ARTICLE I - DEFINITIONS

1.1 “Account” means a commercial checking or demand deposit account maintained by Merchant referred to in Section 5.16 for the crediting of collected funds and the debiting of fees and charges under this Agreement.

1.2 “ACH” means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.

1.3 “Agreement” means the Application Form, these terms and conditions, any supplementary documents referenced herein, and valid schedules and amendments to the foregoing.

1.4 “American Express” means the Cards bearing the Marks of, and Card Brand operated by, American Express Travel Related Services Company, Inc. or its affiliates.

1.5 “Application Form” or “Merchant Application” means the ISO application form completed by the Merchant.

1.6 “Authorization” means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.

1.7 “Card” means (i) a valid credit card in the form issued under license from Visa U.S.A., Inc. Visa International, Inc., Discover, MasterCard International, Inc., American Express, or UnionPay; or (ii) any other valid credit card accepted by Merchant by agreement with Servicer.


1.9 “Card Issuer” means the financial institution or company which has provided a Card to a Cardholder.

1.10 “Card Not Present (CNP)” means that an Imprint of the Card is not obtained at the point-of-sale.

1.11 “Cardholder” (sometimes referred to as “Card Member” in certain Card Brand materials) shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.

1.12 “Cardholder Information” means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder’s social security number, driver’s license or other identification number or credit or debit card number, or other bank account number.

1.13 “Chargeback” means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Servicer by a Card Issuer because such item does not comply with the applicable Card plan’s operating regulations.

1.14 “Credit Voucher” means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.

1.15 “Imprint” means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.

1.16 “Mid or Non- Qualifying Transaction” means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Brand for Merchant’s standard card industry code and which may be charged fees as set forth in Schedule A.

1.17 “mPOS” means any mobile point of sale, including smartphones, tablets, or any other dedicated wireless devices that perform the functions of a cash register or electronic point of sale terminal.

1.18 “ISO Marks” means the names, marks, designs, slogans, signs, acronyms and other insignia (whether registered or unregistered) used or to be used by ISO including all variations thereof and amendments thereto from time to time.

1.19 “Public Announcement” means disclosure in a press release reported in the associated press or comparable national news service or in a document publicly filed by ISO.

1.20 “Sales Draft” means the paper form, whether electronically or manually imprinted, evidencing a sale Transaction.

1.21 “Transaction” means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Servicer for collection.

1.22 “Voice Authorization” means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

ARTICLE II - CARD ACCEPTANCE

2.1 Honoring Cards.

Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Brand rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant’s election is set forth in the Application Form. Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card.

Merchant may not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a Cardholder to pay any charge or price as a condition of sale that is not also required from a customer paying cash. Notwithstanding the foregoing sentence, Merchant may impose a surcharge on certain Card Transactions, but only where permitted by federal law, state law and the Card Brand rules. Merchant (and not Servicer) is solely responsible for ensuring that it is permitted by federal law, state law and the Card Brand rules to impose a surcharge. Merchant may be required to provide notification to the Card Brands if it imposes a surcharge and hereby authorizes Servicer to provide such notification and furnish any necessary documentation, on Merchant’s behalf, to the Card Brands.

However, Merchant may not, by this term, be prevented from offering discounts to Cardholders for cash purchases. Merchant may not charge a surcharge for a Transaction (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

2.2 Advertising.

Merchant will prominently display the promotional materials provided by Servicer in its place(s) of business. Merchant’s use of promotional materials and use of any trade name, trademark, service mark or logo type (“Marks”) associated with a Card is limited to informing the public that the Card will be accepted at Merchant’s place(s) of business. Merchant’s use of Marks is subject to the Servicer’s direction. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately ease use and return any inventory to Servicer upon termination thereof. Merchant may not use any promotional materials or Marks associated Visa, American Express, Discover, MasterCard and UnionPay in any way which suggests or implies that either endorses any goods or services other than payment Card services. Merchant is required to display UnionPay service hotline at Merchant’s place of business.

2.3 Card Acceptance.

When accepting a Card, Merchant will follow the steps provided by Servicer for accepting Cards and will: (a) determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder’s account; (c) unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order, (d) obtain an Imprint of the Card including embossed data from the merchant imprinter plate, and (e) obtain the Cardholder’s signature on the Sales Draft and compare that signature to the signature on the Card; (f) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (g) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) offer the Sales Draft to Servicer for purchase according to Servicer’s procedures and the terms of this Agreement; and (g) make a Card Imprint, if the Transaction is not based upon a mail, internet, phone or pre-authorized order.

2.4 Authorization.

Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Servicer’s designated authorization center and will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from Servicer’s authorization center unless Merchant intends to submit to Servicer a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. The Merchant shall not use Sales Drafts (paper or electronic), for purposes outside of the scope of the Merchant Agreement, nor shall a third party not included in the agreement be allowed to use them. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder’s identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Servicer may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization or approval code has been recorded on the Sales Draft; (b) if Servicer determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Servicer has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Servicer, including Address Verification System processing and CV2/CVC2/CID processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that the use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.

2.5 Retention and Retrieval of Cards.

Merchant Agreement

This Merchant Agreement contains the terms and conditions under which Servicer, defined herein below, and/or other third parties will provide services to you (the “Merchant”) and includes the Merchant Application signed by Merchant. For the purposes of this Agreement Nuvei Technologies Inc. and Finical Inc. shall be referred to hereinafter as “ISO”.

PART ONE: CARD ACCEPTANCE – TERMS AND CONDITIONS APPLICABLE TO MERCHANTS ACCEPTING VISA, DISCOVER, MASTERCARD, AMERICAN EXPRESS, TRAVEL RELATED SERVICES COMPANY, UNIONPAY AND ANY OTHER CARD

Subject to the requirements of applicable Card Brand rules, ISO and Wells Fargo Bank, N.A. may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Wells Fargo Bank, N.A. may jointly or individually assert or exercise the rights or remedies provided to the Servicer hereunder. For purposes of Part One of this Agreement, Wells Fargo Bank, N.A. and ISO are collectively referred to hereinafter as the “Servicer”.

Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeited, fraudulent or stolen. Merchant's obligations under this section, as well as authorize a breach of the privacy or any injury to persons or property, and Merchant will hold Servicer harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.

2.6 Multiple Transaction Records; Partial Consideration.

Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.

2.7 Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders.

