUM OF ONE INSIDE PICTURE, ONE OUTSIDE PICTURE.

I hereby verify that I have inspected the business premises of the merchant at this address and the information stated above is correct to the best of my knowledge and belief.

# CBD MERCHANT APPLICATION AND AGREEMENT

APPROVED 06.17.24

## ADDITIONAL CARD TYPES

AMERICAN EXPRESS: If you desire to participate in the American Express® OptBlue® Program, please check here:

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company Inc (American Express) to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize American Express to inform me directly or through the entity above of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card the terms and conditions for American Express® Card acceptance (terms and conditions) will be sent to such entity along with a welcome letter. By accepting the American Express Card for the purchase of goods and/or services or otherwise indicating its intention to be bound, the entity agrees to be bound by the terms and conditions.

SIGNATURE \_\_\_\_\_

By checking this box, Merchant opts out of receiving future commercial marketing communications from American Express.

## SCHEDULE OF FEES

INTERCHANGE COST PLUS <input type="checkbox"/>			TIERED PRICING <input type="checkbox"/>				FLAT RATE PRICING <input type="checkbox"/>	
I/C RATE	FEE - \$		QUAL. CHECK	QUALIFIED	MID-QUALIFIED	NON-QUALIFIED	RATE	FEE - \$
Interchange Cost Plus (Visa/MC/Discover)	%	per auth	Tiered Pricing (V/MC/D)	%	%	%	Flat Rate (Visa/MC/Discover)	per auth
Interchange Cost Plus (AMEX OptBlue)	%	per auth	Per Transaction Fee	\$	\$	\$	Flat Rate (AMEX OptBlue)	per auth
PIN Debit Fee Plus	%	\$	Per Authorization Fee	\$	\$	\$	PIN Debit Fee	% \$
			Tiered Pricing (AMEX)	%	%	%		
			Per Transaction Fee	\$	\$	\$		
			Per Authorization Fee	\$	\$	\$		
			Per Transaction Fee	\$	\$	\$		
			Per Authorization Fee	\$	\$	\$		
			PIN Debit Fee	%	\$	per Transaction		

ADDITIONAL FEES			
IC Cost Plus surcharge	%	Monthly \$100k Data and Breach Protection	\$
Batch Header Fee	\$	AVS Fee	\$
EBT Transaction Fee (per authorization)	\$	Annual PCI Compliance Fee	\$
Voice Authorization Fee	\$ 0.60	PCI Non-Compliance Fee	\$ 50.00
Annual Service Fee	\$	Chargeback/Dispute/Representation Fee	\$
Monthly Service Fee	\$	Debit Gateway (monthly) *Only applies with use of PIN-pad	\$
Retrieval Fee	\$	Monthly Minimum Fee	\$
Account Setup (One time)	\$	Semi-Annual Tech Update/Compliance Fee	\$
		ACH Reject Fee	\$
		Early Termination Fee	\$ 595.00
		POS Placement Fee	\$
		POS License Fee	\$
		Business Portal Fee	\$
		Gateway Fee	\$
		Mobile SIM Fee	\$

**MERCHANT IS ADVISED TO THOROUGHLY REVIEW THIS AGREEMENT, INCLUDING THE ATTACHED TERMS AND CONDITIONS, AND TO CONTACT Vendara OR BANK WITH ANY QUESTIONS.** This is an automatically renewable 36 month merchant contract. Cancellation during the term will result in an Early Termination Fee. Reward cards will automatically adjust to mid or non-qualified pricing; all interchange plus model pricing, card association network transaction fees & assessments will be assessed an additional \$ per transaction fee; American Express transactions will incur an additional 0.0015 BPS. Assessments will not apply to flat rate pricing. Merchant agrees to comply with PCI council data security standards (hereinafter defined) within 9 days after signing this agreement. Failure to do so will result in an additional monthly fee until merchant becomes compliant. Merchant will pay all acceptable card brand registration fees. In consideration of risk and other business factors, Vendara may apply a risk assessment at its discretion, up to 0.0049 over the interchange costs, which is exclusive of all other schedule of fees. This schedule of fees does not provide all information pertinent to this merchant agreement. PIN debit network fees include base switch, acquirer, interchange and other network administration expenses. Unregulated signature debit card transactions will process at the corresponding credit card rate unless otherwise specified. If enrolled in the Visa RDR program, a \$45 fee will be assessed per RDR record and an additional \$25 per record for the "Return Item Support"

VISA/MC/DISCOVER MONTHLY SALES VOLUME: \$ \_\_\_\_\_ AXP MONTHLY SALES VOLUME: \$ \_\_\_\_\_ AVERAGE TICKET SIZE: \$ \_\_\_\_\_ HIGHEST TICKET SIZE: \$ \_\_\_\_\_

## MERCHANT ACCEPTANCE AND AGREEMENT

By executing this Merchant Application on behalf of the merchant described above (the "Merchant"), the undersigned individual(s): (i) represent(s) and warrant(s) that all information contained in this Merchant Application is true, correct and complete as of the date of this Merchant Application, and that such individual(s) have the requisite corporate power and authority to complete and submit this Merchant Application and make and provide the acknowledgments, authorizations and agreements set forth below, both on behalf of the Merchant and individually; (ii) acknowledge(s) that the information contained in this Merchant Application is provided for the purpose of obtaining, or maintaining a merchant account with Bank and Vendara on behalf of the Merchant; (iii) authorize Bank and Vendara to investigate the credit of the Merchant and each person listed on this Merchant Application; (iv) agree, on behalf of the Merchant and in the event this Merchant Application is accepted and executed by Bank and Vendara, to the Fee Schedule set forth above and to the Terms and Conditions included with and incorporated into this Merchant Agreement. **Merchant understands that this Agreement shall not take effect until Merchant has been approved by Bank and Vendara and a merchant number is issued.**

Merchant: \_\_\_\_\_  
Print Legal Name of Merchant Business

Vendara: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_

Name

Principal 1: \_\_\_\_\_  
(Signature of Principal/Owner)

\_\_\_\_\_

Title

\_\_\_\_\_

Title

Esquire Bank: \_\_\_\_\_  
Signature

Principal 2: \_\_\_\_\_  
(Signature of Principal/Owner)

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Title

## PERSONAL GUARANTEE

In consideration of Bank's and Vendara's acceptance of this Agreement, the undersigned Guarantor (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of Merchant to Bank and Vendara under the Agreement, and payment of all sums due there under, and in the event of default, hereby waives notice of default and agrees to indemnify Bank and Vendara for all funds due from Merchant pursuant to the terms of the Agreement. Guarantor waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant, and further waives any and all rights or defenses arising by reason of any modification or change in the terms of the Agreement whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance there under is due, and / or any change in any interest or discount rate or fee there under. Guarantor confirms that Guarantor, collectively or individually is a party to the Agreement, and unconditionally and specifically authorizes Bank, Vendara, and their respective authorized agents, to debit any overdue fees, costs, chargebacks, fines, fees, penalties, expenses or obligations under the Agreement and/or any contractual relationship with Bank or Vendara from any personal checking account or other account owned or controlled by Guarantor, and further to report any default hereunder on Guarantor's personal Credit Bureau Report. Guarantor agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of Bank and Vendara in connection with the enforcement of this Guaranty.

Guarantor #1: \_\_\_\_\_ Date: \_\_\_\_\_

Guarantor #2: \_\_\_\_\_ Date: \_\_\_\_\_



**ESQUIRE**  
BANK

## BANK DISCLOSURE

### Member Bank Information

Esquire Bank  
100 Jericho Quadrangle, Ste 100  
Jericho, NY 11753

### Important Bank Responsibilities

1. Esquire Bank is the only entity approved to extend acceptance of VISA products directly to a Merchant.
2. Esquire Bank must be a principal (signor) to the Merchant Agreement.
3. Esquire Bank is responsible for educating Merchants on pertinent VISA Operating Regulations with which Merchants must comply.
4. Esquire Bank is responsible for and must provide settlement funds to the Merchant.
5. Esquire Bank is responsible for all funds held in reserve that are derived from settlement.

