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## Merchant Credit Card Processing Terms & Conditions

THIS AGREEMENT is made by and between KeyBank National Association, a national banking organization and First American Payment Systems, L.P. ("Bank") and the undersigned "MERCHANT." WHEREAS, Bank is engaged in the business of financial transaction processing which includes, but is not limited to, the processing of and providing for the payment of charges created by the holders of bank cards bearing the Visa U.S.A. Incorporated ("Visa") and MasterCard International Incorporated ("MasterCard") trademarks, as well as certain credit, debit, and other electronic payment cards, each of such cards hereinafter referred to as a bank card; and

WHEREAS, KeyBank National Association has entered into a Transaction Processing Agreement with First American Payment Systems, L.P. ("First American") authorizing First American to perform the processing functions, exercise the legal rights and receive the benefits under such agreement; and

WHEREAS, MERCHANT hereby warrants that it is engaged in a lawful business and is duly licensed under the laws of the state, county, and city disclosed by MERCHANT on the Merchant Application & Agreement, to conduct such business; and

WHEREAS, MERCHANT currently accepts or desires to accept bank cards for its customers' purchase of goods and services it provides or anticipates providing; and

WHEREAS, MERCHANT warrants that neither it nor any of its officers, directors, partners, managers or owners has been terminated for any reason by any bank or any processor in connection with any agreement regarding depositing or processing bank card sales or transactions.

NOW, THEREFORE, in consideration of the representations, covenants, and promises made herein, the receipt and sufficiency of which are acknowledged, Bank and MERCHANT agree as follows:

**1. Agreement.** Reference to "this Agreement" includes all schedules, appendices, Merchant Application & Agreement, additional location documentation, any terms and conditions, and any other documents requested by Bank. MERCHANT acknowledges that Bank will provide transaction processing hereunder through First American or other third parties. MERCHANT agrees that First American may perform the functions of Bank hereunder and that First American may receive the benefits of and enforce the terms of this Agreement against MERCHANT and any third party as an assignee of Bank's rights hereunder, whether or not Bank is a party to such proceeding or transaction.

**2. Additional Locations.** MERCHANT must complete an Additional Location Form for each additional Merchant location. MERCHANT expressly agrees and acknowledges that each Merchant location shall be governed by these Merchant Processing Terms & Conditions and the Merchant Application & Agreement, including and without limitations the rates and fees described therein, as may be amended from time to time.

**3. Acceptance of Bank Cards.** MERCHANT agrees to honor without discrimination all lawful and valid bank cards when properly presented as payment by customers in connection with bona fide, legitimate business transactions arising out of MERCHANT's usual trade or business as disclosed in the Merchant Application & Agreement however, the Merchant may elect to accept card transactions from: (1) All Visa/MasterCard programs, (2) Visa/MasterCard Signature Debit programs only, or (3) Visa/MasterCard Credit/Business programs only. Merchant agrees not to submit any bank card transactions that will violate applicable laws or rules and regulations of Visa and MasterCard. The acceptance of all other credit cards (e.g., American Express, Discover, Diner's Club) is subject to the rules and regulations of the issuing organizations. Such rules and regulations are incorporated herein by this reference.

**4. Completion of Bank Card Sales Draft.** MERCHANT agrees to complete all bank card sales drafts (hereinafter "sales slips") or credit drafts or vouchers (hereinafter "credit slips") in accordance with prescribed rules and regulations of Visa and MasterCard or any other applicable card issuing organization. MERCHANT agrees that in all face-to-face sales to either (i) imprint the sales slip with the embossed data from the customer's bank card and the MERCHANT's imprint plate, or (ii) generate electronically a sales slip by swiping through a POS Terminal a customer's bank card. MERCHANT shall obtain the cardholder's signature on the sales slip and confirm that such signature matches the signature on the card. MERCHANT shall verify that the embossed cardholder number is the same cardholder number contained in the bank card's magnetic strip. MERCHANT agrees not to accept bank cards when the customer's signature does not match the signature on the signature strip or the bank card has expired. Notwithstanding MERCHANT's use of an electronic terminal or similar device through which an authorization may be obtained (a point of sale "POS" terminal), for all face-to-face sales MERCHANT must still obtain the cardholder's signature on the printed sales receipt. Failure to properly follow all terms of this Agreement may result in a delay or denial in processing, a chargeback or sales proceeds not being paid to MERCHANT's account. MERCHANT shall be solely responsible for the proper verification of the cardholder's signature and the expiration date of the bank card, which

obligation shall not be discharged by receipt of an electronic approval code. MERCHANT also understands that transaction authorization is not a guarantee of payment from First American, nor does the transaction authorization prohibit the card holder or card issuer from initiating a chargeback.

**5. Point-of-Sale Devices.** MERCHANT agrees to keep all imprinters and POS terminals used to process bank card transactions in good working order.

