

## Terms and Conditions for Payment Processing

**CentralSquare Payments is a registered MSP/ISO of BMO Harris Bank N.A. Services purchased from CentralSquare Payments are provided by Paya and BMO Harris Bank. The payment processing Terms and Conditions below contain language and terms required to be included by Paya or BMO and will not be negotiated.**

### **Paya Bankcard**

These are the Terms and Conditions applicable to Payment Processing services by and between Paya, Inc. (“Paya”), BMO Harris N.A. (“Bank”), and the organization (“Organization”) who has executed the Agreement.

### **ARTICLE I – ADDITIONAL DEFINITIONS**

“**Account**” means a bank account maintained by Organization as set forth in Section 6.10 for the crediting of collected funds and the debiting of fees and charges pursuant to this Agreement.

“**ACH**” means the Automated Clearing House paperless entry system operated by the Federal Reserve.

“**Agreement**” means the Payment Acceptance Application and these Terms and Conditions with all exhibits and attachments, Schedule of Fees, and any supplementary documents indicated herein, as amended from time to time, all of which constitute the Agreement.

“**American Express**” means American Express Travel Related Services Company, Inc.

“**American Express Organization Operating Guide**” means the rules and regulations available at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide) (or any successor or replacement website), as they may be amended from time to time by American Express.

“**Application**” means the initial disclosure of organization’s information used to underwrite and approve applicant for Payment Processing services “**Authorization**” means a computerized function or a direct phone call to a designated number to obtain credit approval for individual Transactions from the Card Issuer.

“**Card**” means any account or evidence of an account issued to a Cardholder under license from a Payment Brand, any or representative or member of a Payment Brand, that Organization accepts as payment from Cardholders for goods or services. Cards include, but are not limited to, credit and debit/check cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts and any other payment instrument with an embedded microcomputer EMV chip.

“**Cardholder**” (also referred to as “Card Member” in some Payment Brand materials) means the person whose name is embossed upon the face of the Card and who purports to be the person in whose name the Card is issued.

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

“**Chargeback**” means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) returned to Bank by a Card Issuer.

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

“**Debit Card**” means a plastic card used to initiate a debit Transaction, used primarily to purchase goods or services and obtain cash, for which the Cardholder’s bank account is debited by the issuer.

“**Discount Fee**” means a fee charged on all Transactions that is payable by Organization to Paya for processing Organization’s Transactions.

“**Discover**” means DFS Services, LLC.

“**EMV**” means Europay, Mastercard and Visa.

“**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 printing a Sales Draft.

“**Mastercard**” means Mastercard International Incorporated.

“**Payment Brand**” means any payment method accepted by Paya for processing, including, without limitation, Visa, Mastercard, Discover, American Express and other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers.

“**PCI DSS**” means the Payment Card Industry Data Security Standards available at <http://www.pcisecuritystandards.org>, as amended from time to time.

“**Reserve Account**” has the meaning set forth in Section 6.06.

“**Rules**” means the rules, regulations, and other requirements of any Payment Brand or related authority, including, without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association, as amended from time to time. “Rules” includes without limitation the Visa USA, Inc. Operating Regulations, Visa International Operating Regulations, Mastercard Rules, Discover Operating Regulations, and the American Express Organization Operating Guide. Capitalized terms not defined herein shall have the meanings set forth in the Rules.

“**Sales Draft**” means the paper form approved in advance by Paya, whether such form is electronically or manually imprinted, evidencing a sale Transaction.

“**Transaction**” means any retail sale of goods or services, or credit for such, from Organization for which the customer makes payment through the use of any Card and which is presented to Bank for collection.

“**Visa**” means Visa Inc.

“**Voice Authorization**” means a direct phone call to a designated number to obtain credit approval on a Transaction.

### **ARTICLE II - ORGANIZATION REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

**2.01 Honoring Cards.** (a) Organization will accept, without discrimination, all valid Cards properly presented for payment for bona fide, legitimate business transactions arising out of Organization’s usual trade or business and for Transactions originated by Organization; (b) U.S. retailers may require a minimum purchase amount on credit

card transactions. The minimum purchase amount must not exceed \$10.00 (ten dollars) and does not apply to transactions made with a Debit Card. Maximum transactions amounts may be established by Federal agencies and institutions of higher learning; (c) Organization shall not require any Cardholder to pay any part of any fee imposed upon Organization by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge as a condition of sale that is not also required from a customer paying cash. However, Organization may offer discounts to customers for cash purchases. Organization may also charge a service fee on Transactions if Organization charges a service fee: (i) for all payment methods (check, credit card, etc.) or (ii) for a specific payment mode (telephone) and not for other payment modes (face-to-face); (d) Organization shall not accept a Card as payment (other than to the extent permitted by this Agreement), if the person seeking to use the Card does not present the Card to permit Organization to examine it and obtain an Imprint or otherwise use the physical Card to complete the Transaction. Organization shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Organization's Card or the Card of any other party. Organization agrees that any such deposit shall be grounds for immediate termination. Organization shall not obtain under any circumstance Authorization for, nor process a sale on, any Card that Organization is authorized to use. Processing Organization's own Card is grounds for immediate termination.