Unless Merchant has been approved by Servicer to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Servicer determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the same day of processing may be charged back to Merchant and all funds therefrom held as provided in Article IV. Unless approved by Servicer, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an imprint, but in such case Merchant will create a sale slip containing Cardholder data, an Authorization number, the sale amount and the letters “MO”, “TO” or “PC” to be printed. Receiving Bank will revalidate the Merchant's liability of Chargeback for any Transaction for which the Merchant did not obtain an Imprint or the Cardholder's signature.

2.8 Lodging and Vehicle Rental Transactions.

Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any prepayment agreement or agreement for the Sales Draft amount for any lodging or vehicle rental Transaction Merchant must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enrolling the terms and conditions of its preauthorization form through means other than a Card Transaction.

2.9 Returns and Adjustments; Credit Vouchers.

Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Brand's regulations. Merchant will disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. Any change in Merchant's return or cancellation policy must be submitted in writing to Servicer not less than 14 days prior to the change. Servicer may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Servicer has not been notified as required herein.

2.10 Cash Payments.

Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card or receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.

2.11 Cash Advances, Scrip Purchases.

Merchant may not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and may not accept any Card at a scrip terminal, and either action will be grounds for Servicer's immediate termination of this Agreement.

2.12 Duplicate Transactions.

Merchant may not deposit duplicate Transactions. Servicer may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.

2.13 Deposit of Fraudulent Transactions.

Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. Merchant deposits any prohibited Transaction, Servicer may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to Visa, American Express, Discover, MasterCard and UnionPay under Section 4.04. Merchant's employees' actions are chargeable to Merchant under this Agreement.

2.15 Merchant violations.

The following actions are prohibited for Merchant: (i) alteration of the amount on transaction receipts, split transactions, cash out, acceptance of credit cards listed in the card recovery bulletin, excessive usage above the authorized limit, insufficient signature and expiry date checking, refund in cash, late presentation, submit false transactions to Acquirer, obtain extra credit from a Card Issuer by using transaction types of pre-authorization, purchase cancellation & purchase cancellation reversal, pre-authorization completion cancellation & pre-authorization completion cancellation reversal etc.

2.15 Collection of Pre-existing Debt.

Merchant may not prepare and present to Servicer for purchase any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to or held in trust for the merchant by a third party; (b) arising from the sale of merchandise or services at a lower price or at a lower price that was the subject of a prior transaction; (c) arising from the sale of merchandise or services that satisfy miscellaneous obligations; (d) arising from the sale of merchandise or services to a Cardholder of any other party; and (e) arising from the sale of merchandise or services that is different than that of the Cardholder. Merchant will not, under any circumstances, refuse, sell or otherwise disclose any Cardholder Information to any person other than Servicer or the applicable Card Brand, except as expressly authorized in writing by the Cardholder, or as required by law.

(a) Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will include the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm to a Cardholder; and (d) notify Cardholder in the event of unauthorized access to or use of Cardholder Information that could result in substantial harm to a Cardholder.

(c) Annual Certification. Merchant will provide an annual certification to Servicer if requested by Servicer (in court form acceptable to Servicer) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Brand requirements such as PCI, SDP, CSIP, DSR and DISC. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.

(d) Information Use Limitations. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Servicer's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or may be required by legal process or applicable federal and state laws, rules, regulations and guidance and have entered into a written agreement with Merchant containing terms and conditions governing their use and handling of such data to the extent necessary to comply with the foregoing data security provisions including compliance with Card Brand rules, regulations or bylaws.

(e) Response to Unauthorized Access. Merchant will notify Servicer within 24 hours after it knows of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Servicer, the issuing bank of any Cardholder, and their regulators and the Card Brands deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, allowing Servicer and Card Brands to use its risk information for normal business practices, preserving records and other evidence and compiling information to enable Servicer and the issuing bank(s) or the Card Brands to investigate the incident and provide assistance and cooperation to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Servicer's acts or omissions, Merchant will bear the cost of notifying affected Cardholder. Servicer has the right to immediately stop all transactions, enforce rectification and terminate the Merchant Agreement immediately for cause if Merchant breaches the transaction security protocol or use of POS without the Bank's authorization.

(f) Miscellaneous. Merchant may not make a claim against Servicer or hold Servicer liable for the acts or omissions of other merchants, service providers, Card Brands, financial institutions or others that do not have a written contractual relationship with Servicer or over which Servicer has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section 2.15 and each of its provisions will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card data including without limitation CVV2/CVC2/CID data, PIN data, address verification data or any other information protected by a Card Brand's Cardholder Data Security Program or information regarding Merchant and Merchant's Transactions to any Card Brand, and that such Card Brand may use such information to perform its responsibilities in connection with its duties as a Card Brand, promote the Card Brand, perform analytics and create reports, and for any other lawful
business purposes, including commercial marketing communications purposes within the parameters of Card Brand Card acceptance, and transactional or relationship communications from a Card Brand. A Card Brand may use the information about Merchant obtained in this Agreement at the time of setup and/or monitor Merchant in connection with the Card Brand marketing and administrative purposes. Merchant agrees it may receive messages from a Card Brand, including important information about Card Brand products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may also be reached by wireless telephone number and the communications sent may include automated short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

2.16 Compliance with Card Brand Rules.

Merchant will comply with and conduct its Card activities in accordance with all applicable Card Brand rules and regulations. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Brand and industry databases, including the Consortium Merchant Negative File (CMNF), the Change ownership or terminated Merchant list, and the Merchant Alert to Control High Risk Merchants file (“MATCH”). Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) establish a minimum or maximum transaction volume, average, or maximum ticket; (c) changes its return policies or to another fulfillment house different from those identified in Merchant Application; or (g) changes to its Account. Merchant will notify Servicer promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant’s failure to provide notice as required above may be deemed fraud or prohibited Transaction or is not being deposited on behalf of any business purposes. Merchant agrees it may receive messages from a Card Brand, including important information about Card Brand products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may also be reached by wireless telephone number and the communications sent may include automated short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

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connection with this Agreement was not true or accurate when given; (xi) Merchant has defaulted on any agreement it has with the Servicer; (xii) Merchant is served any legal process seeking to attach or garnish any of Merchant's funds or property in Servicer's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiii) any Card Brand has revoked, withdrawn, or altered any Card or Card Brand right, benefit, or privilege; and (xiv) any circumstance arises which is likely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Servicer.