**6. Bank Card Authorization.** MERCHANT understands and acknowledges that all transactions must be authorized.

In the event of a POS terminal failure, bank card defect, or communication error, MERCHANT agrees to obtain (i) authorization according to voice back-up procedures furnished by Bank and (ii) in the case of a face-to-face sale, an imprinted sales slip.

**7. Mail Order, Telephone Order, and Electronic Commerce Sales.** Bank discourages MERCHANT from accepting mail, telephone or electronic commerce orders because of the high incidence of fraud associated with such sales. MERCHANT also understands Bank does not allow transactions to be processed for items sold through online auction sites, where bidding for merchandise takes place, due to the high incident of fraud and chargebacks. MERCHANT acknowledges that Bank shall have the right to immediately terminate this Agreement without liability, if MERCHANT has not received previous written approval from Bank to accept mail, telephone or electronic commerce orders or if MERCHANT exceeds the percentage of mail, telephone or electronic commerce orders previously approved by Bank or described in the Visa/MasterCard Sales Profile of the Merchant Application & Agreement. Bank's failure to hold funds, suspend processing or terminate this Agreement shall not constitute a waiver of such rights and such rights may be exercised at any time regardless of when Bank determines to exercise such rights. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.

**8. Transaction Records.** MERCHANT agrees to balance and deliver to Bank all bank card transactions on the same day they are processed.

**9. Payments.** All payments to MERCHANT for legitimate and authorized bank card sales shall be made by Bank through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, Bank cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, the MERCHANT agrees to assist Bank to help resolve any problems in crediting MERCHANT's account. MERCHANT agrees to provide Bank three (3) days prior written notice of any change of account and to abide by Bank's policies regarding changes to accounts. MERCHANT and not Bank or any processor shall be responsible for verifying that account information is correct on the Merchant Application & Agreement, voided check and all account statements. Bank is not responsible for incorrect account numbers. Unless proper notice is provided by MERCHANT to Bank, MERCHANT shall not change any of its accounts. All payments to MERCHANT for the amount of bank card sales properly submitted to Bank shall be less discount, credit chargebacks, reserve amounts, transaction fees, statement fees, and other applicable fees all of which are the responsibility of MERCHANT. Any payment made by Bank to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by Bank. If Bank, as a result of MERCHANT's failure to comply with all terms and conditions under this Agreement, is unable to deliver payments otherwise due MERCHANT, such payments shall be earned compensation of Bank. Fees and other charges due Bank hereunder may be deducted from amounts due MERCHANT or may be debited against any of MERCHANT's accounts at Bank's sole discretion. The discount and other fees may be collected by Bank on a daily, monthly, or other basis, as determined by Bank. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's account, or paid directly by MERCHANT through ACH or otherwise at Bank's sole discretion. MERCHANT must notify Bank in writing of any errors on any statement within 90 days after mailing the first statement on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of Bank and MERCHANT subject to or relating to this Agreement or Bank's obligations hereunder. Save and except Bank's right to funds owed Bank under this Agreement or incorrectly paid to MERCHANT, if no notice of error is received within the 90-day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. Any amount inadvertently or incorrectly paid to MERCHANT may be debited from any account

## Merchant Credit Card Processing Terms & Conditions, continued

of MERCHANT, at the sole discretion of Bank and, in any event, remains an obligation of MERCHANT to Bank payable in full and on demand.

**10. Sales Slip Storage and Retrieval.** Visa and MasterCard require Bank to obtain from MERCHANT and forward to bank card issuers, upon request, copies of sales or credit slips. MERCHANT shall set up a system satisfactory to Bank to store and maintain sales slips and MERCHANT shall deliver to Bank within 24 hours of request copies of any sales slip requested by Bank. MERCHANT shall preserve a copy of the actual paper sales slips, credit slips and, if a mail order or pre-authorized order is involved, the customer's signed authorization for the transaction, for at least three (3) years after the date MERCHANT presents the transaction data to Bank. To assist in the resolution of any dispute and in addition to and without limiting the foregoing provisions of this paragraph, MERCHANT agrees to retain for one (1) year and make available within three (3) days of a request all pertinent records pertaining to each transaction in question, including, but not limited to, itemized bills, authorization requests, and other related documents. MERCHANT shall preserve the confidentiality all information in an area limited to selected personnel and exercise best efforts to maintain these materials in a secure manner. MERCHANT's obligations under this paragraph shall survive following the close of MERCHANT's business or the termination of this Agreement. MERCHANT understands that its failure to respond timely to a retrieval request may result in a chargeback under Visa and MasterCard rules and regulations. All chargebacks and fees shall be the responsibility of MERCHANT and paid by and charged to MERCHANT. In connection with retrieval requests or other administrative requirements associated with any MERCHANT agreement or account, Bank and/or its designated processor may charge retrieval fees and administrative charges which shall be the responsibility of MERCHANT. Bank and/or its designated processor shall determine in their sole discretion the amount of any retrieval fee and administrative charge and when such fee and charge shall be assessed. MERCHANT shall not be entitled to notice of any such fee or administrative charge or with respect to any change in the amount of any fee or administrative charge.