**2.02 Card Acceptance.** When accepting a Card for a face-to-face Transaction, Organization will follow the steps provided by Bank and Paya, and will: (a) Examine the Card for the Cardholder's signature and if the Card is not signed, request identification to confirm that the Cardholder is the person he/she purports to be and determine in good faith and to the best of its ability that the Card is valid on its face; (b) Check the effective date (if any) and the expiration date of the Card, examine any card security features (such as a hologram) included on the Card; and (c) Obtain Authorization before completing any Transaction (where Authorization is obtained, Organization will be deemed to warrant the true identity of the customer as the Cardholder); (d) Unless the Sales Draft is electronically generated or is the result of an Internet, mail, telephone or preauthorized order, obtain an Imprint of the Card; (e) Enter a description of the goods or services sold and the price thereof (including any applicable taxes); (f) As required by the Rules, obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (g) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (h) Provide the Sales Draft to the Cardholder following the purchase; and (i) Legibly reproduce the Cardholder's name, account number, expiration date, and the Organization's name and place of business if that information is not legibly imprinted on the Sales Draft. In addition, for Mastercard Transactions, Organization will legibly reproduce the name of the Card Issuer as it appears on the face of the Card. Each Sales Draft presented to Bank for collection shall be genuine and will not be the result of any fraudulent Transaction or telemarketing sale and shall not be deposited on behalf of any business other than Organization.

**2.03 Authorization.** (a) Organization will obtain a prior Authorization for all Card sales. If Organization cannot, for any reason, obtain an electronic Authorization, Organization will request a Voice Authorization from the designated authorization center, and will legibly print the authorization number on the Sales Draft; (b) Organization will not obtain or attempt to obtain Authorization unless Organization intends to submit a Transaction for the authorized amount; (c) Organization will not divide a single Transaction between two or more Sales Drafts or two or more Cards; (d) Organization will not attempt to obtain Authorization on an expired Card; (e) Organization acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale, that an Authorization is not a guarantee of payment, and that an Authorization will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired Card. Receiving an Authorization shall not relieve the Organization of liability for Chargeback on any Transaction; (f) Transactions will be deemed invalid on Cards that are expired, whether or not an Authorization has been obtained; (g) If Authorization is granted, Organization shall print the Authorization number, or ensure that it appears legibly in the appropriate location on the Sales Draft; and (h) If Authorization is denied, Organization shall not complete the Transaction and shall follow any instructions from the authorization center; (i) Organization shall not obtain or attempt to obtain Authorization for a Transaction that it knows or should have known to be either fraudulent or not authorized by the Cardholder.

**2.04 Retention and Retrieval of Cards.** (a) Organization shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card upon receiving such instructions when making a request for Authorization or if Organization has reasonable grounds to believe that the Card is counterfeit, fraudulent or stolen; (b) The obligation of Organization imposed by this Section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property and Organization will hold Bank and Paya 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.

**2.05 Compliance with Law; Payment Card Industry Data Security Standards; Non-Disclosure and Storage of Cardholder and Transaction Information Requirements.** (a) Organization confirms that it is, and shall be, in full compliance during the term of this Agreement with all laws, statutes and federal and/or state regulations, as well as the Rules as may be applicable to Organization, its business and any Transaction (b) Internet Organizations shall, at a minimum, include the following information and processes on their Internet sites, (i) prominent display of Organization's name as "organization" and as the name that will appear on the Cardholder statement, (ii) a complete description of goods or services offered; (iii) delivery standards including method and time for delivery; (iv) terms and conditions of purchase, and export or legal descriptions; (v) return/refund policy described in reasonable detail; (vi) opportunity to view and confirm order before order submission; (vii) secure method for payment data transmission; (viii) currency of transaction provided (USD); (ix) disclosure of Organization's outlets to country of origin; (x) display of card association or payment network logos; (xi) clear disclosure of Organization's privacy policy; (xii) alternate Organization contact info options; and (xiii) display of web hosting company contact information; (c) Organization hereby certifies that it (and any outside agent or contractor that it may utilize to submit Transactions to Paya) complies and will comply with the PCI DSS and Organization hereby agrees to pay any fines and penalties that may be assessed by a Payment Brand as a result of Organization's noncompliance with the requirements of PCI DSS, any data breaches, or by its failure to accurately validate its compliance. Organization will review and monitor the PCI DSS and other related Rules in order to determine the timeframes and mandates for compliance under PCI DSS. The foregoing is an ongoing obligation during the term of this Agreement and as this Agreement may be renewed. Organization acknowledges and understands that Organization may be prohibited from participating in Payment Brand programs if it is determined that Organization is non-compliant. The following lists certain (but not all) of the current PCI DSS requirements, all of which Organization shall comply with, if applicable: (i) install and maintain a working network firewall to protect data accessible via the Internet; (ii) keep security patches up-to-date; (iii) encrypt stored data; (iv) encrypt data sent across networks; (v) use and regularly update anti-virus software; (vi) restrict access to data to business "need to know;" (vii) assign a unique ID to each person with computer access to data; (viii) do not use vendor supplied defaults for system passwords and other security parameters; (ix) track access data by unique ID; (x) maintain a policy that addresses information security for employees and contractors; and (xi) restrict physical access to Cardholder information. Organization shall notify Paya if it utilizes any third party that provides payment related services, directly or indirectly and/or stores transmits, or processes Cardholder data and Organization is responsible ensuring compliance of any such third parties with PCI DSS. (d) To the extent Organization is required under the Rules, or Organization otherwise elects, to utilize EMV chip-capable terminals, all EMV chip-capable terminals used by Organization must appear on the EMV co-approved terminal list maintained by the Payment Brands. (e) In the event of the failure, including bankruptcy, insolvency, or other suspension of Organization's business operations, Organization shall not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Transaction information to third parties. Organization and/or its agent shall either return this information to Paya or provide Paya with acceptable proof of destruction of this information. (f) If Organization is undergoing a forensic investigation regarding PCI DSS compliance at the time Organization executes this Agreement, then Organization shall fully cooperate with the investigation until completed. Paya warrants that it complies with the applicable required PCI DSS regulations and that Paya is a PCI DSS Validated Service Provider.

**2.06 Returns and Adjustments.** (a) Organization's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. If applicable, Organization agrees to disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise and of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms); (b) Such disclosures must be made on all copies of Sales Drafts in letters approximately ¼ inches high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale; (c) If Organization does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Organization shall not refund cash to a Cardholder who paid for the item by Card; (d) Credits must be made to the same Card account number on which the original sale Transaction was processed.