Immediately after Merchant receives the request by Servicer, Merchant will provide to Servicer either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Servicer reasonably requests to meet Service's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

5.6 Compliance with Law.

Merchant will comply with all laws applicable to Merchant, Merchant's business and any Card Transaction; including, without limitation all state and federal consumer credit and consumer protection statutes and regulations.

5.7 Fees and Charges.

Merchant will pay to Servicer the fees and charges set forth in Schedule A including any additional charges applied to Transactions that fail to meet Card Brand requirements for the lowest interchange levels. "Cost Plus Surcharge", as appears in Schedule A, is calculated by: (i) the interchange fee; plus (ii) applicable surcharge fees; plus (iii) up to 100 basis points for Card Transactions and 100 basis points for debit/credit Card Transactions (as the case may be); plus (iv) access fees, dues and assessments as determined by Servicer.

Where applicable, Servicer shall also pay the following fees:

- **Voice/RU Authorization:** $0.95 per authorization request; 
- **ACH Modifications:** $25.00 per event; 
- **ACH Return:** $25 per return; 
- **Operator Assisted Voice Auth.:** $2.95 per call; 
- **Dispute Resolution Fee:** $25; 
- **Third Party Helpdesk Call:** $5.00 per call; 
- **Unsupported Terminals:** $20 per call.

**Security/Compliance Fee:** $139.80 annually; if applicable; 
**Handling Fee:** $69 for accounts approved yet inactivated; 
**Monitoring Minimum:** $25 shall apply; 
**Pass-Through Brand fees:** Include Visa Acquirer Processing Fee, Visa Misuse of Auth. fee, Visa International Service Assessment (ISA), Visa Zero Floor Limit fee, Visa International Acquirer fee, MC Acquirer Program Support fee, MC Cross Border fee, 
and the PIN Network Access and Brand Usage (NASDAQ) fee. Account will be debited through the disbursement for all Cards and other Merchant Transactions in the process of being collected and when the chargebacks or Chargeback prevention has been removed by Servicer or if Merchant appears on any Card Brand's security list.

Where applicable, Merchant shall pay the following fees:

- **Technical Specifications of Non-Compliance Fee:** 0.75% of the face amount of the Charge; 
- **Data Quality Fee:** 0.75% of the face amount of the Charge. 
- **Data Incident Non- Validation Fee:** 1.0% of the face amount of the Charge. 
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5.8 Modifications to Agreement. This Agreement is subject to amendment to conform with Card Brand regulations, as amended from time to time. From time to time Servicer may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by sending written notice to Merchant of the amendment prior to the effective date of the amendment, and the amendment will become effective unless Servicer receives Merchant’s notice of written termination of this Agreement before such effective date. Amendments required due to changes in either Card Brand’s rules and regulations or any law or judicial decision may become effective on such shorter period of time as Servicer may specify if necessary to comply with the applicable rule, regulation, law or decision. Thereafter, this Agreement shall be automatically extended an additional three years in the event of a price decrease or the introduction of a new product or service used by Merchant (including any equipment upgrade), effective as of the date such price change is implemented or new product-service accepted by Merchant.

5.10 Warranty Disclaimer. SERVICER MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND SERVICER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.11 Limitation of Liability. Servicer’s liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with the transaction, less any applicable fees and expenses. Servicer is not liable at all for any incidental or consequential damages whatsoever. Merchant waives all claims against Servicer for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys’ fees) of any kind unless Merchant provides written notice to Servicer of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. In addition to what is provided herein, Servicer’s cumulative liability towards Merchant for any reason whatsoever shall not exceed the amount of fees received by Servicer pursuant to this Agreement, for services performed in the immediately preceding six (6) months. Merchant will indemnify and hold Servicer harmless from any claim relating to any Sales Draft paid for by Servicer as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages or of losses that Merchant may incur as a result of Merchant’s breach of this Agreement. Further, Merchant will reimburse Servicer for all expenses and costs, including attorneys’ fees, that Servicer may incur in connection therewith.

5.12 Waiver. Servicer’s failure by Servicer to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.

5.13 Written Notices. All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via facsimile or email and the sender obtains a fax or email confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows:


(b) If to Merchant: At the facsimile number, email address or address provided as the billing address, and to the contact listed on the Merchant Application.

A written notice shall also be deemed sent and received if notification is given to the Merchant: (i) through any technological platform offered by Servicer and used by Merchant to access its account; or (ii) by way of Interchange billing statement, whether such billing statement is sent via a technological platform or mail.

5.14 Choice of Law; Jurisdiction. This Agreement shall be governed exclusively by Texas law, without regard to its choice of law provisions. Merchant agrees that any legal action or proceeding arising out of or relating to the relationship between Servicer and Merchant shall be instituted solely in the state or federal courts of the State of Texas and hereby submits to the jurisdiction of such courts in any such action or proceeding. Merchant hereby waives releases and agrees not to assert any rights it may have under any foreign law or regulation that would be inconsistent with the terms of this Agreement as governed by Texas law. Merchant also waives its right to a trial by jury of any disputes arising from its relationship with Servicer.

5.15 Entire Agreement; Assignability. This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Servicer and Merchant. This Agreement may not be assigned by Merchant, directly or by operation of law, without Servicer’s prior written consent. Servicer may assign this Agreement, without notice to Merchant. This Agreement will be binding upon and inure to the benefit of the parties respective heirs, personal representatives, successors and assigns.

5.16 Deposit Account. Servicer will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Servicer with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments for Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Servicer. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Servicer a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Servicer to protect its security interests therein.

5.17 Credit and Financial Inquiries; Additional Locations; Inspections. Servicer may make, at any time, any credit inquiries which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchants’s deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. Upon Servicer’s request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Servicer may consider necessary to perform initial or periodic reviews of Merchants’s financial viability and business practices. Merchant may accept Cards only at locations approved by Servicer. Additional locations may be added, subject to Servicer’s approval. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Servicer, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this paragraph may be deemed to waive Merchant’s obligation to comply in all respects with the terms of this Agreement. Servicer, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with federal and state laws, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing, and data security provisions, including Card Brand compliance. Merchant will make available its records maintained and produced under this Agreement, and Merchant’s facilities will be made accessible, upon notice during normal business hours for examination and audit. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records to any person that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.

5.18 Marketing of Payment Card Services. From time to time, Servicer may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. If such offers are made, Merchant may decline the offers or be deemed to have accepted the offers and be liable for payment therefor.

5.19 Force Majeure. The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party’s compliance therewith, or governmental regulation or priority, or any other similar cause beyond either party’s reasonable control.