**11. Warranties by Merchant.** MERCHANT warrants that it shall fully comply with all federal, state, and local laws, rules, and regulations, as amended from time to time, including, but not limited to, the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

As to each bank card sale presented to Bank for payment, MERCHANT warrants that:

- (a) The sales slip is valid in form and has been completed in accordance with current instructions, if any, furnished by Bank;
- (b) MERCHANT has delivered MERCHANT's merchandise to the cardholder signing such sales slip or completed MERCHANT's service described on the slip in accordance with MERCHANT's underlying agreement with the cardholder;
- (c) MERCHANT has delivered to the cardholder a true and complete copy of the sales slip or suitable receipt evidencing the transaction involving use of the bank card;
- (d) Each sales slip represents the cardholder's indebtedness to MERCHANT for the amount shown;
- (e) The cardholder has no defense, right of offset, or counterclaim against MERCHANT in connection with the purchase of the goods or services;
- (f) Unless expressly authorized in writing by Bank and as permitted by Visa and MasterCard rules and regulations, MERCHANT has not and shall not make any cash advances to cardholder, either directly or by deposit to the cardholder's account;
- (g) Neither MERCHANT nor any owner, director, officer, member, partner or employee of MERCHANT ("Affiliates") has advanced any cash to cardholder or any person in connection with the purported bank card sale;
- (h) MERCHANT has not imposed any minimum purchase amount nor charged cardholder any separate or additional fee(s) or surcharge or required cardholder to pay any part of any charge imposed on MERCHANT by Bank in connection with the acceptance of a bank card transaction. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying cash, check, or any other means other than by bank card, provided such discounted price is presented as a discount from the standard price available for all other means of payment;
- (i) In any bank card transaction, MERCHANT warrants the customer's true identity as an authorized user of the bank card
- (j) In any face-to-face sale, MERCHANT warrants it has verified the existence of a signature in the bank card signature panel and compared such signature with the signature on the sales slip;
- (k) MERCHANT warrants that bank card has not and will not be used for verification of age;
- (l) MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange bank card account number information in the form of imprinted sales slips, mailing lists, tapes, or any other media obtained by reason of a bank card transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, to Bank, to MasterCard or to Visa, or pursuant to a valid subpoena;
- (m) MERCHANT warrants that it will not submit any transactions that are not in compliance with both this Agreement and any such codes or rules and hereby indemnifies and holds Bank harmless against any loss or damage Bank may suffer as a result of a breach of this or any other warranty or agreement by MERCHANT;
- (n) MERCHANT may display the proprietary names and symbols associated with bank cards only while this Agreement is in effect, or until MERCHANT is notified by Bank or the bank card associations to cease such usage. Bank and the bank card associations shall have the right at anytime to require MERCHANT to cease such usage for any reason, whether or not this Agreement remains in

effect. MERCHANT may use the proprietary names and symbols associated with Bank or with bank cards only to indicate that bank cards are accepted for payment and shall not indicate, directly or indirectly, that Bank, MasterCard, Visa, or any other bank card organization endorses MERCHANT's products or services.

- (o) MERCHANT understands that sales completed at one location may not be processed at another location.
- (p) MERCHANT shall not, under any circumstances, present to Bank a sale which has been split into multiple bankcard transactions.
- (q) If an authorization number is required or requested, MERCHANT warrants it shall use only the authorization number obtained through the Voice Authorization Network phone number provided by Bank. MERCHANT shall not use any number given by the cardholder or any type of number which has been obtained from any other source.

**12. Business Changes.** MERCHANT shall provide at least thirty (30) days written notice for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, address, change of Visa/MasterCard Sales Profile as described in the Merchant Application & Agreement, any ownership change, or transfer or sell of substantially all of the assets of MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, utilize the merchant account to process e-commerce transactions or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining Bank's prior written consent to the change, move, or addition. MERCHANT also agrees that prior to any changes, Bank must first accept the change and confirm such acceptance in writing. MERCHANT acknowledges that the codes of professional responsibility and the rules and regulations of professional associations may apply to the transactions covered by this Agreement. MERCHANT may, however, bring any inconsistency between this Agreement and such codes and rules to the attention of Bank and request a modification to this Agreement to eliminate such inconsistency. Bank may, in its discretion, agree to such modification to the extent it is consistent with Bank policy and in conformity with then existing Visa/MasterCard rules and applicable laws and regulations. Until Bank agrees to such modification, the terms of this Agreement shall remain in place.

MERCHANT shall be responsible for any administrative charges of Bank associated with any change.