### Important Merchant Responsibilities

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement.
4. Comply with VISA Operating Regulations.

The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the VISA Member – Esquire Bank – is the ultimate authority should the Merchant have any problems.

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Merchant DBA Name

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Merchant's Signature

Date

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Merchant's Printed Name & Title

**1. What percentage do you sell to?**

Business: \_\_\_\_\_%    Public : \_\_\_\_\_%

**2. Do you have a retail location?**Yes     No **3. Do you sell a service or product?**Service     Product **4. When is the customer charged?**Time of order     Upon shipment **5. Describe Product/Service:**

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**6. What percentage of sales will be from:**Mail \_\_\_\_\_%    Internet \_\_\_\_\_%  
Phone \_\_\_\_\_%    Card Present \_\_\_\_\_%**7. Is the product stored at your**DBA Address     Corporate Address   
Offsite **8. Are any other companies involved with accepting, shipping or fulfilling the service or product, or billing the customer (ie. fulfillment house)**Yes     No     If yes, please provide:

Company Name \_\_\_\_\_ Phone Number \_\_\_\_\_

**9. Do you own the product inventory?**Yes     No **10. Do you sell (check all that apply)**Internationally     Nationally     Locally **11. Who is your current payment processor?**

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**12. How many chargebacks did you have for the previous year?**

# \_\_\_\_\_

**13. What was the total dollar amount for those chargebacks?**

\$ \_\_\_\_\_

**14. How many days from the time of order does it take to deliver merchandise to the customer?**1-7 days     8-14 days     14+ days **15. Do you provide customer service? If no, please provide the name and phone number of the provider:**Yes     No     Company Name: \_\_\_\_\_ Phone \_\_\_\_\_

What are you customer service hours? Time \_\_\_\_\_ Days \_\_\_\_\_

**16. How do you advertise? (Catalogs, magazines, TV, Internet, etc. List all that apply):**

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**17. Please describe your refund policy:**

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**WHEREAS**, Esquire Bank, National Association (the “Bank”), \_\_\_\_\_ (the “ISO”) and \_\_\_\_\_ (the “Merchant”) entered into a Merchant Agreement dated \_\_\_\_\_, 20\_\_ (the “Merchant Agreement”);

**WHEREAS**, the Merchant provided certain representations and warranties in the Merchant Agreement related to Merchant’s compliance with applicable law; and

**WHEREAS**, the Merchant desires that the Bank process payments related to the Merchant’s sale of industrial hemp-derived cannabidiol products (the “CBD Products”).

**NOW THEREFORE**, as an inducement to, and in consideration of, the Bank processing the Merchant’s payments related to its sale of CBD Products, the Merchant provides the following representations and warranties to the Bank:

1. Merchant is in good standing and properly licensed in all states where it sells its CBD Products, and copies of all licenses are attached hereto (each a “License” and collectively, “Licenses”).
2. Attached as Schedule A hereto is a complete list of the CBD Products Merchant currently sells. Merchant will provide a revised Schedule A to the Bank at least annually or more frequently as requested by the Bank.
3. Merchant intends to sell the CBD Products listed on Schedule A to the general public.
4. Each CBD Product is excluded from the definition of “marijuana” in the Controlled Substances Act (21 U.S.C. §801 et. seq.), as amended (the “CSA”), and has been approved for sale under applicable federal and state laws, rules and regulations.
5. Merchant does not, and will not, purchase, sell, deliver or provide any refund or exchange for any product: (i) containing marijuana-based cannabidiol, cannabinoid, or tetrahydrocannabinol (THC) in excess of 0.3% by dry weight; (ii) that is included under Drug Enforcement Agency Drug Code 7350 or 7360; (iii) that is not excluded from the definition of “marijuana” in the CSA; or (iv) that has not been approved for sale under applicable federal and state laws, rules and regulations.
6. Merchant does not know of any reason that could lead to the revocation or cancellation of any License and has not received notice from any governmental authority of any revocation or intention to revoke, suspend or modify any License.
7. The individual executing this Merchant Agreement Certification on behalf of Merchant is duly authorized to make the statements contained herein, and to bind Merchant in accordance with the terms hereof.
8. In connection with its sale of CBD Products, the Merchant covenants that it will at all times:
  - a. Fully comply with all requirements and conditions of the Licenses, all other licenses and/or permits

as well as applicable federal and state laws, rules and regulations related to Merchant’s business, including its sale of CBD Products.

- b. Take all action necessary to maintain the Licenses as valid and in full force and effect.
- c. Notify the Bank in writing within five (5) calendar days of the Merchant being informed of any change to any License or any location from which Merchant sells any CBD Product.
- d. Notify the Bank in writing within five (5) calendar days of the Merchant being informed of any regulatory notices or actions, or of any pending lawsuits or legal actions.
- e. Not make any statements, notices or claims that the CBD Products prevent, treat or cure any illness, disease, ailment or condition on their website, social media, blogs, consumer reviews and testimonials.
- f. Take all actions necessary to ensure that all information provided to Bank and/or all applicable governmental agencies relating to the operation of Merchant’s business, including its sale of CBD Products, is true, accurate and complete.
- g. Refrain from shipping or delivering any CBD Product in violation of any License or Licenses.
- h. Ensure that Merchant only purchases its CBD Products, or the cannabidiol it uses in its CBD Products, from appropriately licensed and authorized distributors.
- i. Ensure that all CBD Products Merchant offers for sale are assembled, manufactured, labeled, advertised and processed pursuant to the requirements of applicable federal and state laws, rules and regulations.

[Merchant Name]

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## MERCHANT AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Agreement (“Agreement”), and the agreement of Merchant to participate in the card processing services program established by Vendara and Bank, the parties agree as follows:

**1. Parties.** “Bank”- A member of Visa, MasterCard, and Discover that provides sponsorship and settlement services to merchants that accept Cards for payment of goods and/or services sold, rented or rendered by merchant. Bank is a national banking association selected by Vendara that is a party to this Agreement. Sponsor banks related to this Agreement are listed in the Vendara Bank Disclosure document.

“Vendara”- Vendara Holdings, LLC, dba Vendara Payments, LLC, a registered independent sales organization/merchant service provider, whose address is 3550 Lenox Road, Atlanta GA 30326. Vendara is registered with Visa as an Independent Sales Organization, with MasterCard as a Member Service Provider, with Discover as an acquirer, and with American Express as an OptBlue® Participant. Vendara has agreed with Bank to provide credit card processing, authorization and related services for merchants that use Bank’s settlement services for Transactions. Vendara is responsible for providing or otherwise securing the provision of (i) all Services to Merchant pursuant to this Agreement and all applicable Rules, (ii) the establishment and implementation of pricing to merchants for the Services and other goods and services identified in this Agreement, (iii) the collection of all fees and charges payable under this Agreement from Merchant pursuant to the Schedule of Fees or otherwise, (iv) point of sale devices, software or related equipment, (v) web hosting services, (vi) gift card services, (vii) customer loyalty services and systems, and (viii) additional products and services not affiliated with Bank as set forth in this Agreement.

“Service Providers”- Bank and Vendara, individually and/or collectively (as the context permits, when construed most favorably to Bank or Vendara), when the rights, duties or obligations set forth herein reside with both Bank and Vendara, or with Vendara on behalf of Bank.

“Merchant”- The merchant set forth on the Merchant Application form to which this Agreement is attached.

**2. Definitions.** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires: “Address Verification” means a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.

“Applicable Law” means: (i) all applicable federal, state and local laws, rules and regulations; and (ii) the Rules.

“Association(s)” means VISA U.S.A., Inc. (“Visa”), MasterCard International Incorporated (“MasterCard”), Discover Financial Services LLC (“Discover”) and American Express® Travel Related Services Company, Inc. (“American Express”).