5.20 No Third Party Beneficiary. No other person or entity may be deemed to be a third party beneficiary of this Agreement.

5.21 Exclusivity. Merchant agrees that Servicer will be Merchant’s exclusive acquirer for Visa, American Express, MasterCard and Discover transactions. Accordingly, Merchant shall not use the services of any other Servicer, corporation, entity or person other than Servicer for authorization and/or processing of payment transactions during the term of this Agreement.

5.22 Inconsistency. In the event of any inconsistency between the terms of this Agreement and the Merchant Application, the provisions of the Merchant Application shall prevail.

PART TWO: ADDITIONAL TERMS AND CONDITIONS APPLICABLE ONLY TO MERCHANTS WITH AMERICAN EXPRESS CARD ACCEPTANCE


A1.2 With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control.

A1.3 General Terms. Merchant authorizes ISO and/or its affiliates to submit American Express transactions to, and receive settlement on such Transactions from, American Express or Servicer on behalf of Merchant.

A1.4 Marketing Message Opt-Out. Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.

A1.5 Conversion to American Express Direct Merchant. Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OpBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express’ then-current Card Acceptance Agreement; and (ii) Merchant will set pricing and other fees payable by Merchant.

A1.6 American Express as Third Party Beneficiary. Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.
A1.7 American Express Opt-Out. Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Brands.

A1.8 Refund Policies. Merchant’s refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Brand, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

A1.9 Establishment Closing. If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if it is not provided refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue credit for any portion of the Transaction for which Merchant has not delivered the goods or services.

PART THREE: ADDITIONAL TERMS AND CONDITIONS APPLICABLE ONLY TO MERCHANTS WITH UNIONPAY CARD ACCEPTANCE, IN CASE OF CONFLICT OR INCONSISTENCY BETWEEN PART THREE AND OTHER PARTS OF THIS AGREEMENT, PART THREE SHALL PREVAIL.

C1.1 Merchant undertakes to prominently display the UnionPay acceptance logos at their premises where Card transactions take place.

C1.2 Merchant agrees to accept all valid UnionPay-branded Cards.

C1.3 Except as permitted by the local regulator or UnionPay and unless an additional surcharge has already been imposed on other Card Brands, the Merchant shall undertake not to impose an additional surcharge on a UnionPay Cardholder, and shall accept UnionPay Cards at the same price and terms as cash.

C1.4 The Merchant shall not retain account numbers, PIN and other UnionPay Card transaction data and shall keep confidential all UnionPay Card information. Merchant shall not provide information or transaction data to a third party other than Servicer or an institution designated by Servicer.

C1.5 The Merchant undertakes to be responsible for the storage and maintenance of payment terminals.

C1.6 If Merchant only accepts UnionPay Cards and does not accept any other Card Brand, then Wells Fargo Bank, N.A. shall not be a party to and shall not be bound by any provisions of this Agreement. ISO shall assume all rights and obligations of Bank herein and Bank shall have no liability to Merchant whatsoever. Merchant waives any and all rights it may have against Bank.

PART FOUR: TERMINAL BAILMENT

If Merchant has accepted to receive a terminal from ISO that is neither leased nor purchased, the following additional terms and conditions of this Part shall apply.

1.1 Bailment. ISO hereby agrees to bail to Merchant, the terminal(s) described in the Merchant Application Form ("Terminal"), subject to the terms and conditions hereof. The bailment term shall commence on the date of delivery and shall end upon termination: (i) by ISO upon five (5) days prior notice; (ii) by Merchant upon thirty (30) days prior written notice; or (iii) immediately and without notice where the Agreement is terminated.

1.2 Activation. Merchant understands and agrees that bailment of the Terminal is conditional upon: (i) Merchant actively processing, pursuant to this Agreement within thirty (30) days of the date of delivery of the Terminal; and (ii) continued processing under this Agreement.

1.3 Maintenance. Merchant shall at all times during the term of this Agreement maintain the Terminal in good operating order, repair, and condition; and protect same from damage or deterioration. Merchant shall not use Terminal for any purpose other than that for which it was intended under this Agreement.

1.4 Return. In the event of a termination of this Agreement, this bailment shall be deemed automatically terminated and Merchant shall, at Merchant’s sole expense, immediately return Terminal to ISO in its original condition, save for normal wear and tear, failing which Merchant agrees to immediately pay ISO an amount equal to $600.

1.5 Delivery. Delivery shall be as of the time that the Terminal is received by Merchant.

1.6 Representations and Warranties. AS REGARDS THE TERMINAL AND ANY DATA STORED THEREIN, ISO MAKES ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT, TITLE OR NON-INFRINGEMENT AND EXPRESSLY DISCLAIMS SAME.

1.7 Risk of Loss. Merchant assumes all risk of loss or damage to the Terminal as of the time of delivery. Merchant agrees to indemnify and hold ISO harmless from and against all claims, liability, damage, loss or expenses which may occur to or arise from the Terminal during or after such time.

1.8 Entire Agreement. This Part, together with any documents to be delivered pursuant hereto, constitutes the entire agreement between Merchant and ISO pertaining to the bailed terminals and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of such parties.

1.9 Limitation of Liability: Amount. IN NO EVENT SHALL ISO BE LIABLE TO MERCHANT FOR ANY LIABILITY, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, IN AN AMOUNT GREATER THAN THE WHOLESALE VALUE OF THE TERMINAL.

1.10. Limitation of Liability: Damages. IN NO EVENT SHALL ISO BE LIABLE TO THE MERCHANT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, TREBLE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS AND REVENUE. LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THE MANUFACTURE, SALE SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE TERMINAL, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. UNDER NO CIRCUMSTANCES SHALL ISO’S AGGREGATE LIABILITY TO MERCHANT EXCEED THE TERMINAL VALUE INDICATED IN THE APPLICATION HERETO.

PART FIVE: Pivotal360 - POS & BENEFITS CLUB

Merchant shall be automatically enrolled in the PivotalONE - POS & BENEFITS CLUB, a merchant loyalty program containing savings, discounts and/or other benefits, as more fully described on the website located at www.PivotalONE.com. If the amount of the fee changes after enrollment for any reason, ISO will provide at least thirty (30) days advance written notice to Merchant regarding any such change.

PART SIX Pivotal360 - WEB REPORTS & ALERTS

Merchant shall automatically have access to Pivotal360 - WEB REPORTS & ALERTS, an advanced online reporting tool.