**13. Returns and Credits.** MERCHANT shall properly complete a credit slip and deliver one completed copy to cardholder at the time of each return of merchandise or cancellation of sale. Bank shall charge MERCHANT the transaction fee as well as other fees applicable to all credit transactions. MERCHANT shall not, under any circumstances issue: (i) cash or MERCHANT's check for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (ii) credit MERCHANT or its Affiliates for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (iii) a credit slip to a cardholder without having completed a previous purchase transaction with the same cardholder; or (iv) a credit slip to a cardholder for any prior sale or service made or provided at a location other than the location where the credit slip is issued.

With proper disclosure at the time of the transaction where purchased goods or services are delivered to cardholder, MERCHANT may:

- (a) Refuse to accept merchandise in return or exchange and refuse to issue a refund to a cardholder; or
- (b) Accept returned merchandise in exchange for the MERCHANT's promise to deliver goods or services of equal value available from MERCHANT at no additional cost to cardholder.

Proper disclosure shall be deemed to have been given if, at the time of the transaction and prior to obtaining the customer's signature, the following notice appears on all copies of the sales slip in legible letters at least 1/4 inch high and in close proximity to the space provided for the cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY," as applicable, or equivalent language.

**14. Chargebacks.** MERCHANT expressly acknowledges and agrees to any charge or debit made by Bank against any of MERCHANT's accounts as a result of the exercise of chargeback or retrieval rights by a cardholder, issuing bank, processor, or other intermediary pursuant to applicable operating regulations of Visa, MasterCard or other card associations as the same may be in effect from time to time. Without prior notice, Bank shall have the right, at any time, to reduce MERCHANT's bank card sales proceeds received from issuing banks, debit any of MERCHANT's accounts and/or demand immediate payment from MERCHANT through ACH or otherwise for any bank card transaction which is disputed, questioned or returned to Bank by the financial institution or company which has issued the bank card (the "Card Issuer") and to chargeback such sale to MERCHANT in any of, but not limited to, the following situations:

- (a) Where goods originally purchased have been returned to MERCHANT by cardholder and cardholder requested a credit slip and such credit slip was not processed by MERCHANT.
- (b) Where the purchase had not been authorized as required.
- (c) Where sales slip covers goods or services other than those described in the Merchant Application & Agreement.
- (d) Where a cardholder contends or disputes to the Card Issuer that: (i) goods or services were not received by cardholder or by authorized user; or (ii) goods or services received by cardholder or by authorized user do not conform to what was described on the sales slip; or (iii) goods or services were defective or of unsatisfactory quality.



(e) Where original sales slip is not received by Bank from MERCHANT when requested by Bank in accordance with paragraph 10 of this Agreement.

(f) Where sales slip does not contain a transaction date or the face of such sales slip shows that such date or dollar amount has been altered or incorrectly entered.

(g) Where the sales slip delivered to Bank contains the imprint or description of a bank card other than the bank card processed.

(h) Where the sale was generated through the use of an expired bank card.

(i) Where no signature appears on sales slip and the cardholder has represented in writing to Bank or the Card Issuer that the cardholder did not make or authorize the transaction.

(j) Where the sales slip does not contain the embossed legend from a bank card or MERCHANT has failed to obtain proper authorization to complete the transaction or the cardholder has represented in writing to Bank or the Card Issuer that the cardholder did not make or authorize the transaction.

(k) Where the signature on the sales slip is different from the signature appearing on the signature panel of the card or where no signature appears on the signature panel of the card.

(l) Where a Card Issuer or Bank has information that impropriety or fraud occurred at the time of transaction, whether or not such transaction was properly authorized by the Card Issuer or the cardholder participated in or authorized the transaction, or the Card Issuer represents that there is no bank card outstanding with the account number used.

(m) Bank reasonably determines that the transaction record is improper, fraudulent, not a bona fide transaction in MERCHANT's ordinary course of business or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, impropriety, or dishonesty on the part of card user, cardholder, MERCHANT or Affiliates.

(n) In any situation where the sales slip was executed or credit given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT hereunder, or MERCHANT's violation of Visa or MasterCard rules and regulations which has resulted in a sale being charged back by the Card Issuer.

(o) As required by bank card association rules or regulations as they currently exist or as they may be amended from time to time.

(p) In such other circumstances where Bank determines or suspects in its sole discretion that the transaction may result in a chargeback for any reason, whether or not enumerated under this paragraph and whether or not the transaction results in a chargeback.

(q) If with respect to any of MERCHANT's outlets, the ratio of bank card counterfeit and fraud volume to bank card sales volume or the ratio of the number of bank card chargebacks to the number of bank card sales exceeds 1% or credits processed exceed 10% for any given month. In such event, without limiting other rights hereunder, Bank in its sole and absolute discretion may charge back all bank card sales for all locations.

MERCHANT understands that Bank will assess MERCHANT a fee as well as administrative costs as determined by Bank for each chargeback. MERCHANT, whether consented to or not by cardholder, shall not present to Bank for processing any sales slip representing a transaction which has been previously charged back to Bank and returned to MERCHANT. MERCHANT's obligations and Bank's rights under this paragraph shall survive the termination of this Agreement.