“Authorization” means an affirmative response, by or on behalf of an Issuer to a request to effect

a Transaction, that a Transaction is within the relevant Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions requiring Authorization by the Associations must be authorized.

“Authorization Center” means the facility or facilities designated from time to time by Vendara to which Merchant shall submit all requests for Authorization.

“Business Day” means any day other than: (i) a Saturday or Sunday; or (ii) a day on which banking institutions in New York are authorized by law or executive order to be closed (and on which Bank is in fact closed).

“Card(s)” means either a Visa, MasterCard, Discover or American Express credit card, debit card (or other similar card that requires a PIN for identification purposes), or pre-paid, stored-value or gift card.

“Cardholder” means a person authorized to use a Card.

“Chargeback” means a Transaction that Service Providers return to Merchant pursuant to this Agreement.

“Forced Sale” means a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.

“Full Recourse Transactions” means mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other “card not present” sales.

“Issuer” means a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards. “Merchant Statement” means an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 5 of this Agreement).

“Monthly Chargeback Violation,” for any given calendar month, means that more than five Chargebacks have been processed in that month and that the Transaction Chargeback Ratio for that month is equal to or greater than 1%.

“Mid-Qualified Transactions” means any Transaction categorized as such by the Processor to settle Transactions with the Associations

“Non-Qualified Transactions” means: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction categorized as such by the Processor to settle Transactions with the Associations.

“Normal Transaction” means a Transaction in which the Card is swiped through or dipped in a

terminal, register or other device, capturing the Card information encoded on the Card's magnetic strip.

“Pre-Authorized Recurring Order Transaction” means a Transaction that has been preauthorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.

“Processor” means the payment processor selected by Vendara to settle Transactions with the Associations.

“Qualified Transactions” means any Transaction categorized as such by the Processor to settle Transactions with the Associations.

“Rules” means all rules, regulations, by-laws, standards and procedures adopted and/or amended from time to time by the Associations (including, without limitation, the Payment Card Industry Data Security Standard), Bank and each relevant Issuer.

“Services” means the transaction processing services described in this Agreement, as the same may be amended from time to time by Service Providers, in their sole discretion.

“Transaction” means the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Service Providers, whether the Transaction is approved, declined, or processed as a Forced Sale. The term “Transaction” also includes credits, errors, returns and adjustments.

“Transaction Chargeback Ratio,” for any given calendar month, means the number of Chargebacks processed in that month divided by the total number of Transactions processed in that month.

**3. Services Provided to Merchant.** During the term of this Agreement, subject to the terms and conditions of this Agreement: (i) Vendara will provide Merchant with Authorization services, Transaction settlement reporting services, Chargeback processing and reporting, Chargeback dispute resolution services, technical support, customer support, risk management services, Merchant training services, point-of-sale hardware and software solutions, and other services in order to allow Merchant to accept and process Transactions; and (ii) Bank will provide Transaction settlement services.

**4. Term.** This Agreement shall become effective when all parties sign the Merchant Application form to which this Agreement is attached (or in connection with which this Agreement is provided) and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of three (3) years each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. All existing obligations, warranties, liabilities, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and, regardless of any such termination, Merchant shall remain liable for all obligations to Cardholders and Service Providers that are incurred while this Agreement is in effect. Furthermore, Merchant acknowledges that all monthly and annual fees appearing on the Schedule of Fees shall

continue to be assessed in any month in which Merchant has Transaction activity following the term of this Agreement.

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

**6. Reserve Account.** Upon, or at any time after, execution of this Agreement, Bank may require, as a condition of its willingness to enter into this Agreement or to not exercise its right to terminate this Agreement, that Merchant establish a reserve account at Bank (the “Reserve Account”) in such amount as Service Providers from time to time may determine in their sole discretion. Service Providers may fund the Reserve Account by deducting amounts from payments due to Merchant, by effecting a charge against Merchant’s Operating Account or against any of Merchant’s accounts at Bank, or by demanding payment from Merchant (which payment Merchant shall make within ten (10) days after receipt of any such demand). The Reserve Account will be maintained for a minimum of nine months after the date on which this Agreement terminates or until such time as Service Providers determine that the release of the funds to Merchant is prudent, in the best interest of Service Providers, and commercially reasonable, and that Merchant’s account with Service Providers under this Agreement and any other agreement entered into between Merchant and Service Providers is fully resolved. Merchant and Vendara acknowledge and agree that only Bank, and not Vendara may authorize or effect any release of funds from the Reserve Account. Bank, if in agreement with Vendara, may withdraw funds from the Reserve Account at any time to offset any indebtedness of Merchant to Bank or Vendara that may arise out of or relate to the obligations of Merchant under this agreement (including, but not limited to, Chargebacks and fees) or to offset any other indebtedness of Merchant to Bank or Vendara under any other agreement entered into between Merchant and Bank or Merchant and Vendara. Upon expiration of this nine-month period, any balance remaining in the Reserve Account will be paid to Merchant. Service Providers will inform Merchant in writing of any charges debited to the Reserve Account during this nine-month period. Notwithstanding the foregoing, Service Providers, in their sole discretion, may release funds from the Reserve Account prior to the expiration of such nine-month period based on their assessment of the risks associated with effecting such release. In addition to the Reserve Account, Bank and Vendara, from time to time and in their sole discretion (but in compliance with the Rules): (i) may hold in suspense funds that are otherwise payable to Merchant; and (ii) may use such funds to offset any indebtedness of Merchant to Bank or Vendara that may arise out of or relate to the obligations of Merchant under this Agreement (including, but not limited to, Chargebacks and fees) or to offset any other indebtedness of Merchant to Bank or Vendara under any other agreement entered into between Merchant and Bank or Merchant and Vendara.

**7. Fees.** Merchant shall pay to Bank and Vendara all fees specified on the Schedule of Fees, as amended by Bank and Vendara from time to time. For each Transaction, Bank and Vendara will charge Merchant as follows:

- (a) An amount (“Merchant Discount Fees”) equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction (“Merchant Discount Rate”);
- (b) A specified amount per Transaction (“Transaction Fee”); and
- (c) A specified amount per Authorization (“Authorization Fee”).

The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on the Schedule of Fees. Different Merchant Discount Rates may apply to Qualified, Mid-Qualified and Non-Qualified Transactions, as shown on the Schedule of Fees. Merchant agrees that Service Providers will, and authorizes Bank to, deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on the Schedule of Fees. Merchant also agrees to pay to Service Providers the amount of any fees, charges or assessments imposed on Service Providers by any Association or Issuer for Merchant’s violation of any Applicable Law or such Association’s determination that Merchant has engaged in violation of any Applicable Law. Merchant shall pay Vendara for any other services provided to Merchant by Vendara and shall pay Service Providers for all other fees shown on the Schedule of Fees, including, but not limited to, monthly minimum fees, Chargeback fees and customer service fees.

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

**9. Security Interest.** As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby:

- (a) grants to Bank a first priority security interest in:
  - (i) the funds held in the Operating Account and, without suggesting that Merchant has any ownership interest in the Reserve Account, in the Reserve Account; and
  - (ii) any inventory with respect to which a Transaction has occurred but has not yet been fulfilled (collectively, the “Pledged Collateral”);
- (b) grants to Vendara a second priority security interest in the Pledged Collateral; and
- (c) grants to Vendara a first priority security interest in all other equipment and other assets that Vendara provides or supplies to Merchant in connection with or pursuant to the terms of this Agreement or any other agreement entered into between Merchant and Vendara (collectively, the “Pledged Equipment”).
- (d) Merchant will execute and deliver to Bank and to Vendara such documents, in form satisfactory to Bank and Vendara, as Bank or Vendara may reasonably request in order to perfect Bank’s and Vendara’s security interest in the Pledged Collateral and Pledged Equipment, and will pay all costs and expenses associated with filing the same or this Agreement in all public filing offices, where filing is deemed by Bank or Vendara to be necessary or desirable. Bank and Vendara are authorized to file financing statements relating to the Pledged Collateral and Pledged Equipment without the other where

authorized by law; provided, however, that in no event will Vendara effect any such filing in a way that is inconsistent with the first priority security interest in the Pledged Collateral granted by Merchant to Bank. Merchant appoints Bank and Vendara as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or Vendara.