PART SEVEN: PIVOTAL MERCHANT INSIGHTS ESSENTIALS- Merchant Business Management

If requested, Merchant shall automatically have access to Pivotal Merchant Insights Essentials ("PMI Essentials"), a business management and analytics tool that is accessible at https://pivotalmerchantinsights.com.

PART EIGHT: ADDITIONAL SERVICES AGREEMENT

E-COMMERCE / GATEWAY

1.1 Services. ISO will provide the transactional gateway services and related goods and services (the “Gateway Services”) to Merchant as set forth in Schedule A of the Application Form. ISO and Merchant shall agree upon the equipment and services to initially be provided under this Agreement and may update and change the goods and services provided to Merchant by mutual consent.

1.2 Limited License. ISO hereby grants to Merchant a limited, revocable, worldwide, non-exclusive, non-sub-licensable and non-transferable license under intellectual property rights owned or licensed by ISO, to use Gateway Services, provided however that:

(a) such license is subject to all obligations and restrictions imposed on Merchant in this Agreement; and
(b) such license extends only to Merchant’s employees and contractors, but only to the extent that such employees and contractors use the Gateway Services for the sole purpose of collecting payments on behalf of Merchant, and for no other purpose whatsoever;
(c) such license extends only to Merchant’s use of Gateway Services solely to perform the functions specified herein and in compliance therewith, and
(d) while exercising such license, Merchant shall treat the Gateway Services as ISO’s Confidential Information under this Agreement.

1.3 Limitations on Rights Granted. Except as expressly provided to the contrary in this Agreement, Merchant shall not, and shall not knowingly cause or permit any third party to use or reproduce Gateway Services. Merchant shall not, and shall not knowingly cause or permit any third party to disassemble,
Merchants are required to provide accurate and timely settlement files to ISO. Merchant is required to put in place internal procedures to limit access to the Gateway Services. Merchant shall immediately notify ISO by telephone and confirm to ISO in writing such notice. Merchant shall cooperate and assist ISO in pursuing such protection, including without limitation executing and delivering to ISO such instruments as may be required to register or perfect ISO’s interests in any Intellectual Property Rights or assignments thereof. Merchant shall not remove or destroy the proprietary, confidentiality, trademark, service mark, copyright or patent markings or notices placed upon or contained in any materials or documentation received from ISO in connection with this Agreement.

1.12 Confidential Information. Merchant acknowledges that certain confidential and proprietary information of ISO may be communicated to it (or its designees) by ISO, including without limitation information concerning the Gateway Services and the know-how, technology, techniques, business and marketing plans related thereto (collectively, the “Confidential Information”) all of which are confidential and proprietary to, and trade secrets of ISO. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by ISO; (ii) becomes public knowledge or known to Merchant other than by breach of Merchant’s obligations under this section or by breach of a third party’s confidentiality obligations to ISO; (iii) is known to Merchant other than by breach of a third party’s confidentiality obligations to ISO; or (iv) is independently developed by Merchant without reliance on or use of Confidential Information. As a condition to the receipt of the Confidential Information, Merchant shall agree that it will not at any time acquire or exploit any Confidential Information and will not at any time disclose any Confidential Information in violation of this Agreement; and take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information and shall not permit any unauthorized person to have access thereto in any way. Confidential Information as it would with its own confidential information, and in no event shall apply less than a standard of care to prevent disclosure. Merchant shall promptly notify ISO of any unauthorized disclosure or use of the Confidential Information. Merchant shall cooperate and assist ISO in preventing or remedying any such unauthorized use or disclosure.

1.13 Indemnification. Merchant shall defend, indemnify, and hold harmless ISO and any of its officers, directors, agents and employees, from and against any and all claims, actions, proceedings and suits, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys’ fees and other litigation expenses) incurred by ISO, arising out of or relating to ("Claim”): (a) any breach of any representation, warranty, covenant or agreement of Merchant set forth in this Merchant Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of its employees, agents or customers; (c) the reliability, accuracy, legitimacy or payment data or purchase orders submitted by Merchant to ISO; (d) Card transactions submitted by Merchant to ISO and rejected by ISO or ISO; (e) claims by Merchant’s Cardholders, including, without limitation, claims relating to the disclosure of Data; (f) any alleged or actual violation by Merchant of any Applicable Laws; or (g) any fines and/or penalties charged or to be charged by ISO to Card Brands or any other entity. Upon written notice from ISO to Merchant, Merchant shall immediately undertake the defense of any such Claim, by representatives of Merchant’s own choosing, subject to ISO’s reasonable approval; and reimburse ISO for any expenses or loss arising from or relating to a Claim.

1.14 Limitation of Liability. MERCHANT AGREES AND ACKNOWLEDGES THAT USE OF GATEWAY SERVICES ARE AT MERCHANT’S SOLE RISK. ANY GATEWAY SERVICES, GOODS OR SOFTWARE PROVIDED THEREWITH (COLLECTIVELY, THE “SERVICES”), IS PROVIDED "AS IS" AND "AS AVAILABLE," AND ISO MAKES NO REPRESENTATIONS, WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE; OR THOSE ARISING BY OPERATION OF LAW, COURSE OF DEALING OR USAGE OF TRADE. MERCHANT UNDERSTANDS AND ACKNOWLEDGES THAT ISO SHALL NOT BE LIABLE FOR ANY IMPROPERLY PROCESSED OR AUTHORIZED TRANSACTION, OR ILLEGAL OR FRAUDULENT ACCESS TO MERCHANT’S GATEWAY ACCOUNT OR DATA. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS MERCHANT AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS MERCHANT AGREEMENT.
Merchant Agreement

WARRANTY OR GUARANTEE WHATSOEVER IN RELATION TO THIRD PARTY PRODUCTS OR SERVICES (INCLUDING THOSE OF A MSP), MERCHANT’S USE OF ANY SUCH THIRD PARTY PRODUCTS OR SERVICES IS AT ITS OWN RISK. ISO ASSUMES NO RESPONSIBILITY AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING DIRECTLY OR INDIRECTLY FROM USE OF ANY CARD OR DATA COLLECTED FROM ANY THIRD PARTY, PRODUCT OR SERVICE, REGARDLESS OF WHETHER OR NOT ISO IS A RESELLER OR REFERRAL AGENT FOR SUCH PRODUCT OR SERVICE.