**15. Electronic Commerce.** If Bank approves MERCHANT to accept bank cards via the Internet, then MERCHANT will offer secure encryption capability, such as Secure Socket Layer (SSL), to cardholders. MERCHANT agrees that it must also in addition not in lieu of other applicable procedures and rules comply with the following:

(a) Post its privacy and security policy on its website, where such policies shall be clearly marked for consumers to see and clearly review.

(b) Website must include the following information displayed in the following manner: (i) complete description of the products offered, (ii) return merchandise and refund policy, (iii) method for the cardholder to acknowledge their acceptance of the Terms & Conditions for return merchandise or for the refund policy; this acknowledgement should be in a format that complies with association guidelines for proper disclosure, (iv) customer service contact, including email address and/or telephone number, (v) any applicable export or legal restrictions, (vi) delivery policy and (vii) consumer data privacy policy.

In any real-time electronic commerce bank card transaction, MERCHANT will cause the cardholder to enter the verification value located on the back of the card and the cardholder's street number and zip code for address verification. MERCHANT acknowledges and agrees all e-commerce transactions must be submitted utilizing e-commerce certified software acceptable to Bank. MERCHANT acknowledges that the electronic commerce indicator must be used to identify e-commerce transactions in the authorization request and clearing record. Penalties can be assessed for failure to use the correct electronic indicator. MERCHANT acknowledges and agrees they will not submit e-commerce transactions via a point-of-sale (POS) terminal. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.

**16. Recurring Transactions.** If MERCHANT agrees to accept a transaction from a cardholder for the purchase of goods or services which are to be delivered or performed periodically (a "Recurring Transaction"), the cardholder must complete and deliver to merchant a written request for such goods or services to be charged to the cardholder's account periodically. Each of the following provisions shall apply to all recurring transactions:

(a) The cardholder's written authorization must be retained for the duration of the recurring charges and provided promptly in response to a cardholder's request for a copy.

(b) MERCHANT must not complete an initial or subsequent recurring transaction after receiving a cancellation notice from the cardholder, Bank, or another bank.

(c) MERCHANT shall type or print legibly, on the "Signature Line" of the sales draft for recurring transactions, the words "Recurring Transaction."

(d) The cardholder's written authorization must include the amount of the transaction, frequency of the charge and the duration of time for which cardholder's permission is granted.

(e) If the cardholder elects to renew a Recurring Transaction, the cardholder must complete and deliver to MERCHANT a new written Recurring Transaction request.

**17. Improper Transactions; Forward Commitments.** Bank may hold funds, suspend processing, terminate MERCHANT with or without notice, or require MERCHANT to process a refund upon any determination by Bank, in its sole discretion, of improper, fraudulent, suspicious or questionable transactions, including, but not limited to, any transactions for items or services with a future delivery date or forward commitment, transactions that fail to meet the requirements of this Agreement or which vary from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement. Bank may also at its sole discretion block, reject, or deny any transaction for any reason. Bank reserves the right, at its sole discretion, to adjust or amend the Merchant Profile Section of the Merchant Application & Agreement with or without notice to MERCHANT. No discounts or transaction fees are refundable to MERCHANT with respect to improper, fraudulent, suspicious or questionable transactions including, but not limited to, when a merchant processes a refund, or during any period of suspension.

**18. Fraudulent Sales/Factoring.** MERCHANT shall not present to Bank directly or indirectly, any sales slip or transaction record (i) that results from processing debit, credit, directly or indirectly, of any transaction not originated as a result of an act directly between cardholder and MERCHANT, (ii) that MERCHANT processes for any other person or business (iii) that results from a transaction outside MERCHANT's normal course of business as described in the Merchant Application & Agreement, (iv) that MERCHANT knows or should have known to be fraudulent, improper, illegal, or not authorized by the cardholder, or (v) that contains the account number of a bank card account issued to MERCHANT. Should MERCHANT do so, Bank may hold funds, suspend processing or terminate this Agreement following the determination of improper, fraudulent, suspect, or other questionable transactions, including, but not limited to, transactions varying materially in character from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement until such time as questions regarding such transactions have been resolved to the satisfaction of Bank. MERCHANT acknowledges no discount or transaction fees will be refunded as a result of Bank withholding payment to merchant for improper, fraudulent, suspect, questionable transaction or variances in the Merchant Profile section of the Merchant Application & Agreement including returns/credits.

**19. Exclusivity.** MERCHANT agrees that it will not use the service of any corporation, entity or person other than Bank for the processing of bank card transactions.

**20. Rules and Regulations.** This Agreement shall be subject to the bylaws and operating rules and regulations of Visa and MasterCard as amended from time to time.