**2.07 Organization's Business.** (a) Organization will immediately notify Paya, with a copy to Bank, of any bankruptcy, receivership, insolvency or similar action initiated by or against Organization or any of its principals. Organization will include Bank and Paya on the list of creditors filed with the Bankruptcy Court, whether or not a claim exists at the time of filing; (b) Organization must notify Paya, with a copy to Bank, in writing of any changes to the information in the Application, including but not limited to: a change to Organization's financial condition (within 3 days), any additional location or new business, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and the manner in which sales are completed. Organization must also notify Paya in writing, with a copy to Bank, if Organization sells or closes its business. Except for a change to the financial condition, Paya and Bank must receive all such notices 7 days prior to the change and otherwise upon request from Paya. Organization is liable to Paya and Bank for all losses and expenses incurred by Paya and Bank arising out of Organization's failure to report changes. Paya and Bank may immediately terminate this Agreement upon a change to the information in the Application, whether Paya and Bank independently discover such change or whether Organization notifies Paya and Bank of such change.

**2.08 Advertising.** (a) Organization will prominently display the promotional materials provided by Bank and Paya in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logotype ("**Marks**") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Organization's place(s) of business. Organization's use of promotional materials and Marks is subject to the direction of Bank and Paya and must be utilized in accordance with the Rules; (b) Organization may use promotional materials and Marks during the term of this Agreement and shall immediately cease use and return any inventory to Bank or Paya upon any termination thereof; (c) Organization shall not use any promotional materials or Marks associated with any Payment Brand in any way which implies that the Payment Brand endorses any goods or services other than Card services and Organization shall not refer to any Payment Brand in stating eligibility for Organization's products or services. Organization's rights to use the Marks shall terminate with termination of this Agreement and Organization will cease all use of the Marks upon notification by the applicable Card association to discontinue use. Organization shall be fully liable to Bank and/or Paya for any and all loss, cost and expenses suffered or incurred by Bank and/or Paya, arising out of failure to return or destroy such materials following termination or Organization's misuse of the Marks. If Organization is a "Direct Mail Cardholder Solicitation Organization," then Organization acknowledges that the trademark 'Mastercard' and the corresponding logotype are the property of Mastercard International Incorporated (herein, "the Corporation"). Organization shall not infringe upon the mark or logo, nor otherwise use the mark or logo in such a manner as to create the impression that Organization's products or services are sponsored, produced, affiliated with, offered, or sold by this Corporation. Organization shall not use the mark or logo on its stationery, letterhead, envelopes, or the like nor in its solicitation; provided, however, that Organization may use one of the mark or logo in close proximity to the payment or enrollment space in the solicitation in a size not to exceed 1 1/4 inches in horizontal length if a logo is employed, or, if a mark is used, in type not to exceed the size of the type used in the major portion of the text on the same page; provided further that the legend, 'Accepted for Payment' must accompany the mark or logo used and must be the equivalent size of the mark or logo. In no case, however, shall Organization use any of the logo on the front or first page of its solicitation. One truthful statement that Organization is directing or limiting its offer to Mastercard cardholders may appear in the body of the solicitation, other than in close proximity to the payment or enrollment space, subject to the limitation that: (i) only the word mark may be used; (ii) the word mark may not (1) exceed in type size the size of any other type on the same page, (2) differ in color from the type used in the text (as differentiated from the titles) on the same page, (3) be as large or as prominent as the name of Organization, (4) be the first item appearing on any page, nor (5) in any other way be the most prominent element of the page; (iii) Organization's name and/or logo must appear prominently on the same page as the mark; and (iv) the following disclaimer must appear in close proximity to the mark on the same page and in an equal size and type of print: 'Mastercard International Incorporated is not affiliated in any way with Organization and has not endorsed or sponsored this offer.' Organization further agrees to submit its first direct mail solicitation(s), prior to mailing, to the Mastercard Law Department, to be reviewed only for compliance with this Corporation's trademark rules and shall furthermore not distribute in any manner such solicitations until Organization shall have obtained the Corporation's written approval of the manner in which it uses Mastercard mark and logo on such solicitations. Organization shall likewise, upon request, submit to the Corporation any amended solicitations prior to mailing.

**2.09 Representations and Warranties of Organization.** Organization represents and warrants to Bank and Paya at the time of execution and during the term of this Agreement that: (a) All information contained in the Application or any other documents delivered to Bank and/or Paya in connection therewith is true and complete and properly reflects Organization's business, financial condition and principal partners, owners or officers; (b) Organization has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and does not and will not violate any provisions of federal or state law or regulation, or conflict with any other agreement to which Organization is subject; (c) Organization has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) There is no action, suit or proceeding now pending or to Organization's knowledge, threatened by or against or affecting Organization which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) Organization has performed and will perform all of its obligations to the Cardholder in connection with the Transaction evidenced by each Sales Draft; (f) With respect to all Transactions that Organization requests Paya and Bank to originate, Organization continuously represents and warrants to Bank and Paya that: (i) Each Cardholder has authorized the debiting and/or crediting of its account; (ii) Each entry is for an amount the Cardholder has agreed to; and (iii) Each entry is in all other respects properly authorized; and (h) Organization will not sell, purchase, provide or exchange any Cardholder's account name or number information in any form to any third party except to Bank or to Paya or pursuant to written government request, and then only upon prior notice to Paya given in sufficient time to permit Paya to file a protective motion.