1.15 Data Security Compliance. Merchant shall ensure that any of its agents or subcontractors to whom merchant provides access to cardholder information received from, created or received by Merchant on behalf of ISO, agrees to the same restrictions and conditions that apply through this Agreement to Merchant with respect to such information. Upon five (5) business days’ notice or immediately upon any unauthorized access to, use or disclosure of any Cardholder Information, ISO may at its discretion, conduct an on-site audit and review of Merchant’s procedures and systems.

1.16 Data Accuracy. Merchant shall provide ISO with data necessary for the electronic funds transfer (“collection data”) in the form and at the times prescribed by ISO and shall make periodic checks and updates necessary to cause the collection data to be current and accurate at all times. The format and schedule requirements for delivery of collection data by Merchant may be changed by ISO during the term of this Agreement, and Merchant shall deliver collection data in conformance with changed requirements set forth from time to time by ISO. Merchant warrants to ISO that all data and entries delivered to ISO by Merchant will (a) be correct in form, (b) contain true and accurate information, (c) be fully authorized by its customer and, (d) be timely under the terms and provisions of this Agreement.

1.17 Use of Data. ISO shall have the right to use the data received from Merchant to help create, develop, operate, deliver, and improve its products, services, content and advertising, and for loss prevention and anti-fraud purposes.

1.18. Records. Merchant shall be solely responsible for compiling and retaining records of all transactional information for Merchant’s records. Except as otherwise provided herein, ISO shall not have the obligation to store, retain, report or otherwise provide any copies of or access to any Data collected or processed by ISO or any of its suppliers. Merchant shall be solely responsible for all equipment, hardware and software that Merchant may use to conduct foreign transactions.

1.19 Fees. Merchant shall pay to ISO the fees listed in Schedule A, including all applicable taxes. ISO shall issue monthly invoices to Merchant in arrears. Merchant agrees to pay ISO for the Gateway Services via deduction of all fees and charges due directly from the Account viaACH.

1.20 Inconsistency. In the event of any inconsistency between the terms of this Part and any other terms and conditions of this Merchant Agreement, the provisions of this Part shall prevail.

1.21 Termination. The license to Gateway Services shall immediately terminate upon the earlier of: (i) termination of expiration of this Merchant Agreement; (ii) termination of the Gateway Services; or (iii) failure of Merchant to comply with any provisions of this Part section. ISO may terminate Gateway Services for any reason with or without notice.

FOREIGN CURRENCY PROCESSING

1.1 Multi-Currency Processing Services (MCP). Multi-currency processing (“MCP”) enables a Merchant to price its goods and services in various selected currencies (each an “Acceptance Currency”) and the Cardholder then decides to purchase the goods and services in the currency of his/her choice (e.g. Euro) (“MCP Transaction”). The Cardholder provides the card details at the point of sale and completes the Transaction in the chosen Acceptance Currency (e.g. Euro). The Transaction is authorized and submitted to the Card Brands for clearing and settlement in the chosen Acceptance Currency. However, the Merchant receives settlement of the MCP Transaction in US Dollars in the same way as it receives settlement of other Transactions under the Merchant Agreement.

1.2 Acceptance Currencies. It is the Merchant’s responsibility to set its prices in the various Acceptance Currencies. ISO can make available to the Merchant for download a daily currency exchange rate table. However, the Merchant can choose to set prices for its goods and services as it wishes, either by reference to such exchange rate table, or any other exchange rate source, or as localized pricing in the amount of the Acceptance Currency (e.g. £20.99). MCP Transactions will be displayed through the applicable Card Brands in the selected Acceptance Currency. The MCP will apply only to those Cards issued under the brands of Visa, MasterCard or such other Card Brands included within the MCP program (as defined in this Agreement) ("Foreign Cardholders") to present a purchase at Merchant’s point-of-sale and to pay for a purchase in the currency of the Foreign Cardholder, based upon a rate of exchange determined by ISO, while Merchant receives settlement of the foreign transaction in US Dollars (collectively, “Foreign Transactions”).

1.3 Conversion of MCP transaction. The conversion of the MCP Transaction from the Acceptance Currency to US Dollars will be effected based upon a daily exchange rate table produced for the conversion of transactions from the involved Acceptance Currency to US Dollars, which is obtainable from ISO. Upon authorization of a MCP Transaction, the authorization message returned to the Merchant will contain the US Dollar amount into which that MCP Transaction will be converted to assist Merchants in reconciling their accounting. Merchants acknowledge that because of the fluctuation in currency exchange rates, localized pricing of goods and services in foreign Acceptance Currencies is likely to result in the Merchant receiving different amounts in US Dollars from day to day, which may be more or less than the typical US Dollar price of the Merchant’s goods or services. This risk is reduced if Merchant uses the daily exchange rate table made available by ISO.

1.4 Termination or suspension ISO reserves the right to add, delete or suspend any Acceptance Currency to or from the MCP, as the case may be, at any time without notice to Merchant. Further, ISO may terminate or suspend MCP Services for any reason upon notice to the Merchant.

1.5 MCP Service Requirements. Merchant will comply with all reasonable instructions provided by ISO pertaining to Merchant’s participation in MCP. Without limiting the foregoing, Merchant agrees to comply with the following specific MCP requirements:

(i) Disclosure of Foreign Currency Amount at Point of Sale: In order to comply with Card Brand regulations, the Merchant must display the amount of the MCP Transaction at the point of sale, including an Internet website buy page, in the various Acceptance Currencies that the Merchant wishes to offer, to enable Foreign Cardholders to select the currency required to pay for their purchase. ISO provides a Card Information card for payment. Merchant agrees that it will at its sole cost use a point of sale device, or system which is certified or supported by ISO for use with the MCP.

(ii) Disclosure of Foreign Currency Amount on Receipt: In accordance with Card Brand rules, all MCP Transaction receipts shall show the amount of the Transaction in the correct Acceptance Currency chosen by the Cardholder and such amount must be preceded by the appropriate international currency symbol, or currency code for that Acceptance Currency.

(iii) Timely Presentment of MCP Transactions: The Merchant must present all MCP Transactions for settlement to ISO within one day after authorization, in order to minimize the risk of loss attributable to movement in the currency exchange rates for the various Acceptance Currencies between the time that a Foreign Transaction is completed and the submission of the batch clearing and settlement files to ISO. For the avoidance of doubt, neither ISO nor any of its vendors bears responsibility for any foreign exchange loss attributable to an MCP Transaction processed using MCP.