**21. Cardholder Information Security.** MERCHANT agrees to abide by all Visa and MasterCard Operating Rules and Regulations regarding the safeguarding of cardholder information. MERCHANT agrees not to store the CVV2 or CVC2 security code (the 3-digit code found on the back of bank cards) and to implement the joint Payment Card Industry (PCI) standards in whole and in part as they relate to the Visa Cardholder Information Security Program (CISP), the MasterCard Site Data Protection (SDP) program and any successor programs as the standard for protecting cardholder information. MERCHANT agrees to comply with the PCI, CISP and SDP programs. MERCHANT agrees to immediately contact Bank if any cardholder information has been compromised in any manner. MERCHANT acknowledges and agrees that if any cardholder information is compromised, whether due in part to a third party software provider, VAR, Vendor, or Employee, MERCHANT will be liable for all fines, fees or damages which may be assessed to the Bank by Visa/MasterCard. Technical standards and information on meeting PCI, CISP and SDP can be located at on the web at [www.usa.visa.com](http://www.usa.visa.com) and [www.mastercard.com](http://www.mastercard.com). MERCHANT bears all responsibility for ensuring that it is up to date on all new requirements using these tools and will be liable for all fines and fees assessed by Bank for non compliance of the PCI, CISP and SDP programs.

**22. Assignment.** This Agreement and the rights and obligations underlying this Agreement may be assigned by KeyBank National Association or First American Payment Systems, L.P. This Agreement may not be assigned by MERCHANT.

**23. Term; Termination.** This Agreement shall continue in full force and effect for a term of three (3) years from acceptance by Bank. Thereafter, the Agreement will automatically renew for additional one-year periods unless terminated per this paragraph or other provisions of the Agreement. The initial term of this Agreement shall commence with Bank acceptance hereof (as evidenced by the commencement of Bank's performance hereunder), and shall continue until either (i) terminated by MERCHANT by giving and Bank receiving at least thirty (30) days, but no more than ninety (90) days, written notice of non-renewal to Bank with termination effective at the end of the applicable term or (ii) terminated by Bank, with or without cause or reason, and with or without notice. Termination by First American for any service results in termination of all services. In the event MERCHANT submits bank card transactions to Bank after the date of termination, the bank card transactions may (at

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Bank's option) be processed subject to the terms and conditions of this Agreement. If this Agreement is terminated by MERCHANT without proper notice, Bank will be entitled to recover, and MERCHANT will pay on demand, any and all losses (including consequential damages and loss of profits, costs, expenses and liabilities) incurred by Bank in connection with termination. MERCHANT agrees to pay bank/processor deconversion fees established by Bank, but in no event less than three hundred dollars (\$300.00) for each MERCHANT location. MERCHANT authorizes Bank to debit any account for said deconversion fees, plus any and all losses (including consequential damages and loss of profits, costs, expenses, and liabilities) incurred by Bank in connection with termination. Bank may hold payment of any monies due MERCHANT to ensure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement.

**24. Authorization.** MERCHANT hereby authorizes Bank in accordance with this Agreement to initiate debit/credit entries to any account as indicated herein. The authority to initiate such debit/credit entries shall remain in full force until Bank shall have been paid all fees under this Agreement and all chargebacks and other amounts shall have been paid.

**25. Terminated Merchant File/MATCH.** MERCHANT may be placed on the Combined Terminated Merchant File/MATCH upon violation of any terms of this Agreement or any bank card association rules or regulations. MERCHANT hereby releases, indemnifies, and holds Bank harmless for any loss or damage it may incur as a result of Bank's actions hereunder or as a consequence of MERCHANT being placed by Bank or its agents on the Combined Terminated Merchant File/MATCH or other applicable list where such events are reported.

**26. Attorneys' Fees and Collection Costs.** MERCHANT shall be liable for and shall indemnify and reimburse Bank for any attorneys' fees and expenses incurred by Bank in the enforcement hereof, including but not limited to collecting any amounts or obligations due from MERCHANT. Bank shall assess a collection fee of not less than \$200 in the collections of any obligation or amounts due by MERCHANT.