## 10. Processing Transactions.

(a) Merchant shall obtain Authorizations and process Transactions using such equipment and software as may be approved from time to time by Service Providers, in their sole discretion (the “Equipment”). Merchant shall validate Cards and Cardholders in face-to-face transactions as required by Applicable Law.

(b) Merchant shall obtain Authorizations for Transactions in a manner required by Applicable Law and in the manner, and following the processes and procedures, determined from time to time by Service Providers in their sole discretion. Merchant shall submit such information to Bank or Bank’s designee in connection with Transaction processing as Bank from time to time may determine.

(c) Merchant shall not submit a Transaction to Service Providers (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder’s consent for a Pre-Authorized Recurring Order Transaction.

(d) Merchant shall not transmit any Transaction to Service Providers that is illegal or that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder.

(e) Merchant shall not process a Transaction that does not result from an act between a Cardholder and Merchant.

(f) Merchant shall not request or use any Card number for any purpose other than as payment for its goods or services.

(g) Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder’s specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

(h) Merchant may request but must not require a Cardholder to provide additional identification information as a condition of Card acceptance, unless such information is required to complete the Transaction, such as for shipping purposes, or the Rules specifically permit or require such information to be collected.

## 11. Prohibited Transactions. Merchant shall not do any of the following:

(a) Establish a minimum on debit cards or greater than \$10.00 on credit cards or a maximum dollar Transaction amount;

(b) Obtain multiple Authorizations for amounts less than the total sale amount;

(c) Obtain Authorization for the purpose of setting aside the Cardholder’s credit line for use in future sales;

(d) Extend credit for or defer the time of payment of the total cash price in any Transaction;

(e) Honor a Card except in a Transaction where a total cash price is due and payable;

(f) Make any special charge to or extract any special agreement or security from any

Cardholder in connection with any Transaction;

(g) Transmit or accept payment for any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;

(h) Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (ii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;

(i) Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;

(j) Re-process any Transaction that was previously charged back to Service Providers and subsequently returned to Merchant, irrespective of Cardholder approval;

(k) Initiate a Transaction credit without a preceding debit at least equal to the credit;

(l) Initiate a Transaction credit without a balance in the Operating Account at least equal to the credit;

(m) Use the Equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;

(n) Use the Equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;

(o) Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;

(p) Disclose any information obtained through the Equipment to any person except for necessary disclosures to affected Cardholders, Service Providers and/or the Issuer;

(q) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;

(r) Disburse funds in the form of cash;

(s) Accept a Card to collect or refinance an existing debt (whether originally owed to Merchant or otherwise) that is considered uncollectible (for example, payments to a collection agency or attempts to recover funds for a dishonored check) except to the extent specifically permitted by Applicable Law;

(t) Issue a Transaction credit in respect of goods or services acquired in a cash transaction which are returned;

(u) Make any cash refund to a Cardholder who has made a purchase with a credit Card (all Transaction credits shall be issued to the same credit Card account number used in the sale);

(v) 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;

(w) Accept a Card for the purchase of Scrip (as defined by applicable VISA regulations), except to the extent specifically permitted by Applicable Law;

(x) Accept any payment directly from a Cardholder for previous Card charges incurred and processed by Merchant;

(y) Require, through an increase in price or otherwise, any Cardholder to pay any surcharge, convenience fee, or service fee in connection with any Transaction or to pay any part of any charge imposed on Merchant by Service Providers except, in either case, as expressly

permitted by, and under terms and conditions that comply in full with, Applicable Law;

(z) Provide cash to a Visa cardholder unless Merchant is either (i) participating in Visa Cash-Back Services or (ii) a hotel or cruise line;

(aa) Cause any Cardholder to waive its right to dispute a Transaction;

(bb) Request the Card Verification Value 2 data (as defined by Visa) on any paper order form;

(cc) Request a Cardholder account number for any purpose that is not related to payment for goods or services; or

(dd) Add any tax to Transactions, unless applicable law expressly requires that a merchant be permitted to impose a tax, and only if such tax is included in the Transaction amount and not collected separately.

**12. Prohibition of Furnishing Account Information; Use of Third Parties.** Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange any Card information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained through the use of a Card to any third party. Merchant may use third parties that do not have a direct agreement with Service Providers as Merchant's agent for the direct delivery of Transactions for clearing and settlement if:

(a) Merchant advises Service Providers that it will use a third-party processor in this capacity, identifying the third party so selected by Merchant;

(b) Merchant agrees that Service Providers will reimburse Merchant only for the Visa Transactions delivered by that third-party processor to VisaNet; and

(c) Merchant assumes responsibility for any failure by its third-party processor to comply with Applicable Law. Merchant shall notify Service Providers of the identity of any third party performing services to Merchant in connection with which such third party has access to any Card information

**13. Daily Reconciliation of Transactions.**

(a) Electronically Transmitted Transactions. Bank shall control and disburse all Transaction-related settlement funds to Merchant. Transactions with respect to which Bank receives payment from or through the Associations will be settled on a daily basis, and, except as otherwise expressly provided or permitted pursuant to the terms of this Agreement, Bank shall deliver payment to Merchant in connection with such Transactions by effecting a credit to the Operating Account equal to the reconciled and paid summary Transaction total of all of Merchant's total paid summary Transactions since the previous credit. Notwithstanding the foregoing, Bank may, in its sole discretion, effect a credit to the Operating Account in connection with any Transaction prior to the point in time Bank receives payment in connection therewith from or through the Associations. In either case, Bank may, if necessary or appropriate, reduce any credit made to the Operating Account by, and/or Bank may require that Merchant pay to Bank an amount equal to: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the amounts, fees and charges, including (but not limited to) Chargebacks, Merchant owes Service Providers hereunder or under any other agreement entered into between Service Providers and Merchant; (iv) all taxes, penalties, charges, fees and other items incurred by Service Providers that are reimbursable pursuant to this Agreement; (v) all applicable rates, fees and charges described on the Schedule of Fees; (vi) any

amount Bank previously credited to the Operating Account that Service Providers determine, in good faith, was incorrectly so credited; and (vii) any amount Service Providers determine, in their sole discretion, represents unacceptable risk to the relevant Cardholder or Service Providers. Any application of funds associated with the settlement of Transactions that differs from the foregoing must be agreed to, in writing, by Bank, Vendara and Merchant and may not, in any respect, violate Applicable Law.

(b) **Reconciliation of Transactions.** Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Service Providers for payment, and shall notify Service Providers immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Service Providers shall have no responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Service Providers for settlement.