(iv) Credits/Returns: In the event that Merchant issues a credit, reflecting either the partial or complete return or reimbursement of a MCP Transaction, Merchant must process said credit in the Acceptance Currency. In determining the US Dollar amount of the credit to be deducted from the Merchant’s account, ISO shall use the MCP exchange rate applicable on the date of presentation of the credit or return transaction by Merchant. Due to the differences in the currency exchange rates applicable to the underlining MCP Transaction and the related Chargeback, respectively, Merchant acknowledges that the final amount of the Chargeback will differ from the original settlement amount received by the Merchant for the MCP Transaction in US Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the credit, as set forth in the Merchant Agreement.

(v) Chargebacks: A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ISO by the applicable Card Brand in the Acceptance Currency and converted by such Card Brand into US Dollars at the Card Brand’s designated foreign exchange rate. Due to the variances in currency exchange rates applied to the underlining MCP Transaction and the related Chargeback, respectively, Merchant acknowledges that the final amount of the Chargeback will differ from the original settlement amount received by the Merchant for the MCP Transaction in US Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the Chargeback, as set forth in the Merchant Agreement.

(vi) Merchant Options: Merchant shall indicate which currencies it wishes to use as Acceptance Currencies by checking the applicable box in Schedule A. Merchant can change options by written request to ISO not less than 30 days’ notice.

1.6 Dynamic Currency Conversion (DCC)

(i) The Dynamic Currency Conversion enables certain of Merchant’s customers, whose Cards are denominated in any of the program currencies (“Program Currencies”) other than U.S. Dollars ("Foreign Cards") to present a card at Merchant’s point-of-sale and to pay for a purchase in the currency of the Foreign Cardholder, based upon a rate of exchange determined by ISO, while Merchant receives settlement of the foreign transaction in US Dollars (collectively, a “Foreign Transaction”).

(ii) Merchant acknowledges and agrees that a Foreign Transaction will be converted to the Program Currency in which the Card is denominated based upon an exchange rate in effect at the time of authorization or repair transaction and the rate Foreign Transactions, as converted, will be deducted to the “Card Brands” in the currency in which the Card is denominated. The DCC program shall only apply to those Cards issued by Visa, MasterCard or under the brands of such other Card Brands included within the DCC program that are billed to the Foreign Cardholder in a Program Currency. Additionally, Merchant may not apply to credit-return transactions, or certain Foreign Transactions that are referred to ISO for authorization or otherwise authorized by Merchant via telephone. ISO reserves the right to add, delete or suspend any currency to or from the DCC program, as the case may be, at any time without notice to Merchant. Further, ISO may terminate or suspend DCC services for any reason upon notice to the Merchant.

1.7 DCC Service Requirements. Merchant will comply with all reasonable instructions provided by ISO pertaining to Merchant’s participation in the DCC program. Without limiting the foregoing, Merchant agrees to comply with the following specific DCC requirements:

(i) Program Disclosure: Merchant agrees to comply with all instructions and specifications applicable to DCC as provided by ISO from time to time. Without limiting the generality of the foregoing, Merchant shall follow DCC program procedures, as may be amended by ISO from time to time.

(ii) Foreign Cardholder Opt-in: Merchant shall, based on the instructions provided by ISO and/or the Card Brands, from time to time, provide Foreign Cardholders with the ability to “opt-in,” or consent to participate in DCC. In the event that a particular Foreign Cardholder elects not to opt-in or to consent to participate in DCC, Merchant shall follow the “Card Brands” in the currency in which the Card is denominated. Merchant may not apply to credit-return transactions, or certain Foreign Transactions that are referred to ISO for authorization or otherwise authorized by Merchant via telephone. ISO reserves the right to add, delete or suspend any currency to or from the DCC program, as the case may be, at any time without notice to Merchant. Further, ISO may terminate or suspend DCC services for any reason upon notice to the Merchant.

(iii) Timely Presentment of Foreign Transactions: Merchant acknowledges that the timely presentment of Foreign Transactions is necessary for participation in the DCC program. For the avoidance of doubt, Foreign Transactions must be presented within twenty-four (24) hours of the completion of the Foreign Transaction and the Foreign Transaction must be presented within twenty-four (24) hours of the Foreign Cardholder’s checkout from the Merchant’s establishment, failing which Merchant may be subject to additional charges.

(iv) Credits/Returns: Unless Merchant uses point-of-sale technology that is not capable of processing credit/returns in the Program Currency in the manner required by ISO, a credit/return to a Foreign Cardholder’s account, reflecting either the partial or complete return or reimbursement of a Foreign Transaction, will be converted to the Program Currency using the exchange rate applicable on the date of presentation of the credit or return transaction by Merchant. Subject to the terms of this Agreement, Merchant agrees to comply with all reasonable instructions provided by ISO for the processing of credits/returns in the Program Currency in the manner required by ISO, and in the event that a Merchant elects not to opt-in, or to consent to participate in DCC program, Merchant’s account at the Card Brands will be debited with the full amount of the credit, as set forth in the Merchant Agreement, and in the event of doubt, Foreign Transactions must be presented within twenty-four (24) hours of the Foreign Cardholder’s checkout from the Merchant’s establishment, failing which Merchant may be subject to additional charges.
(v) Chargebacks: A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ISO by the applicable Card Brand in the Program Currency and converted by such Card Brand into US Dollars at the Card Brand’s designated foreign exchange rate. Given the potential variability in exchanging rates, the conversion may result in a higher or lower amount than the original Chargeback amount. Merchant acknowledges that the original amount of the Chargeback will likely differ from the original settlement amount received by the Merchant for the Foreign Transaction in US Dollars. Notwithstanding anything herein to the contrary, Merchant acknowledges that it will be responsible for the full amount of the Chargeback under the terms of this Merchant Agreement.

(vi) Interchange cost Merchant agrees that any increased Interchange cost attributable to the increase in the price of the goods or services in US Dollars prior to its conversion by the applicable service fee shall be borne by Merchant.