**27. Rates; Fees; Adjustments.** "Discount Rate" shall mean a percentage of the total sales submitted to Bank for processing. "Transaction Fee" shall mean a fee charged on each sales draft and each credit draft regardless of the total stated. "Authorization Fee" shall mean the fee charged on each transaction attempted whether approved or declined and whether or not the sale was actually charged. A batch settlement fee will be charged on all batch settlements. "Per Item Fee" shall mean the fee charged on each settled Check Card transaction. The Visa/MasterCard Credit Card Discount rate listed on the Merchant Application & Agreement applies to "Qualified Transactions" only and shall apply to Credit Card transactions. The Visa/MasterCard Check Card Discount rate listed on the Merchant Application & Agreement applies to "Qualified Transactions" only and shall apply solely to Check Card transactions. Qualified Transactions are those in which the card was magnetically read and an authorization was obtained electronically, the card was issued by a bank within the United States, the transaction was settled on the day of the sale and the transaction meets all other requirements imposed by the bank card associations. Other transactions have higher Discount Rates and are categorized as "Mid-Qualified" or "Non-Qualified" transactions. Mid-Qualified transactions include those key entered, the authorization was obtained electronically, the transaction met the requirements imposed by the bank card associations or settled more than one (1) business day following the bank card transaction date. Non-Qualified transactions include those where no authorization was obtained, the authorization was obtained by calling a voice or Voice Recognition Unit (VRU) authorization number, the transaction was settled more than two (2) business days after the bank card transaction date, the credit card was issued by a bank outside the United States, the bank card was issued for business procurement purposes or the transaction did not meet the requirements imposed by the bank card association for the transaction to be eligible for a lower Discount Rate.

If you are a Mail Order Telephone Order or E-Commerce merchant, the bank card associations require additional data elements to be submitted as a part of the transaction record in order for the transactions to qualify for the lowest possible discount rate. Failure to submit the additional data elements or to meet all other requirements imposed by the bank card associations will result in the payment of a higher discount rate.

If you have signed a Monthly Minimum Merchant Application & Agreement, this amount shall not be less than \$25 per month.

If you have signed an Annual Fee Merchant Application & Agreement, the amount shall not be less than \$95.00 per year and will be collected via ACH transfer within sixty days from the approval date of this Agreement and on the first business day of the anniversary month each year thereafter. Annual fees may be increased upon thirty days written notice and shall apply to each Merchant location.

Bank shall have the right to adjust charges as necessary to offset any direct or indirect increase to Bank in the costs of providing services hereunder including, but not limited to, costs associated with collection and administration of chargebacks, fees charged by Visa or MasterCard, fees charged by other providers in processing, increases in the cost of living index or changes in rules, regulations, or operating procedures of Visa and MasterCard or other applicable bank card organization, charges for changes to merchant accounts or information, adjustments in foreign exchange rates, or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increases in communication costs charged to Bank by common carriers. Such charges shall, without prior notice, become effective as of the date of charge. Upon any request from MERCHANT for copies of file information, account research, or other information, Bank may charge fees for such

services, including per hour fees as determined by Bank. Without limiting the foregoing, Bank shall have the absolute and unconditional right to increase Discount Rates, Transaction Fees, Authorization Fees and Per Item Fees for any reason when deemed appropriate in Bank's sole discretion. Bank may charge a fee not less than thirty dollars (\$30.00) for a change of depository bank account or a change of name by MERCHANT.

POS Terminal replacement services (equipment swaps) shall consist of replacement or repair, at Bank's option, of MERCHANT'S processing equipment (terminal, printer, pinpad or check reader.) Bank will perform this service if (i) MERCHANT has honored and paid all amounts owed to Bank including, but not limited to, all amounts owed for Chargebacks and ACH rejects, (ii) the equipment has been verified to be in working order with Bank (verification of this shall occur by MERCHANT submitting a transaction to Bank using the equipment that is being requested to be replaced). Bank, at its option, may use refurbished equipment for replacement and at Bank's sole discretion may substitute comparable equipment. Bank shall charge a fee not less than fifty dollars (\$50.00) for shipping and handling on equipment exchanges or swaps and a fee not less than one hundred seventy-five dollars (\$175.00) for all wireless equipment. MERCHANT is required to return all defective equipment replaced by Bank to Bank. Bank may assess a restocking fee of not less than thirty-five dollars (\$35.00) on all returned equipment. If equipment is not returned, Bank, at its sole discretion, may assess a fee of not less than four hundred dollars (\$400.00) for each piece of equipment not returned and a fee of not less than eight-hundred (\$800.00) for each piece of wireless equipment not returned. Bank reserves the right to assess a fee, to be determined by Bank, for equipment upgrades when compatible equipment is not available or when MERCHANT'S existing equipment is obsolete or no longer supported by Bank.

**28. Variances.** MERCHANT acknowledges that bank, at its sole discretion, may hold/delay funds, suspend processing, require MERCHANT to run a return/credit on a sale, withhold settlement for a period of up to 180 days, or terminate this Agreement, with or without notice if there exist variances from the information, amounts or percentage included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement or if bank determines that any transaction could result in a detriment to the Bank. All determinations shall be made by and at the discretion of Bank. MERCHANT shall immediately contact Bank in writing if variances occur from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement. For purposes hereof, Bank's determination shall be binding upon MERCHANT. MERCHANT hereby releases, indemnifies and holds Bank harmless for any losses or damage it may incur as a result of Bank's actions hereunder, or as a consequence of MERCHANT'S funds being held or processing suspended due to variances from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement.