**2.10 [Deleted]**

**2.11 [Deleted]**

### ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK; RESERVE ACCOUNTS; TYPES OF TRANSACTIONS

**3.01 Acceptance.** Bank and Paya shall accept from Organization all valid Sales Drafts deposited by Organization and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to the terms of this Agreement and the Rules. Bank shall only provisionally credit the value of collected Sales Drafts to the Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, penalties, late submission charges and items for which Bank did not receive final payment. Settlement of funds will be in United States Dollars. Bank and Paya may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (a) the Transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement; (b) the Cardholder disputes his liability to Bank for any reason, including but not limited to those Chargeback rights enumerated in the Rules; or (c) the Transaction giving rise to the Sales Draft was not directly between Organization and the Cardholder. Bank will offset from payments due to Organization, any amount previously credited to Organization for a Sales Draft not accepted or later revoked by Bank and Paya. Organization shall regularly and promptly review all statements of account, banking statements, and other communications sent to Organization and shall immediately notify Paya if any discrepancy exists between Organization's records and those provided by Paya, the Organization's bank, or with respect to any transfer that Organization believes was not authorized by Organization or Cardholder. If Organization fails to notify Paya in writing within fourteen (14) calendar days after the date that Paya mails or otherwise provides a statement of account or other report of activity to Organization, Organization will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer. The foregoing does not limit in any way Organization's liability for any breach of this Agreement.

**3.02 Endorsement.** The presentment of Sales Drafts for collection and payment is Organization's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with Bank's and Paya's acceptance procedures, and shall constitute an endorsement by Organization to Bank of such Sales Drafts. Organization hereby authorizes Bank to supply such endorsement on Organization's behalf. Organization agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Sec. 365, as amended from time to time. Organization acknowledges that its obligation to Bank and Paya for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Account.

**3.03 Transmission Method.** If Organization utilizes electronic authorization and/or data capture services, Organization will enter the data related to a sales or credit Transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the Transaction is completed. If Organization provides its own electronic terminal or similar device, such terminals must meet Paya's and Bank's requirements for processing Transactions. Information regarding a sales or credit



Transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Organization to Paya or its agent(s) in the form Paya from time to time specifies, or as required under the Rules. If Bank and Paya request a copy of a Sales Draft, credit voucher or other Transaction evidence, Organization will provide it within 3 business days following the request. The means of transmission indicated in the Application shall be the exclusive means utilized by Organization until Organization has provided Paya with at least 30 days prior written notice, with a copy to Bank, of Organization's intention to change the means of such delivery or otherwise to alter in any material respect Organization's medium of transmission of data to Paya.

**3.04 Chargebacks.** (a) Simultaneously with each Cardholder Transaction, a contingent and unmaturing claim for Chargeback accrues against Organization in favor of Paya and Bank if under the Rules, Paya or Bank is required, or has the right, to pay to any Payment Brand any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Organization by Paya and Bank. Organization agrees that it is fully liable to Bank and Paya for all Chargebacks, and that Bank and Paya are authorized to offset from incoming Transactions and to debit via ACH the Account, the Reserve Account, or any other account held at any other financial institution in the amount of any Chargeback. Organization agrees to accept for Chargeback any sale for which the Cardholder disputes the validity of the sale according to the Rules; or Paya and Bank determine that Organization has in any way failed to comply with the Rules, this Agreement or Paya's procedures, including but not limited to the following: (i) The Sales Draft is illegible, not signed by the Cardholder or has not been presented to Bank within the required time-frames; (ii) The Sales Draft does not contain the Imprint of a valid, un-expired Card; (iii) A valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iv) The Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated on one Card for a single sale; (v) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased; (vi) The price of goods or services on the Sales Draft differs from the amount which Organization presents for payment; (vii) The Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number; (viii) Paya and Bank believe, within their sole discretion, that Organization has violated any provision of this Agreement; (ix) Paya determines that the Transaction record is fraudulent or that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty on the part of Organization or Organization's agents or employees; (x) Organization fails to provide a Sales Draft or legible copy thereof to Bank and Paya in accordance with this Agreement. (b) Organization acknowledges that Paya and Bank shall have full recourse to charge back the amount of a Card sale for which the Cardholder disputes that he/she did not authorize the charge if (i) the Imprint of the Card or (ii) the signature of the Cardholder was not obtained by Organization; and (iii) Organization shall not initiate a Transaction in an attempt to collect a Chargeback. Organization shall be liable for all fees arising out of the Chargeback dispute processes under the Rules.

**3.05 Processing Limits.** Organization's "Approved Monthly Volume" for sales drafts is that monthly volume set forth in the Application or as otherwise set forth in the Processing account approval letter from Paya to Organization or as may be later changed by Paya from time to time upon notice to Organization. If Organization exceeds the Approved Monthly Volume, either in the aggregate or with respect to any "method of sale": (i) Paya and Bank may suspend processing, hold the funds over the Approved Monthly Volume, and/or return all Sales Drafts evidencing funds over the Approved Monthly Volume to Organization.

**3.06 Additional Requirements for Acceptance of Debit Cards.** Organization may honor at the locations set forth on the Application debit cards ("Debit Card") serviced by the electronic funds transfer networks in connection with the sales ("Debit Card Sale") of merchandise or services to the holders of such Debit Cards ("Debit Cardholders"). Bank and/or Paya agree to accept from Organization via electronic transmission documents evidencing such Debit Card Sales ("Sales Transmittal") and Adjustment Drafts (as defined below).