1.8 Indemnification. Merchant agrees to indemnify ISO, the Card Brands, and other card sponsors against any and all claims, demands, losses, damages, liability, actions, costs, judgments, arbitration awards and expenses (including reasonable attorneys’ fees), to which ISO., the Card Brands and other card sponsors may be subjected arising in whole or in part from the MCP and DCC services, any Card transaction involving Merchant, any act or omission of Merchant in connection with any such Card transaction, use of any third-party vendor, any breach of the Merchant Agreement by Merchant, or the Merchant’s or any third-party vendor’s violation of Applicable Laws or Card Brand operating regulations, or any return of goods, price adjustment or other dispute with or by a Cardholder against Merchant (whether or not such other Financial Cardholder’s claim is valid), including, but not limited to, claims or losses of any Cardholder or of any third party. Without limiting the generally of the foregoing or any other provision in this Merchant Agreement, Merchant agrees to be solely responsible for its actions in honoring or refusing to honor Cards and in retaining Cards in accordance with Card Brand card operating procedures; and Merchant will indemnify, defend and hold harmless the Card Brands, ISO, and other members of the Card Brands harmless from any claim, loss or liability arising from any injury to persons, property or reputation which occurs as a result thereof.

THE FOLLOWING SERVICES ARE NOT PROVIDED BY ISO OR SERVICER.

PART NINE: THIRD PARTY AGREEMENTS

The below Equipment Lease Agreement is a third party agreement between Merchant and First Data Merchant Services Corporation and will apply if Merchant has checked the appropriate box or otherwise indicated its desire in the Merchant Application form part of this Agreement to enter into such lease arrangement. The signature page found on such application or any Schedule thereto shall also constitute a signature of the Merchant by Merchant.

Merchant acknowledges that First Data Merchant Services Corporation is relying upon the information contained in the Merchant Application and the Schedules thereto, all of which are incorporated by reference into the Equipment Lease Agreement.

EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Merchant Services Corporation (through its business unit First Data Global Leasing) ("we," "our," "us," "Lessor") and the Merchant ("Lessee" or "you") identified on the Merchant Application form part of this Merchant Agreement ("MA"). In this Lease Agreement, the words "we," "our," and "us" shall refer to First Data Merchant Services Corporation and its successors and assigns. Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by the Lessee on the MA (the "Settlement Account"). In the event of default of Lessee’s obligation hereunder, Lessor authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes Lessor, or any institution to which it may assign any such debit entries initiated by Lessor to Lessee’s account. In the event that Lessor withdraws funds erroneously from Lessee’s account, Lessee authorizes charge of any amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such terms and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

1. Equipment. We agree to lease to you and you agree to lease from us the equipment identified on the MA or such other comparable equipment we provide you (the "Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the equipment for any particular purpose. The term Equipment includes the Equipment initially deployed under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

1.2, Effective Date, Term and Interim Rent.

a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.

b) The term of this Lease Agreement begins on a date designated by us after the receipt of all required documentation and acceptance by us (the "Commencement Date"). and continues for the number of months indicated on the MA (the "Lease Term"). THIS IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED.

c) You agree to pay an interim lease payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.

d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR’S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS AGREEMENT WITH SAID SERVICE PROVIDER.

1.3 Site Preparation. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer’s and our specifications and will make the site(s) available to us by the confirmed shipping date.

1.4 Payment of Amounts Due.

a) The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation equipment.

b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth in the MA and/or applicable Fee Schedule.

c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason.

d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than $5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay us an administrative charge of $10.00 for any debit we attempt to make against your Settlement Account that is rejected.

e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of $50.00 for each aggregate payment requiring collection effort.

1.5 Use and Return of Equipment; Insurance.

a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.

b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.

c) You shall not create, incur, assume, or allow to exist any consensual or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written notice.

d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.

e) We or our representatives may, at any time during normal business hours, enter your premises for purposes of inspecting, examining or repairing the equipment.

f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stickers to the Equipment evidencing our ownership.

g) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards. You shall provide us with proof of insurance. The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay full purchase price or total monthly lease charges hereunder.

h) You may choose not to insure the Equipment and participate in the Equipment Service Program. The Equipment Service Program provides a replacement of the Equipment for as long as you participate in the Equipment Service Program during the Lease Term. The Equipment Service Program includes (i) free comparable replacement terminal (new or refurbished) in the event of a defect or malfunction (terminal defects or malfunctions caused by acts of God are not covered by this Equipment Service Program), (ii) free shipping and handling on both the replacement terminal and return of defective terminal, (iii) free overnight shipping and handling on replacement terminal if requested by 3:00 pm ET (Monday-Thursday). If you return your damaged equipment, you will be charged the full purchase price of the replacement equipment sent to you. The monthly fee of $4.95 for the optional Equipment Service Program is a per terminal fee. You can choose to insure the Equipment and terminate your participation in the program at any time by calling our Customer Service department.

1.6 Title to Equipment.

The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 1.8, no transfer of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a lease despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereunder.

1.7, Return or Purchase of Equipment at End of Lease Period. Upon the completion of your lease...
term or any extension thereof, you will have the option to (a) return the Equipment to us, or (b) purchase the Equipment from us for its then fair market value, calculated as a percentage of the aggregate lease payments in accordance with the following: if the term of this Lease Agreement is forty-eight (48) months or more, the buyout option as a percentage of the aggregate lease payments shall be twenty percent (20%). If the term of this lease is thirty-six (36) to forty-seven (47) months, the buyout option as a percentage of the aggregate lease payments shall be fifteen percent (15%). If the term of this lease is twenty-four (24) to thirty-five (35) months, the buyout option as a percentage of the aggregate lease payments shall be twenty percent (20%). If the term of this lease is twelve (12) to twenty-three (23) months, the buyout option as a percentage of the aggregate lease payments shall be twenty-five percent (25). In the absence of an affirmative election by you to purchase or return the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment. If we terminate the lease pursuant to Section 1.12 due to a default by you, then you shall immediately return the Equipment to us no later than the tenth business day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 1.7 by debiting your bank account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

1.8. Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the software in your operation of the Equipment.

1.9. Limitation on Liability. We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or maintenance of the Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

1.10. Warranties. All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment or non-infringement. You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

1.11. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, leasing against, or return of the equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

1.12. Default; Remedies. 

a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with our affiliates or joint ventures, such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the MA.

b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment (as determined by us), not as a penalty but as liquidated damages. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an MA any funds held or available as security for payment under the terms of the MA, including funds available under the "Reserve Account; Security Interest" section of the MA, if applicable.

1.13. Assignment. You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

1.14. Lease Guaranty. No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

1.15. Governing Law; Venue; Miscellaneous. This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

1.16. Notices. All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the MA, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

1.17. Entire Agreement. This Lease Agreement constitutes the entire Agreement between parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

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