**29. Credit Card/Money Laundering.** Merchant agrees to abide by all local, state, and federal laws and statutes and Visa/MasterCard regulations regarding Credit Card/Money Laundering. MERCHANT acknowledges that it may only enter transactions into the credit card system if (i) transactions are through an approved merchant account for sales which are originally generated by merchant, (ii) transactions are between itself and a bona fide cardholder, and (iii) transactions are submitted from MERCHANT'S own accounts. Bank reserves the right to terminate this Agreement, with or without notice, if Bank reasonably believes merchant is in violation of any of the above.

**30. Merchant Reserve Account.** Bank may require the MERCHANT or any guarantor to establish a reserve account against current and future indebtedness for any reason. Any reserve will be held by Bank for a period of time as is consistent with Bank's liability. Bank may immediately estimate the amount of the potential losses, fees, and costs and require MERCHANT or any Guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. Failure to fund the reserve may result in immediate termination of the Agreement.

**31. Guarantor.** Any Guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that Bank may require performance of any obligation of MERCHANT hereunder directly from Guarantor.

**32. Amendments.** Bank has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than 30 days from date of notice.

**33. Taxes.** Merchant shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

**34. Arbitration.** Except for any matter under the jurisdiction of and brought by a party in small claims court, on an individual basis, without resort to any form of class action or joinder or consolidation of claims, any dispute, controversy or claim arising out of or relating to this Agreement, including any breach, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

**35. Force Majeure.** The Bank is released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any acts of any other party or third party or acts of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, software failure, program failure, network problem, sabotage, war, military operation, national

emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or Bank's compliance therewith or government proration, regulation, or priority, or any other cause beyond Bank's reasonable control whether similar or dissimilar to such causes.

**36. Indemnification.** Merchant hereby releases, indemnifies and holds Bank harmless for any losses, claims, costs or damages to Merchant or any third party as a result of Bank's acts or omissions under this Agreement, including, as a consequence of Bank's own negligence.

**37. Limitation of Damages.** Bank shall not be liable for special, consequential, exemplary, or punitive damages. In no event shall Bank's cumulative liability to MERCHANT hereunder, including as a result of Bank's or any processor's own negligence, breach or error, exceed one-hundred fifty dollars (\$150.00). Merchant acknowledges and agrees that Bank shall not be liable for losses, claims, or damages that arise as a result of acts or omissions, including, but not limited to, those constituting fraud, misrepresentation, misconduct, or negligence committed by any of Merchant's employees, representatives or affiliates in connection with or relating to the execution, delivery or performance of the Merchant Application and Agreement/Merchant Processing Terms and Conditions, whether such acts or omissions were known or unknown by Bank.

**38. Waiver. The parties and any Guarantor expressly waive the right, and agree not to bring or participate in any class action or joinder or consolidation of claims with respect to any dispute under or relating to this Agreement, including in any arbitration.**

**39. Disclaimer. Bank disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. MERCHANT acknowledges that the service may not be uninterrupted or error free.**

**40. Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state, without regard to the conflicts of law principles of such state.

**41. Severability.** In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the illegal, invalid or unenforceable provision is modified to give effect to the original intent consistent with being valid and enforceable under applicable law.

**42. Counterparts.** This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

**43. Notices. If to Bank,** all written notices under this agreement shall be delivered to:

First American Payment Systems  
201 Main Street, Suite 1000  
Fort Worth, TX 76102

**If to Merchant,** the proper notice shall be the address stated on the records of Bank. Notice to Merchant may be by letter, facsimile and/or the Monthly Merchant Statement.

If such transmitted notice is by Merchant to Bank, the original of any communication shall also be mailed to Bank on the date of the transmission and it shall not be deemed served until the mailed copy is received and confirmed by Bank.

**44. Member Bank Disclosure.** The responsibilities listed below do not supersede terms of the Merchant Application & Agreement or the Merchant Terms & Conditions and are provided to ensure MERCHANT understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the merchant have any problems.

(a). Member Bank (Acquirer) Information:

Acquirer Name: Key Bank, N.A.  
Acquirer Address: 4910 Tiedeman Road, Brooklyn, OH 44144  
Acquirer Phone: 216-813-8444

(b). Important Member Bank (Acquirer) Responsibilities:

- (i.) A Visa Member is the only entity approved to extend acceptance of Visa products directly to a Merchant;
- (ii.) A Visa Member must be a principal (signer) to the Merchant Agreement;
- (iii.) The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply;
- (iv.) The Visa Member is responsible for and must settle funds with the merchant;
- (v.) The Visa Member is responsible for all funds held in reserve that are derived from settlement.

(c). Important Merchant Responsibilities:

- (i.) Ensure compliance with cardholder data security and storage requirements;
- (ii.) Maintain fraud and chargeback below thresholds;
- (iii.) Review and understand the terms of the Merchant Agreement;
- (iv.) Comply with Visa Operating Regulations.

**45. Entire Agreement Changes.** This contains, and any applicable Supplements contain, the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by Bank.