(a) **Compliance; Authorization; Other Requirements.** Organization agrees to comply (and assume all liability for failure to comply) with the Rules of the Debit Card networks ("Networks") as amended from time to time. Any Authorization must be obtained immediately for every Debit Card Sale as directed by Bank and/or Paya ("Authorization"). When Authorization is obtained, Organization will electronically print the authorization number on the Sales Transmittal. Organization agrees that: (i) for each Debit Card Sale, the Debit Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale ("POS"); (ii) each PIN pad will be situated to permit Debit Cardholders to input their PINs without revealing them to other persons, including Organization's personnel; (iii) Organization will instruct personnel (a) that they may not ask any Debit Cardholder to disclose the PIN and (b) in the event that any of Organization's personnel nevertheless becomes aware of any Debit Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person; (iv) the PIN message must be encrypted from the PIN pad to the POS terminal and from the POS terminal to the Network and back so that the PIN message will not be in the clear at any point in the Transaction; (v) Organization will comply with any other requirements relating to PIN security as required by Bank or by any Network; (vi) for each Debit Card Sale a Transaction receipt in conformity with Regulation E of the Board of Governors of the Federal Reserve System will be made available to the Debit Cardholder; (vii) Organization may not collect tax as a separate cash transaction; and (viii) POS terminals, including hardware and software, must be certified for use by Bank and by all of the Networks. POS terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. Organizations are responsible for compliance with all Rules regarding the use of POS terminals, regardless of whether such POS terminals are obtained through Bank or through Paya. Organization will promptly initiate a refund to the customer (which may be made in cash, by an Adjustment Draft or with a check or cashier's check, as permitted by the Rules) whenever Organization determines that a Debit Card Sale should be canceled or reversed. Organization will cooperate with Bank and Paya, to resolve any alleged errors relating to Debit Card Sales. Organization will maintain adequate records to assist in error resolution; records will be maintained for two years or the period required by the Rules, whichever is greater. Organization will permit and will pay all expenses of periodic examination and audit of functions at such frequency, as Paya deems appropriate. Audits will meet Paya's standards, and the results will be made available to Paya. Organization will not accept cash, checks or other negotiable items from any Debit Cardholder and forward a credit through any network (i.e., as a purported payment or deposit to an account maintained by the Debit Cardholder). Organization will not forward through any network any Transaction or initiate any reversal of a Transaction that did not originate between Organization and the Debit Cardholder.

(b) **Prevention of Fraud.** Organization will fully cooperate with Paya and Bank in the event that Bank or Paya determines that there is a substantial risk of fraud arising from Organization's access to the network. Organization will take whatever actions Bank or Paya reasonably deem necessary in order to protect Paya and/or the Bank. Neither Paya, Bank nor any of their respective personnel will have any liability to Organization for any action taken in good faith.

(c) **Display of Network Trademark(s); Protection of Trade Secrets.** In order to inform Debit Cardholders that Debit Card Sales may be transacted at Organization's locations, Organization will prominently display the trademark and/or service mark of each network at each location and will display signage of each network at the entrance, near all POS terminals and on the window of such location. All uses by Organization of any trademark and/or service mark will comply with the applicable Rules. Organization acknowledges and agrees that in displaying any such trademark and/or service mark, Organization will be acting under Paya's and/or Bank's control and subject to approval by the applicable network. Organization will not be deemed, under any circumstances, a licensee or sub-licensee of any trademark or service mark of any network, nor will Organization otherwise be deemed to have or to acquire any right, title or interest in trademarks or service marks.

(d) **Returns and Adjustments.** Organization will attempt to settle in good faith any dispute between it and a Debit Cardholder involving a Debit Card Sale. Organization will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card Sales. Organization will not make any cash refunds or payments for returns or adjustments on Debit Card Sales but will instead complete a form provided or approved by Bank ("Adjustment Draft"). The Sales Transmittal for any Debit Card Sale for which no refund or return will be accepted by Organization must be clearly and conspicuously marked (including on the Debit Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.

(e) **Presentation of Sales Transmittals and Adjustment Drafts.** Organization will electronically transmit to Bank all Sales Transmittals or Adjustment Drafts in a manner acceptable to Bank. Organization will make a good faith effort to electronically transmit data within one banking business day after the Transaction date. Organization will not extend the time of payment for or extend credit for any part of a Debit Card Sale. Organization represents and warrants that the electronic transmission

of each Sales Transmittal and Adjustment Draft will evidence a true record of the Debit Card Sale Transaction reflected on the document. Bank will process Debit Card Sales transmitted by Organization, and Bank will promptly credit, debit or charge, as applicable, the appropriate amount to the Account. Within a reasonable time after the end of each calendar month, Bank will calculate the applicable amount of fees and other charges owed by Organization, and Bank will debit the Account in the amount of such fees and other charges. The amount of such fees to be paid by Organization are set forth on Schedule of Fees in this agreement. Such fees may be amended at any time by Bank and/or Paya upon written notice to Organization. Bank may refuse to accept or may revoke its acceptance of any Sales Transmittal or Adjustment Draft, and Bank may debit, charge or credit the Account in the corresponding amount, if: (i) the Debit Card was completed without prior Authorization; (ii) the Sales Transmittal or Adjustment Draft involved circumstances constituting a breach of any agreement, representation, or warranty by Organization; (iii) the Debit Card Sale was in violation of applicable law, the Rules or regulations; (iv) the Debit Cardholder is Organization, any partner of or shareholder in Organization, or any affiliate, spouse or immediate family member of any of them; (v) the Debit Card Sale was not made in connection with the sale of goods or services by Organization. Bank may refuse or revoke the acceptance of any Sales Transmittal or Adjustment of Sales Transmittal upon the occurrence of any of the following events, and Bank may charge, debit or credit the Account in the corresponding amount if: (a) Organization defaults in paying when due any obligation to Bank or Paya; (b) any material adverse change in Organization's financial condition occurs; (c) any deposit account at Bank or any of Organization's property in the possession of Bank is garnished or attached; (d) Organization assigns its assets generally for the benefit of creditors; (e) a proceeding is commenced by or against it under any bankruptcy, insolvency or similar law seeking an order to adjudicate it a bankrupt or insolvent or other relief, or seeking appointment of a receiver or similar official for Organization or for any substantial part of Organization's assets. Organization will notify Bank and/or Paya in writing immediately upon becoming aware that any such event has occurred or is likely to occur. Bank will notify Organization promptly of all Adjustment Drafts. Additionally, Bank will advise Organization on each debit, charge and credit processed to the Account. Organization authorizes Bank to charge debits arising from this Agreement against any credit due Organization, whether or not such charges create overdrafts or a debit balance in the Account. Organization agrees to pay Bank or Paya, as applicable, the full amount of any such overdraft or debit balance or to replenish the Account in an amount sufficient to permit the amount of the charge to be made, as applicable, promptly upon request. Organization further authorizes Bank to suspend in a segregated account amounts which otherwise would be credited to the Account if Bank or Paya reasonably believe that the Sales Transmittals submitted by Organization are fraudulent. Bank or Paya will notify Organization of the suspension of such amounts within a reasonable time; provided, however, that such notice will not be required if the appropriate law enforcement agency has been notified of the suspected fraud.