(c) **Provisional Credit.** Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer, or Service Providers receives adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

**14. Adjustments and Returns.** Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If Merchant limits its acceptance of returned merchandise, or if Merchant is an Electronic Commerce Merchant, Merchant will ensure that its return policy is clearly set forth on the Transaction receipt or on Merchant’s website, as required by Applicable Law. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay the excess to Service Providers. Merchant shall make no cash refunds on credit Transactions and shall handle all credit adjustments as provided in this Section 14. If no refund or return will be given, Merchant must advise Cardholder in writing, at the time of the Transaction, that the sale is a “final sale” and “no returns” are permitted. Merchant must advise Cardholder in writing of any policy of Merchant that provides for no- cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies, and shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

**15. Chargebacks.**

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

(i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) under any of the following circumstances:

(a) No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Bank, or the Transaction was submitted to Bank or Vendara thirty (30) days or more after the

date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;

- (b) The Transaction was based on a pre-authorization form, the Card on which the Authorization was based was canceled and Merchant was so notified prior to the Transaction;
- (c) The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, and Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
- (d) The Card expired prior to the date of the Transaction or the date of the Transaction was prior to the validation date, if any, indicated on the Card;
- (e) The Transaction information required by this Agreement was not submitted to Bank, or the procedures required by this Agreement to be followed in connection with processing a Transaction were not followed;
- (f) Bank or Issuer receives a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
- (g) The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
- (h) A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in the Transaction;
- (i) The Transaction was made at or by a merchant other than Merchant;
- (j) The Transaction otherwise violates the terms of this Agreement or any Applicable Law;
- (k) A Transaction is charged back by an Issuer; or
- (l) Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

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

In addition to any other remedy available to Bank, upon the occurrence of a Monthly Chargeback Violation, Merchant must pay to Bank a fee that is equal to the total number of Chargebacks processed during the relevant calendar month multiplied by the relevant dollar amount set forth in the table set forth below (where X in the table below is the Transaction Chargeback Ratio for the relevant calendar month and Y is the number of Chargebacks processed during the relevant

calendar month) (the “**Monthly Chargeback Violation Fee**”):

Y	X								
	1.00% - 1.50%	1.51% - 2.00%	2.01% - 2.25%	2.26% - 2.50%	2.51% - 3.00%	3.01% - 3.50%	3.51% - 5.00%	5.01% - 7.50%	7.51% or more
5 – 25	\$0	\$10	\$10	\$15	\$15	\$20	\$25	\$40	\$50
26 – 50	\$10	\$10	\$15	\$15	\$20	\$20	\$25	\$40	\$50
51 – 75	\$15	\$20	\$20	\$20	\$25	\$25	\$30	\$50	\$50
76 - 100	\$15	\$20	\$20	\$25	\$25	\$30	\$35	\$50	\$50
101 - 125	\$20	\$20	\$25	\$25	\$30	\$35	\$35	\$60	\$60
126 – 150	\$20	\$25	\$25	\$30	\$35	\$35	\$40	\$75	\$75
151 – 175	\$25	\$30	\$30	\$35	\$35	\$40	\$40	\$75	\$100
175+	\$25	\$30	\$35	\$35	\$40	\$40	\$50	\$100	\$100

Without limiting Service Providers’ ability to collect the Monthly Chargeback Violation Fee by other means, Merchant will pay each relevant Monthly Chargeback Violation Fee to Bank no later than 30 days after receiving a request for payment thereof from Bank (which request will include a description of the Monthly Chargeback Violation Fee amount and a description of the manner in which it was calculated).

**16. Merchant Statement.** At least once each month, Vendara shall provide a Merchant Statement to Merchant. 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. Merchant hereby irrevocably waives any right it may have to object to or dispute any information appearing on or fee charged on any Merchant Statement with respect to which it does not submit a written notice of dispute as described above within such 30-day period.

**17. Retention of Information.** Merchant shall retain the information required to be submitted in connection with a Transaction or to be maintained in connection with a complaint for seven years from the date of the Transaction or the complaint. At the request of Service Providers, Merchant shall provide such information to Service Providers within five (5) days of receipt of a request from Service Providers. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall, among other things, constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

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

**19. Customer Complaints.** Merchant shall respond promptly to inquiries from Cardholders and shall attempt to resolve any disputes amicably. If unresolved disputes occur with a frequency

unacceptable to Service Providers, Service Providers may terminate this Agreement. Vendara reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

- (a) The Cardholder's name;
- (b) The Card account number;
- (c) The date and time the Cardholder asserted the claim or defense;
- (d) The nature of the claim or defense; and
- (e) The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Service Providers with this information in writing within 10 days.

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

**21. Compliance with Applicable Law.**

(a) General. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses, and that it is in compliance with all Applicable Law, in connection with the operation of its business. Merchant represents and warrants that it understands the importance of complying with Applicable Law in connection with any and all actions it takes in connection with Transactions (including, without limitation, complying with requirements relating to Transaction information, storage and disclosure), and covenants at all times to comply in full with all Applicable Law, including, without limitation, all Rules relating to: (i) the use by Merchant of Association-owned trademarks, logos, trade names and designations (collectively, "Association Marks"); (ii) acceptance of Cards (which, in any event, must be limited to Bank's area of use and must be in accordance with a policy adopted by Merchant to not discriminate among customers seeking to make purchases with a Card); (iii) risk management; (iv) transaction processing; and (v) products, programs or services in which Merchant is required or elects to participate. Merchant further acknowledges and agrees that it is responsible for the actions of all of its employees while in Merchant's employ. For the sake of clarity, and without otherwise limiting any other provision of this Agreement: (i) Merchant will terminate its use of all Association Marks immediately upon termination of this Agreement, and will terminate its use of any relevant Association Marks immediately upon the request of Bank or the relevant Association; and (ii) Merchant acknowledges and agrees that it must not sell, purchase, provide, exchange or in any manner disclose Cardholder account or Transaction data, or personal information of or about a Cardholder to anyone other than Service Providers, the Associations, or in response to a valid government demand.

(b) Data Security Rules. Without limiting the generality of the foregoing or any other provision of this Agreement, Merchant understands that it and all of its employees, agents, representatives and service providers must comply with the Rules, including without limitation, those relating to Cardholder information security issues, non-disclosure of Cardholder information and Transaction documents, retention and storage of Cardholder and Transaction information and other security procedures adopted by the Associations (including, without limitation, PCI DSS). Merchant hereby confirms its agreement to abide by and fully comply with (and cause its

employees, agents, representatives and service providers to abide by and fully comply with) such Rules, and, when requested, demonstrate compliance with such Rules, including, without limitation, the Rules and procedures described below:

(i) Visa Cardholder Information Security Program and MasterCard Site Data Protection Program. Visa and MasterCard have implemented programs to protect Cardholder data. The Visa Cardholder Information Security Program (“CISP”) and MasterCard Site Data Protection Program (“SDP”) apply to Merchant if Merchant processes or stores Cardholder data as a result of Internet or mail/telephone acceptance of Visa or MasterCard Card account information. A copy of the complete Visa Cardholder Information Security Standards manual and a Self-Assessment Worksheet can be obtained online at [www.visa.com/cisp](http://www.visa.com/cisp) or from Vendara, and a copy of the SDP provisions can be obtained from Vendara. Visa and MasterCard may impose restrictions, fines, or prohibit Merchant from participating in Visa or MasterCard programs if it is determined that Merchant is non-compliant. Merchant may be required to comply with an audit to verify compliance with security procedures. The following list describes some of the current CISP and SDP program requirements, with all of which Merchant may be required to comply, if applicable to Merchant. (A) install and maintain a working network firewall to protect data accessible via the Internet; (B) keep security patches up-to-date; (C) encrypt stored data; (D) encrypt data sent across networks; (E) use and regularly update anti-virus software; (F) restrict access to data by business “need to know”; (G) assign a unique ID to each person with computer access to data; (H) don’t use vendor-supplied defaults for system passwords and other security parameters; (I) track access to data by unique ID; (J) maintain a policy that addresses information security for employees and contractors; and (K) restrict physical access to Cardholder information. Merchant must also comply with the requirements of Section 10.3 of the Visa Rules in connection with suspected or confirmed losses, thefts, compromises of information, and fraud or laundering associated with information. Please also note that this is not intended to be a complete list, and Merchant remains solely responsible for understanding and complying in full with all of the applicable CISP and SDP requirements.

(ii) Transaction Information. Merchant acknowledges that the sale or disclosure of databases containing Cardholder account numbers, personal information, or other Transaction information to third parties is strictly prohibited by the Rules. Unless Merchant obtains consents from Vendara, and each applicable Association, issuing bank and Cardholder, Merchant must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Transaction (including without limitation, the names, addresses and Card account numbers of Cardholders, copies of imprinted sales drafts and/or credit records, mailing lists, tapes or other media obtained in connection with a sales draft and/or credit record) except for purposes of authorizing, completing and settling Transactions and resolving any Chargebacks, retrieval requests or similar issues involving Transactions, other than pursuant to a court or governmental agency request, subpoena or order. Merchant shall use proper controls for, limit access to, and render unreadable prior to discarding all records containing Cardholder account numbers and Card imprints.

