

## MERCHANT AGREEMENT

This Merchant Agreement by and among the BALDWIN COUNTY COMMISSION OF BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama ("County"), having an administrative office located at 312 Courthouse Square Bay Minette, Alabama 36507, ALPHA & OMEGA PROCESSING, LLC., an Alabama corporation ("Processor"), having an office located at 9599 Pleasant Road, Daphne, Alabama 36526, and MERCHANT CHOICE PAYMENT SOLUTIONS/WOODFOREST NATIONAL BANK an Texas corporation, having an office located at P O Box 8339, The Woodlands, Texas 77387.

### WITNESSETH:

WHEREAS, Processor provides services to County in connection with County=s receipt of payments in connection with its governmental activities; and

WHEREAS, County desires to offer to its payors the convenience of making payments to County through the use of credit cards, so long as County receives the full amount of each payment made by use of a credit card, without diminution in respect of processing or interchange fees or charges; and

WHEREAS, Processor is prepared to offer gross payment service on credit card payment transactions by payors to County upon receipt of a convenience fee from the payor on each such transaction; and

WHEREAS, both Processor and County have entered into a Merchant Bank Card Application and Agreement and Additional Terms and Conditions (a "Merchant Agreement") with Merchant Choice Payment Solutions/Woodforest National Bank,

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to the Merchant Agreement and this Addendum agree as follows:

#### **ARTICLE I - DEFINITIONS**

1.1 "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday in the State of Iowa or the State of Wisconsin on which Merchant Choice Payment Solutions/Woodforest National Bank is open for the transaction of substantially all its credit card merchant banking functions.

1.2 "Effective Date" shall mean the later of (i) the date of execution of this Addendum by Merchant Choice Payment Solutions/Woodforest National Bank or (ii) a Business Day specified by Merchant Choice Payment Solutions/Woodforest National Bank in a writing sent to each of the other parties to this Agreement, as the date on which this Addendum enters into force.

1.3 "Notice of Termination" shall mean a written notice, referencing this Addendum, delivered or sent in accordance with the terms of this Addendum by one party to the other parties to this Addendum pursuant to Section 3.3.

1.4 "Section" shall mean one of the sections or subsections of this Addendum, unless the context clearly indicates otherwise.

1.5 "Term" shall mean three (3) years from the Effective Date hereof, unless terminated at an earlier date as herein provided.

1.6 "Termination Effective Date" shall mean the Business Day which is five (5) Business Days after the Business Day on which Merchant Choice Payment Solutions/Woodforest National Bank receives from Processor or County, or on which Merchant Choice Payment Solutions/Woodforest National Bank sends to Processor and County, a Notice of Termination.

1.7 Capitalized terms used in this Addendum and not otherwise defined herein are used with the respective meanings ascribed thereto in the Merchant Agreement.

## **ARTICLE II - MODIFICATIONS OF MERCHANT AGREEMENTS**

From the Effective Date of this Addendum until the Termination Effective Date (such period of time being referred to as the "Term"), the respective Merchant Agreements between and among Merchant Choice Payment Solutions/Woodforest National Bank, County and Processor shall be modified to the extent set forth in this Article II.

2.1 County Sales Drafts. During the Term, notwithstanding Section 8.1 of the County's Merchant Agreement, Merchant Choice Payment Solutions/Woodforest National Bank agrees to credit County's Settlement Account for each Sales Draft which is properly presented by or for County in accordance with the terms of its Merchant Agreement, without

deduction for Discount or interchange fees. County acknowledges and agrees that nothing in this Addendum modifies or diminishes County's obligation under its Merchant Agreement or the Operating Rules for adjustments, Chargebacks, Credit Transactions, or fines arising from or relating to any Sales Draft so presented by or for County.

2.2 Processor Payments. During the Term, notwithstanding any provision of Processor's Merchant Agreement to the contrary, Processor agrees to pay, and authorizes Merchant Choice Payment Solutions/Woodforest National Bank to deduct from any amounts received or held in respect of, or owing to, Processor, an amount equal to the Discount and interchange fees in respect of each Sales Draft presented by or for County under County's Merchant Agreement to which Merchant Choice Payment Solutions/Woodforest National Bank would have been entitled under the terms of County's Merchant Agreement, determined without regard to the effect of Section 2.1 of this Addendum. Processor acknowledges and agrees that, although Processor intends to impose a convenience fee on each payor whose Sales Draft is submitted by or for County to Merchant Choice Payment Solutions/Woodforest National Bank, the payment obligation of Processor to Merchant Choice Payment Solutions/Woodforest National Bank under this Section 2.2 is absolute, subject to no condition precedent or subsequent, and shall be due and payable to Merchant Choice Payment Solutions/Woodforest National Bank whether or not Processor is able to impose on, or collect from, any one or more such payors, any such fee.

### ARTICLE III - MISCELLANEOUS

3.1 References. During the Term, references in the Merchant Agreement of either the County or the Processor to the Merchant Agreement shall be deemed to be references to the relevant document as modified hereby.

3.2 Modifications. Except to the extent expressly modified hereby, each of the parties acknowledges and agrees that the respective Merchant Agreements of the County and the Processor are ratified and confirmed and shall remain in full force and effect. The Merchant Agreement and this Addendum may be modified or amended only by a written document signed by each of the parties hereto.