#### ARTICLE IV – GATEWAY PROGRAMMING

**4.01 Applicability to this Agreement.** In addition to all the other provisions of this Agreement, the provisions of this Article IV shall apply if Organization utilizes web services from Paya, including the Paya payments gateway, vault services, any application program interface, code samples, web services, integration specifications, and any offline components (collectively “**Web Services**”).

**4.02 License Grant.** Subject to the terms and conditions of this Agreement, Paya hereby grants to Organization a non-exclusive, non-transferable, limited license (without the right to sublicense) to access and use the Web Services.

**4.03 Programming of Web Site.** While Paya provides specific APIs or programming scripts to Organization or Organization's Web site programmer(s), Organization acknowledges that such sample programming scripts are insufficient in and of themselves to allow Organization's Web site to function with the Web Services. Programming of Organization's Web site and its functionality are the sole responsibility of Organization.

**4.04 Organization's Programming Agent.** Organization has the sole responsibility to select and employ any competent programming agent to accomplish the programming required to make Organization's Web site function correctly with the Web Services.

**4.05 Fees Subject to Fluctuation.** Fees for the electronic commerce payment system offered by Paya may be based on the number and/or volume of monthly transactions processed by the Organization. Thus, notwithstanding anything to the contrary herein, the provisions of this Agreement which require notice prior to a change in fees based upon the number and/or volume of monthly transactions shall not apply to any transactions or services covered by this Article 4.

**4.06 Technical Support.** Organization shall be solely responsible for all technical support for Web site-related issues.

**4.07 Shut Downs/Updates.** Paya reserves the right, from time to time, without prior notice, to shut down and restart the Web Services for maintenance and/or Web Services upgrades or updates from time to time. Paya will use commercially reasonable efforts to keep service shut downs as brief as possible. Organization must monitor updates and upgrades to the Web Services and update Organization's Web site and programming accordingly.

**4.08 Disclaimer.** PAYA AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE WEB SERVICES PAYA AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE WEB SERVICES WILL BE SECURE (UNLESS OTHERWISE CONTRACTED), TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER NON-PAYA HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (B) THE WEB SERVICES WILL MEET ORGANIZATION'S REQUIREMENTS OR EXPECTATIONS. THE WEB SERVICES ARE PROVIDED ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF ORGANIZATIONABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY PAYA AND ITS LICENSORS.

#### ARTICLE V - TERMINATION AND EFFECT OF TERMINATION

**5.01 Term: Termination.** (a) Paya Payment Processing Account shall have an initial term of five (5) years and Paya Mobile Payments Account shall have an initial term of one (1) month ( respectively the “**Initial Term**”) and shall commence on the earlier of (i) Paya's acceptance hereof (evidenced by the execution of the Agreement by Paya);

(ii) the date of written notice from Paya that Organization's application is approved for processing; or (iii) the date on which Organization's first Transaction is processed.

(b) This Agreement may be terminated by any party effective at the end of the Initial or any Renewal Term by providing written notice to the other parties of its intent not to renew no less than thirty (30) days prior to the expiration of the then-current term. Additionally, this Agreement may be terminated: (i) by Paya and Bank at any time with or without cause, with prior written notice to Organization; and (ii) by Organization at any time with or without cause with notice to Paya; and (iii) in the event of a material breach of the terms of this Agreement by Paya and Bank, provided Organization provides Paya and Bank written notice of the alleged breach and the breach remains uncured for a period of 30 days following receipt of written notice by the breaching party (c) Organization shall pay any fees, fines, third party costs or penalties which Paya may be assessed due to Organization's breach of this Agreement. All rights and obligations of the parties existing as of the effective time of termination will survive termination; (d) Within Paya's and Bank's sole discretion, if Organization's or any of its principal(s)' business credit deteriorates, if any significant circumstances exist that would create harm or loss to the goodwill of a card association or payment network system, or if any case or proceeding is commenced by or against Organization under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank and Paya shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by Bank and Paya. Organization agrees to notify Paya and/or Bank immediately of any bankruptcy, receivership, insolvency or similar action initiated by or against Organization.

**5.02 Effect of Termination.** (a) In the event of termination for any reason, Organization expressly authorizes Bank and Paya to withhold and discontinue the disbursement for all Cards and other payment Transactions of Organization in the process of being collected and deposited; (b) Collected funds will be placed in the Reserve Account (defined below) until Organization pays any equipment and processing cancellation fees and any outstanding charges, losses or amounts for which Organization is liable under this Agreement. Further, Bank reserves the right to require Organization to deposit additional amounts based upon Organization's processing history and/or anticipated risk of

loss to Bank into the Reserve Account. The Reserve Account shall be maintained a minimum of 270 days after the termination date and for any reasonable period thereafter, during which Cardholder disputes may remain valid under the Rules. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all other expenses, losses and damages have been paid will be disbursed to Organization; (c) Organization expressly acknowledges that the MATCH system and Early Termination File (collectively, the "MATCH") is a maintained by Mastercard and Visa and contains the business name and the names and identification of principals of Organization which have been terminated for one or more of the reasons specified in the Rules. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized Transactions, excessive Chargebacks or highly suspect activity. Organization acknowledges that Paya and Bank are required to report the business name of the Organization and the names and identification of its principals to MATCH when Organization is terminated for such reasons. Organization consents to such reporting to the card associations and/or payment networks as applicable by Bank and Paya. Further, Organization waives and will hold harmless Bank and Paya from any claims that Organization may raise because of such reporting; (d) Upon termination for any reason, Organization will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to Bank and Paya. In the event Organization obtains any Authorization after termination, Organization expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement; (e) Following termination, Organization shall upon request provide Bank and Paya with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.