(iii) Merchant may not retain or store magnetic stripe data after a Transaction has been authorized. If Merchant stores any electronically captured signature of a Cardholder, Merchant may not reproduce such signature except upon the specific request of Service Providers. Merchant shall store all media containing Cardholder names, Cardholder account information, and other personal information, as well as Card imprints (such as sales drafts and credit records, auto rental agreements, and carbons) in an area limited to selected personnel and, prior to discarding

any such information, destroy it in a manner that renders the data unreadable. Merchant further warrants and agrees that in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, it will not sell, transfer or disclose any materials that contain Cardholder account numbers, personal information, or Transaction information to third parties, and shall return the information to Service Providers and provide acceptable proof of destruction to Service Providers

(c) Vendara and Merchant each agree to meet all applicable PCI DSS requirements with respect to its performance hereunder.

**22. Taxes.** Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If excise, sale or use taxes are imposed on Transactions, Merchant shall be responsible for the collection and payment thereof. Merchant shall not add any tax to any Transaction unless Applicable Law expressly provides that Merchant is permitted to impose a tax, and any such tax amount, if so allowed, shall be included in the Transaction amount and not collected separately. Service Providers shall be entitled to recover from Merchant any of said taxes paid by it on behalf of Merchant immediately after payment. If either Bank or Vendara is required to pay any taxes, interests, fines or penalties owed by Merchant or imposed on Bank or Vendara as a result of any action or inaction by Merchant, the amount of such taxes, interests, fines or penalties will become immediately due and payable by Merchant to Bank or Vendara. Without limiting the generality of the foregoing, Merchant is solely responsible for, and will pay or reimburse to Bank and/or Vendara any amount, fee, penalty, charge or surcharge imposed or charged by any Association in connection with any action taken by Merchant or failed to have been taken by Merchant, including, by way of example and without limitation: (i) any fee or charge imposed by any Association for monitoring Merchant or Merchant's activities for non-compliance; and (ii) any fine imposed by any Association in connection with Merchant's placement of a surcharge on debit transactions.

**23. Limitation of Liability.** In addition to all other limitations on the liability of Service Providers contained in this Agreement, neither Service Provider shall be liable to Merchant or Merchant's customers or any other person for any of the following:

(a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;

(b) Any loss caused by a Transaction downgrade resulting from defective or faulty Equipment, even if such Equipment is owned by Service Providers;

(c) The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Service Providers or any other person for any reason; or

(d) Interruption or termination of any Services caused by any reason except for failure of Vendara to repair or replace Equipment at Merchant's expense (in which case, any resulting liability shall be for the sole account of Vendara). At no time will Vendara's liability exceed the amount of fees collected or reasonably expected to be collected from Merchant for this delay period.

NEITHER SERVICE PROVIDER SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY EITHER SERVICE

PROVIDER PURSUANT TO THIS AGREEMENT. MERCHANT ACKNOWLEDGES THAT NEITHER SERVICE PROVIDER HAS PROVIDED ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT NEITHER SERVICE PROVIDER HAS ANY LIABILITY WITH RESPECT TO ANY EQUIPMENT. NEITHER SERVICE PROVIDER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. IF THERE ARE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM SERVICE PROVIDERS' PERFORMANCE OR ANY FAILURE TO PERFORM, THE LIABILITY OF EACH SERVICE PROVIDER SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE.

**24. Limitation on Damages.** IN NO CASE SHALL MERCHANT BE ENTITLED TO RECOVER DAMAGES FROM SERVICE PROVIDERS THAT EXCEED THE FEES RETAINED BY SERVICE PROVIDERS PURSUANT TO THIS AGREEMENT DURING THE SIX MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES.

**25. Indemnification.** Merchant agrees to indemnify and hold Service Providers harmless from any and all losses, claims, damages, assessments (sometimes referred to as “fines” or “penalties”), liabilities and expenses, including attorneys’ fees and costs (whether or not an attorney is an employee of Service Providers or Service Providers’ affiliates) arising out of or related to any of the following:

- (a) Merchant’s failure to comply with this Agreement and/or termination of this Agreement as a result of any breach by Merchant;
- (b) Any act or omission of Merchant;
- (c) Merchant’s failure to comply with any Equipment’s user’s guide;
- (d) Merchant’s failure to comply with any Applicable Law;
- (e) The determination by any Association that Merchant has engaged in conduct inconsistent with the Rules or the Data Security Rules (including CISP, SDP, or PCI DSS);
- (f) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
- (g) The fraud or dishonesty of Merchant or Merchant’s employees, licensees, successors, agents and/or assigns;
- (h) Merchant’s selection of an Internet service provider or other telecommunication services service provider;
- (i) The theft of or damage or destruction to any Equipment; or
- (j) Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.

**26. Credit Investigation and Auditing.** Service Providers may audit, from time to time, Merchant’s compliance with the terms of this Agreement. Merchant shall provide all information requested by Service Providers to complete Service Providers’ audit. Merchant authorizes parties contacted by Service Providers to release the credit information requested by Service Providers, and Merchant agrees to provide a separate authorization for release of credit information, if

requested by Service Providers. Merchant shall deliver to Service Providers such information as Service Providers may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. Without limiting the generality of the foregoing, Merchant shall provide to Service Providers its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.

**27. Termination of Agreement by Bank or Vendara; Early Termination Fee.** Bank or Vendara may terminate this Agreement upon at least 30 days' prior written notice to the other parties. In addition, Bank or Vendara may terminate this Agreement immediately upon written notice to Merchant upon the occurrence of any of the following (each, an "Event of Default"):

- (a) Any information concerning Merchant obtained by Service Providers is unsatisfactory to Service Providers, in Service Providers' sole discretion.
- (b) Any act of fraud or dishonesty is committed by Merchant, its employees or agents, or Service Providers believes in good faith that Merchant, its employees or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation.
- (c) Chargebacks, returns, rapid dispute resolutions (RDRs), or reported incidents of fraud or unauthorized activity are excessive, in the opinion of Service Providers.
- (d) There is a breach of any representation or warranty made by Merchant to Service Providers, or Merchant defaults in the performance of any of its obligations under this Agreement.
- (e) Merchant files a petition under any bankruptcy or insolvency law.
- (f) Service Providers determine that the continuation of this Agreement may create harm or the loss of goodwill to Service Providers or any Association.
- (g) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Service Providers hereunder.
- (h) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Service Providers.
- (i) Merchant experiences excessive settlement rejects.
- (j) Merchant fails to engage in Transactions over the course of any thirty-day period.
- (k) Any insurance policy obtained by Bank, Vendara or Merchant relating to Transactions and/or Chargebacks is canceled or terminated for any reason.
- (l) Merchant fails to provide financial statements suitable to Service Providers on request.
- (m) Any Association requests or demands that this Agreement be terminated.
- (n) Vendara does not or cannot perform its duties under this Agreement and Bank determines that it is not feasible to provide the Services contemplated by this Agreement to Merchant. Bank is not obligated to provide replacement Services if Vendara does not or cannot perform.

For purposes of this Agreement, an "Early Termination" shall be (i) a termination of this Agreement by Bank or Vendara following an Event of Default specified above; (ii) a termination of this Agreement by Merchant for any reason whatsoever, other than following written termination notice given by Merchant pursuant to Section 4; or (iii) Merchant's breach of Section 29. The parties agree that the actual damages which will result to Vendara from an Early Termination are not readily ascertainable as of the effective date of this Agreement. In addition, Merchant acknowledges and agrees that in reliance on this Agreement and other long-term

agreements, Vendara will incur additional long-term costs, including without limitation, computer hardware, software, and labor. Accordingly, upon the occurrence of an Early Termination, Merchant shall pay to Vendara, in addition to all amounts owed for the Services provided to Merchant pursuant to this Agreement, an amount equal to the greater of (i) \$595; or (ii) solely to the extent permitted under Applicable Law, thirty percent (30%) of the average total monthly fees paid by Merchant to Service Providers during the preceding six (6) months (or shorter period if this Agreement has not been in effect for six (6) months), times the number of months, or portion thereof, remaining in the term of this Agreement as described in Section 7 of this Agreement. The parties intend that this Early Termination fee be in lieu of Vendara's lost profits for the remainder of this Agreement, but not in lieu of any other damages to which Vendara might otherwise be entitled arising out of your wrongful acts or omissions.