3.3 Termination. Any party may terminate the Merchant Agreement and this Addendum at any time, with or without cause, by delivering a Notice of Termination to each of the other parties hereto. Such Notice of Termination must be in writing, must reference the Merchant Agreement and this Addendum, and must state that such party is terminating the Merchant Agreement and this Addendum. A Notice of Termination must be sent by the originating party to each of the other parties by first-class mail, postage prepaid, to the other parties at their respective addresses as set forth on the signature pages hereof, or to any other address previously notified in writing by any party to the other parties hereto as being the address at which such party would thereafter receive mail. The Merchant Agreement and this Addendum shall terminate on the Termination Effective Date. Termination of the Merchant Agreement and this Addendum shall have no effect on the rights and obligations of the parties

with respect to Sales Drafts presented by or for County to Merchant Choice Payment Solutions/Woodforest National Bank on or prior to the Termination Effective Date.

3.4 Entire Agreement: Severability; Successors and Assigns. The Merchant Agreement and this Addendum constitute the entire agreement, and supersedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. To the extent a provision of the Merchant Agreement and this Addendum is unenforceable, the same will be construed as if the unenforceable provision were omitted. A successor to or assignee of Merchant Choice Payment Solutions/Woodforest National Bank's rights and obligations under the respective Merchant Agreement between Merchant Choice Payment Solutions/Woodforest National Bank and each of the other parties will succeed to Merchant Choice Payment Solutions/Woodforest National Bank's rights and obligations under the Merchant Agreement and this Addendum.

3.5 Governing Law. The Merchant Agreement and this Addendum shall be governed by, and construed in accordance with, the law of the State of Alabama, without giving effect to the conflict of laws principles thereof.

3.6 Section Headings. Section headings are for convenience of reference only and shall not affect the interpretation of the Merchant Agreement and this Addendum.

3.7 Counterparts. The Merchant Agreement and this Addendum may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Merchant Agreement and this

Addendum by signing any such counterpart. The Merchant Agreement and this Addendum shall be effective on the Effective Date.

3.8 Exclusive Jurisdiction and Venue. Each party agrees that any legal action or proceeding with respect to the Merchant Agreement and this Addendum or the transactions contemplated hereby shall be brought in any court of competent jurisdiction in the State of Alabama in Baldwin County, or in the United States District Court for the Southern District of Alabama, and each party hereby submits to and accepts generally and unconditionally the jurisdiction of such courts with respect to its person and property and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to such party or by registered or certified mail, postage prepaid, to such party at the address set forth for it on the signature page hereof. Each party hereby irrevocably waives any objection to venue of any such lawsuit or proceeding in the above described courts.

3.9 Waiver of Jury Trial. Each of the parties to the Merchant Agreement and this Addendum knowingly and voluntarily waives any right it may have to a trial by jury in any proceeding (whether sounding in contract or tort) which is in any way connected with this Agreement, or the relationship established under it. This provision may only be modified in a written instrument executed by each of the parties hereto.

3.10 No Exclusive Franchise. The Merchant Agreement and this Addendum shall not be interpreted as an exclusive franchise, nor shall the same be interpreted as an irrevocable or exclusive grant of special privileges, immunities or franchise. Notwithstanding

any other provision of the Merchant Agreement or this Addendum, County expressly reserves the right to enter into other agreements with other vendors for the provision of the same or similar services as contemplated hereby, either to the exclusion of or in conjunction with the services which are contemplated to be rendered pursuant to the terms hereof.

3.11 Conflict or Ambiguity. In the event of any conflict or ambiguity between this Addendum and the Merchant Agreement on the Credit/Debit Processing Addendum, the terms of this Addendum shall control.



IN WITNESS WHEREOF, the parties have executed this Agreement on the date

set out adjacent to their respective signatures.

**COUNTY:**

**BALDWIN COUNTY COMMISSION**

**OF BALDWIN COUNTY, ALABAMA,**

**A political subdivision of the State of Alabama**

**Address for Notices:**

**312 Courthouse Square**

**Bay Minette, AL 36507**

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

**FRANK BURT, JR.**

**DATE**

**As Its Chairman**

**PROCESSOR:**

**ALPHA & OMEGA PROCESSING, LLC,**

**An Alabama corporation**

**Address for Notices:**

**3115 Northington Court**

**Florence, AL 35630**

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

**DATE**

**As Its \_\_\_\_\_**

**MERCHANT CHOICE PAYMENT**

**SOLUTIONS/WOODFOREST NATIONAL BANK**

**A Texas corporation**

**Address for Notices:**

**One Heartland Way**

**Jeffersonville, IN 47130**

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

**DATE**

**As Its \_\_\_\_\_**

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that FRANK BURT, JR., whose name as Chairman, of the BALDWIN COUNTY COMMISSION, a county commission and political subdivision of the State of Alabama, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said county commission.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama

My Commission Expires:\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_, of ALPHA & OMEGA PROCESSING, LLC, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Alabama corporation

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, in and for said  
County in said State, hereby certify that \_\_\_\_\_, whose  
name as \_\_\_\_\_, of MERCHANT CHOICE PAYMENT  
SOLUTIONS/WOODFOREST NATIONAL BANK, is signed to the foregoing instrument and  
who are known to me, acknowledged before me on this day that, being informed of the contents  
of the instrument, he/she, as such officer and with full authority, executed the same voluntarily  
for and as the act of said Texas corporation

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_