## ARTICLE VI - ACCOUNTS; SECURITY INTERESTS; INDEMNIFICATION

**6.01 Accounting Monitoring.** (a) Organization agrees that Paya and Bank may suspend, within their sole discretion, the disbursement of Organization's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Paya and Bank will make good faith efforts to notify Organization promptly. Paya and Bank shall have no liability for losses, either direct or indirect, which Organization may attribute to any suspension of funds disbursement except to the extent such losses are caused by Paya's gross negligence or willful misconduct; (b) Organization's presentation to Paya and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" refers to any period of two or more calendar months during which Organization has a Chargeback ratio that exceeds 1% by number of Transactions or a Chargeback ratio that exceeds 1% by dollar volume. Organization authorizes, upon the occurrence of Excessive Activity, Bank and Paya to take additional actions as either of them may deem necessary, including, but not limited to, suspension of processing privileges, increase of any fees that may be charged to Organization and/or creation or maintenance of a Reserve Account in accordance with this Agreement.

**6.02 Forms.** Organization shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by Paya and Bank, and Organization shall not use forms provided by Bank and Paya other than in connection with Transactions without Paya's and Bank's prior written consent.

**6.03 Records.** In addition to any records routinely furnished to Paya and Bank under this Agreement, Organization shall preserve a paper or electronic copy of all actual paper Sales Drafts, Credit Vouchers and Debit Card Sales and, if a mail, phone order or preauthorized order is involved, the Cardholder's signed authorization for the Transaction, for at least 3 years after the date Organization presents the Transaction. If Records and/or data on Paya's system associated with Organization are subpoenaed by legal process or otherwise, Paya shall produce such records in accordance with the subpoena without notice to Organization.

**6.04 Requests for Copies.** Within 3 days of receipt of any written or verbal request by Bank and Paya, Organization shall provide either the actual paper Sales Draft, Credit Voucher and/or Debit Card Sales or a legible copy thereof (in size comparable to the actual voucher or draft) and any other documentary evidence available to Organization and reasonably requested by Bank or Paya to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

**6.05 IRS Withholdings and Reporting.** Section 6050W of the Internal Revenue Code ("Code") requires payment providers and third party payment networks, such as Paya, to report payment settlement amounts to the Internal Revenue Service ("IRS") for each Organization processing through Paya. Organization shall verify its identity by providing Paya with a Tax Identification Number ("TIN") such as a Social Security Number (SSN) or Employer Identification Number (EIN) for each Payment Processing Account. In the event Organization fails to provide its TIN, Paya will place a restriction on Organization's Account and may restrict the receipt of funds into Organization's Account, or withhold a percentage of payments deposited into Organization's Account in order to satisfy the backup withholding requirements of the IRS.

**6.06 Security Interests, Reserve Account, Recoupment and Set-Off:** (a) Paya may establish and maintain a non-interest bearing account ("Reserve Account") in the name of Bank at any federally insured financial institution, with sums provided by Organization that are sufficient to satisfy Organization's current or future obligations as determined by Bank and Paya: (i) Bank and Paya shall have the right to initiate a debit to the Account or any other account at any institution to establish or maintain funds in the Reserve Account. Bank or Paya may deposit into the Reserve Account funds they would otherwise be obligated to pay Organization, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if they determine such action is reasonably necessary to protect their interests; (ii) Bank, on its own behalf or at Paya's request, may, without notice to Organization, apply deposits in the Reserve Account against any outstanding amounts Organization owes under this Agreement or any other agreement between Organization and Bank or Paya. Paya or Bank may exercise their rights under this Agreement to collect any amounts due to Bank or Paya including, without limitation, rights of set-off and recoupment. Organization shall have no right to withdraw funds or debit the Reserve Account. In the event of a bankruptcy proceeding, Bank and Paya may exercise their rights under this Agreement to debit the Reserve Account for amounts due Bank and Paya regardless of the pre-petition or post-petition nature of the amount due Bank and/or Paya. In the event of a bankruptcy proceeding, Organization also agrees that it will not contest any Motion for Relief from the Automatic Stay, which Bank and Paya may file to debit the Reserve Account. As set forth in Section 5.02, funds in the Reserve Account will remain in the Reserve Account for a minimum of 270 days following termination. Bank will have sole control of the Reserve Account. In the event of a bankruptcy proceeding, Bank and Paya do not consent to the assumption of this Agreement. Nevertheless if this Agreement is assumed Organization agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. Sec. 365, as amended from time to time, Organization must establish or maintain a Reserve Account in an amount satisfactory to Bank and Paya; (b) Bank and Paya have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Account, and (ii) any other amounts Paya and Bank may owe Organization under this Agreement or any other agreement; (c) The rights conferred upon Bank and Paya in this Section are not intended to be exclusive of each other or of any other rights and remedies of Bank and Paya under this Agreement, at law or in equity. Rather, each and every right of Bank and Paya at law or in equity will be cumulative and concurrent and in addition to every other right.