Merchant understands that Bank's role in this Agreement is limited to providing sponsorship for both Vendara and the Merchant, and the receipt, maintenance and settlement of Transaction funds to Merchant. Bank does not provide any other Services under this Agreement, so Bank may terminate this Agreement without liability to Merchant if Vendara does not or cannot perform its duties under this Agreement.

Service Providers may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the date of such Transaction.

In the event Service Providers terminate this Agreement following any Event of Default, Merchant: (i) agrees that Bank may place Merchant on each Association's "Terminated Merchant File" (or any other list or file serving a similar purpose) and that Service Providers shall have no liability for such placement, even in instances where Merchant disagrees with the propriety of such placement; and (ii) agrees to indemnify and hold Service Providers harmless from and against any and all costs, expenses and liabilities (including attorneys' fees) incurred by Service Providers in connection with or arising out of such Event of Default.

Following any bankruptcy filing against or by Merchant, Service providers reserve the right to suspend or discontinue the provision of Services. Merchant must notify Service Providers in writing no later than five (5) days following any bankruptcy filing by or against Merchant.

Credits to the Operating Account and other payments to Merchant are provisional.

The parties acknowledge and agree that Bank is extending financial accommodations to Merchant within the meaning of 11 U.S.C.365 (c) (2) of the Bankruptcy Code as amended from time to time. The right of Merchant to receive any amounts due or to become due from Bank is expressly subject and subordinate to the Chargebacks, recoupment, setoff, lien, and/or security interest rights that are being applied to claims that are liquidated, unliquidated, fixed contingent, matured or unmatured.

**28. Setoff.** In addition to any other legal or equitable remedy available to it in accordance with

this Agreement or by law, Service Providers may set off any amounts due to it against any property of Merchant in its possession or under its control.

**29. Exclusivity.** Subject to any volume limitations imposed by Vendara, Merchant shall submit all Transactions made during the term hereof solely to Service Providers for processing. If Merchant fails to comply with this provision, such failure will be deemed to be an Early Termination. Any exceptions to this exclusive arrangement must be approved by Vendara in advance in writing.

**30. Amendments to this Agreement.** From time to time Service Providers may amend this Agreement as follows:

(a) Service Providers may amend or delete Cards or Services listed in the Schedule of Fees by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Vendara shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Service Providers have sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.

(b) From time to time, Bank and Vendara may change all rates, fees and charges set forth on the Schedule of Fees. Vendara will provide written notice to Merchant of all such amendments. Bank and Vendara may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached or if the risk factors associated with processing Transactions increase (including, without limitation, if Bank and Vendara reasonably determines that Merchant is experiencing excessive Chargebacks, fraud, or excessive settlement rejects). If notice is required, Vendara will give written notice on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement.

(c) Service Providers may amend this Agreement in any manner other than as described in Section 30(a) or 30(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Service Providers in such written notice.

**31. Assignment.** This Agreement may not be assigned by Merchant without the prior written consent of Vendara and Bank. Either Vendara or Bank may assign its rights and obligations under this Agreement to a third party subject to the terms and conditions of one or more separate agreements entered into between Vendara and Bank, and, subject to the terms of those separate agreements, Vendara may replace the existing Bank with another Bank without prior written notice to Merchant. Assignment of this Agreement by either Vendara or Bank shall, subject to the terms of relevant separate agreements entered into between Vendara and Bank, relieve the assigning party of any further obligations under this Agreement.

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

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

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

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

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

**37. Notices.** Except for notices provided by Vendara to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when: (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) business days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed to the address(es) listed on the application to which this Agreement is attached. Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid. Service Providers may, but shall have no obligation to, comply with any notice (*e.g.*, of termination, non-renewal, or change requests) that is not entirely complete. Further, Service Providers shall have the right to rely upon, and shall have no liability for complying with, any notice ostensibly originating from a Merchant agent's email address.

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

**39. Bank/Vendara Relationship.** For purposes of this Agreement and performance of this Agreement by Vendara, Merchant acknowledges that: (i) Vendara is the exclusive agent of Bank; (ii) Bank is entirely responsible for, and in control of, Vendara's performance; and (iii) Bank must approve, in advance, any fee payable to or in connection with any obligation of Merchant arising from or related to performance of this Agreement. Notwithstanding the foregoing, Merchant may

not challenge the propriety of any fee on the basis of Bank's purported failure to approve in advance any such fee.

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

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

**42. Force Majeure.** The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

**43. Cooperation.** Merchant covenants and agrees that, if it is undergoing forensic investigation at the time this Agreement is signed, Merchant will fully cooperate with the investigation until it is completed.

**44. Limited Acceptance.** Visa Rules allow Merchant to become a Limited Acceptance Merchant as part of its use of Service Providers' Services. A "Limited Acceptance Merchant," as defined by Visa, is a merchant that accepts either, but not both, of the following: (a) Visa Credit and Business Category Cards or (b) Visa Debit Category Cards.

Merchant has elected to become a Limited Acceptance Merchant by choosing to accept ONLY (please mark the applicable card category below):

- Visa Credit and Business Category Cards
- Visa Debit Category Cards

Merchant's failure to select one of the Limited Acceptance Categories above means that Merchant has elected to accept BOTH Visa Credit and Business Category Cards and Visa Debit Category Cards.

If Merchant elects to be a Limited Acceptance Merchant, Merchant must properly display the Visa-approved signage that represents the Limited Acceptance Category that Merchant has selected above.

**45. Special Merchant Categories.**

(a) If Merchant is a Health Care Merchant (as defined by the Visa Core Rules and Visa Product and Service Rules (the "Visa Core Rules")), Merchant acknowledges that it must comply with the provisions of Section 5.9.12 of the Visa Core Rules.

(b) If Merchant is a T&E Merchant (as defined by the Visa Core Rules), Merchant

acknowledges that it must comply with all of the provisions of the Visa Core Rules relating to T&E Merchants, including Sections 5.9.6, 5.10.4.1, 7.3.12, and 11.1.3.2. Merchant further agrees that, if it is an International Airline Program Merchant (as defined by the Visa Core Rules), the terms of the attached International Airline Program Merchant Addendum apply.

(c) If Merchant receives BIN information from Service Providers, Merchant agrees that: (i) such information may be used solely for purposes of identifying Visa card product types at the point of sale; (ii) Merchant may not, and will not, disclose such information to any third party; and (iii) Merchant will treat such information as proprietary and confidential information belonging to Visa and with the same degree and case as information labeled “Visa Confidential.”

(d) If Merchant is an Electronic Commerce Merchant (as defined by the Visa Core Rules and Visa Product and Service Rules (2014)—the “VCR”), the following terms apply (references following each requirement indicate whether the requirement is located in the VCR or the Visa Acquirer Risk Program Standards Guide (2010) (VPSG); capitalized terms that are not otherwise defined in this Agreement are used as defined in the VCR):

(i) Merchant must display its consumer data privacy policy on its website. (VPSG)

(ii) Merchant must display the security method it uses for the transmission of payment data on its website. (VPSG)

(iii) Merchant must offer Cardholders a secure transaction method and a data protection method, such as Secure Sockets Layer (SSL), 3-D Secure and/or Verified by Visa. (VPSG; VCR Section 1.5.6.2)

(iv) For Non-Secure Transactions and Non-Authenticated Security Transactions, Merchant must attempt to obtain a Visa Card expiration date and submit it as part of the Authorization Request. (VCR Section 5.8.4.1)

(v) Merchant’s website must contain all of the following:

A. Customer service contact, including email address or telephone number.

B. The address, including the country, of Merchant’s permanent establishment, either:

1. On the same screen view as the checkout screen used to present the final Transaction amount; or
2. Within the sequence of web pages the Cardholder accesses during the checkout process.

C. Policy for delivery of multiple shipments.

D. Security capabilities and policy for transmission of payment card details.

E. In addition, on an Online Gambling Merchant’s homepage or payment page, all of the following:

1. The statement “Internet gambling may be illegal in the jurisdiction in which you are located; if so, you are not authorized to use your payment card to complete this transaction”;
2. A statement of the Cardholder’s responsibility to know the laws concerning online gambling in the Cardholder’s country;
3. A statement prohibiting the participation of minors;
4. A complete description of the rules of play, cancellation policies, and pay-out policies;

- 5. A statement recommending that the Cardholder retain a copy of Transaction records and Merchant policies and rules; and
  - 6. An Acquirer numeric identifier specified by Visa. (VCR Section 5.9.3.1)
- (vi) Merchant must not display the full Account Number to the Cardholder online. (VCR Section 5.9.3.2)
- (vii) If Merchant is a Verified by Visa Merchant, Merchant acknowledges that its Electronic Commerce Transactions are not eligible for Chargeback protection from Chargeback reason codes 75 (Transaction Not Recognized) and 83 (Fraud-Card- Absent Environment) if either:
- A. The Merchant is classified with one of the following MCCs:
    - 1. MCC 4829 (Wire Transfer Money Orders);
    - 2. MCC 5967 (Direct Marketing – Inbound Teleservices Merchant);
    - 3. MCC 6051 (Non-Financial Institutions – Foreign Currency, Money Orders [not Wire Transfer], Travelers’ Cheques); or
    - 4. MCC 7995 (Betting, including Lottery Tickets, Casino Gaming Chips, Off-Track Betting, and Wagers at Race Tracks); or
  - B. Merchant has been identified in the Merchant Chargeback Monitoring Program or Risk Identification Service Online. Merchant remains ineligible while it is in either program, and for an additional 4 months after exiting the program. This condition also applies if Merchant enabled Verified by Visa while identified in either program. (VCR Section 5.9.3.5)
- (viii) Merchant must include the following in its transaction receipts:
- A. Customer service contact;
  - B. Merchant country; and
  - C. Conditions of sale, including return and cancellation policy. (VCR Section 5.10.3.3)
- (ix) In an Authorization Request, Merchant must not transmit Authentication Data specific to one Transaction with another Transaction, except when either:
- A. 2 Transactions are related due to delayed delivery; or
  - B. All items of an order cannot be shipped at the same time. (VCR Section 10.15.3.2)
- (e) If Merchant limits its acceptance of returned merchandise or is an Electronic Commerce Merchant, Merchant must ensure that its return policies are clearly indicated to a Cardholder on the Transaction Receipt or

Location	Required Disclosure	To be used for the following Merchant Policies
Transaction Receipt (all copies, near the Cardholder signature area or in an area easily seen by the Cardholder)		
Website (on checkout screen or in sequence of web pages)	“Click to accept” or other acknowledgment button or	All return/refund policies and other purchase terms and

before final checkout	checkbox	conditions
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**46. Participation in the American Express OptBlue® Program** By checking the “Accept” checkbox next to AMERICAN EXPRESS OptBlue® on [the application], Merchant has elected to participate in the American Express OptBlue program (“American Express Card Acceptance”). In the event of a conflict between any defined terms in this Section 45 and any defined terms in this Agreement, the defined term in this Section 45 shall control. Furthermore, in the event of a conflict between any term in this Agreement, including this Section 45, and any defined term provided by American Express, the defined term provided by American Express shall control. The following terms and conditions apply to Merchant’s participation in American Express Card Acceptance.

(a) The definition of “Association(s)” is changed to read as follows: “Association(s)” means VISA U.S.A., Inc. (“Visa”), MasterCard International Incorporated (“MasterCard”), Discover Financial Services LLC (“Discover”) and American Express Travel Related Services Company, Inc. (“American Express”).

(b) The definition of “Card(s)” is changed to read as follows: “Card(s)” means either a Visa, MasterCard, Discover or American Express credit card, debit card (or other similar card that requires a PIN for identification purposes), or prepaid, stored-value or gift card.

(c) The definition of “Issuer” is changed to read as follows: “Issuer” means American Express or a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards

(d) Merchant authorizes Service Providers and/or their affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant.

(e) Merchant agrees that Service Providers may collect and disclose Transaction Data, Merchant Data, and other information regarding Merchant, and that American Express may use such information: (i) to perform its responsibilities in connection with American Express Card Acceptance; (ii) to promote the American Express Network; (iii) to perform analytics and create reports; and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of American Express Card Acceptance, and important transactional or relationship communications from American Express. American Express may use the information about Merchant obtained in the merchant application at the time of setup to screen and/or monitor Merchant in connection with American Express Card marketing and administrative purposes.

(f) Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Vendara; however, Merchant may continue to receive marketing communication 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.

(g) Merchant acknowledges that it may be converted from American Express Card Acceptance to a direct relationship with American Express if and when its American Express related Transaction volumes exceed the eligibility thresholds for American Express Card Acceptance, meaning Merchant becomes a High CV Merchant. If this occurs, upon such conversion: (i) Merchant will be bound by American Express’s then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

(h) Merchant will not assign to any third party any payments due to it under American

Express Card Acceptance, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future American Express-related Transaction receivables to Service Providers, their affiliated entities and/or any other cash advance funding source that partners with Service Providers or their affiliated entities, without consent of American Express. Notwithstanding the foregoing, Service Providers prohibit Merchant from selling or assigning future American Express-related Transaction receivables to any third party.

(i) Notwithstanding anything in this 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.

(j) By contacting Service Providers, Merchant may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept Other Payment Products.

(k) Service Providers have the right to terminate Merchant's participation in American Express Card Acceptance immediately: (i) if Merchant breaches any of the provisions of this Section 45 or any other terms of this Agreement applicable to American Express Card Acceptance; (ii) if Merchant breaches any provision of the American Express Merchant Operating Guide, or (iii) for cause or fraudulent or other activity, or upon American Express's request. In the event Merchant's participation in American Express Card Acceptance is terminated for any reason or this Agreement is terminated for any reason, Merchant must immediately cease all use of and remove all American Express Licensed Marks from Merchant's website and wherever else they are displayed.

(l) Merchant's refund policies for American Express-related Transactions must be at least as favorable as its refund policy for purchases with any Other Payment Products, and the refund policy must be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law. Merchant may not bill or attempt to collect from any Cardmember for any purchase or payment on the Card unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

(m) Merchant will comply in full with American Express's Merchant Operating Guide (as the same may be amended from time to time and is incorporated here in by reference) (the "MOG"). The current MOG can be found at [https://icm.aexp-static.com/content/dam/gms/en\\_us/optblue/us-mog.pdf](https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf). For the sake of clarity, the term "Rules" specifically includes the MOG.

(n) A copy of the American Express Data Security Requirements (DSR) can be obtained online at [www.americanexpress.com/dsr](http://www.americanexpress.com/dsr). Merchant will abide by and fully comply with the DSR and Payment Card Industry Data Security Standard (PCI DSS). Merchant shall comply with all Applicable Laws and regulations relating to Merchant's business. Merchant will report all instances of a Data Incident immediately to Service Providers after discovery of the incident. Merchant must ensure data quality and that Transaction Data and customer information is processed promptly, accurately and completely, and complies with the American Express Technical Specifications. Merchant is responsible for being aware of and adhering to privacy and data protection laws and provide specific and adequate disclosures to Cardmembers of collection, use, and processing of personal data.