**6.07 Third Parties.** (a) Organization may be using special services or software provided by a third party to assist Organization in processing Transactions, including authorizations and settlements, or accounting functions. Organization is responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure Organization has and complies with any software updates. Paya and Bank have no responsibility for any transaction until that point in time Paya receives data about the transaction; (b) Organization will notify Paya immediately if Organization decides to use electronic authorization or data capture terminals or software provided by any entity other than Paya or its authorized designee ("third party terminals") to process Transactions. If Organization elects to use third party software or terminals, Organization agrees (i) the third party providing the software or terminals will be Organization's agent in the delivery of Transactions to Bank via Visa Net or a similar data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Bank nor Paya will be responsible for any losses or additional fees incurred by Organization as a result of any error by a third party agent or a malfunction in a third party's software or terminal.

**6.08 Modifications to Agreement.** Paya and Bank may, from time to time, amend any provision of this Agreement as required by the Rules by providing written notice, including electronic written notice, to Organization of the required Rules-prompted amendment; all other amendments or modifications must be contained in a written amendment executed by both parties with the same formality of this Agreement.



**6.09 Limitation of Liability; Indemnity; Disclaimer.** (A) THE LIABILITY, IF ANY, OF BANK AND PAYA UNDER THIS AGREEMENT WHETHER TO ORGANIZATION OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF THE LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY ORGANIZATION TO PAYA AND BANK DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED, AND (II) ASSESSMENTS, CHARGERBACKS, AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH IN THE EVENT MORE THAN ONE MONTH IS INVOLVED, THE AGGREGATE AMOUNT OF PAYA AND BANK'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL BANK, PAYA, NOR ITS OR THEIR OFFICERS, AGENTS, DIRECTORS, OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; (B) SUBJECT TO THE LIMITATIONS SPECIFIED IN SECTION 768.28, FLORIDA STATUTES, ORGANIZATION AGREES TO BE RESPONSIBLE FOR ANY CLAIM RELATING TO (I) ANY DISPUTE BETWEEN ORGANIZATION AND A CARDHOLDER WITH RESPECT TO THE ALLEGED OR ACTUAL FAILURE BY ORGANIZATION TO PROCESS A TRANSACTION AS REQUESTED BY SUCH CARDHOLDER OR TO PROVIDE PHYSICAL SECURITY AT OR NEAR ANY TERMINALS OR OTHER PREMISES OF ORGANIZATION, OR THE TRANSMISSION OR DISCLOSURE OF ANY INFORMATION BY AND THROUGH PAYA, (II) THE TRANSMISSION OF ANY INCORRECT OR INCOMPLETE INFORMATION TO A CUSTOMER OF ANY NETWORK MEMBER THROUGH THE NETWORK REGARDING AN ACCOUNT MAINTAINED BY SUCH CUSTOMER, OR THE DISCLOSURE THROUGH SUCH NETWORK TO ANY PARTY OF INFORMATION RELATING TO ANY SUCH ACCOUNT; AND (III) ORGANIZATION'S FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS AGREEMENT AND APPLICABLE LAWS, RULES AND/OR REGULATIONS, INCLUDING WITHOUT LIMITATION DISPUTES RESULTING FROM ORGANIZATION'S FAILURE TO PROVIDE A SALES TRANSMITTAL. ORGANIZATION FURTHER AGREES TO BE RESPONSIBLE FOR ALL CLAIMS, LIABILITY AND EXPENSES ARISING OR RESULTING FROM ANY DISPUTE OR CLAIM MADE AGAINST BANK AND/OR PAYA BY ANY THIRD PARTY ARISING OUT OF ORGANIZATION'S BREACH OF THIS AGREEMENT OR THE RULES. FURTHER ORGANIZATION SHALL REIMBURSE BANK OR PAYA, AS THE CASE MAY BE, FOR ALL EXPENSES AND COSTS, INCLUDING ATTORNEY'S FEE, WITH REGARD TO THE FOREGOING; (C) NEITHER BANK NOR PAYA MAKE ANY OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY SERVICES IT PERFORMS IN ACCORDANCE WITH THIS AGREEMENT, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. PAYA AND BANK DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

**6.10 Account.** (a) Organization will establish and maintain an account at Bank or at any federally insured financial institution ("**Account**") reasonably approved by Bank in the United States. Organization will maintain sufficient funds in the Account to satisfy all obligations, including fees, contemplated by this Agreement. Organization irrevocably authorizes Paya and/or Bank to debit the Account for Chargebacks, fees and any other penalties or amounts owed under this Agreement. Organization must obtain prior written consent from Bank and Paya to change the Account. If Organization does not obtain that consent, Paya or Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion; (b) Bank will deposit all Sales Drafts to the Account subject to Section 3.01 of this Agreement. Organization authorizes Bank and Paya to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Organization conditional credit for any entry; (c) Bank, in its sole discretion, may grant Organization provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Bank and Paya and subject to all Chargebacks and other amounts owed to Bank and Paya under this Agreement; (d) Organization shall promptly examine all statements relating to the Account, and immediately notify Paya and Bank in writing of any errors. Organization's written notice must include: (i) Organization name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why Organization believes an error exists and the cause of it, if known. That written notice must be received by Paya and Bank within 60 days after Organization received the periodic statement containing the asserted error and failure to provide such notice shall bar any claim of errors. ORGANIZATION MAY NOT MAKE ANY CLAIM AGAINST BANK OR PAYA FOR ANY LOSS OR EXPENSE RELATING TO ANY ASSERTED ERROR FOR 60 DAYS IMMEDIATELY FOLLOWING RECEIPT OF ORGANIZATION'S WRITTEN NOTICE. During that 60 day period, Paya and Bank will be entitled to investigate the asserted error, and Organization will not incur any cost or expense in connection with the asserted error without notifying Paya; (e) Organization will indemnify and hold Paya and Bank harmless for any action they take against the Account pursuant to this Section. Organization will also indemnify and hold harmless the institution at which Organization maintains the Account for acting in accordance with any instruction from Bank or Paya regarding the Account. This Section will survive termination of this Agreement; (f) Organization authorizes Bank and Paya to initiate debit/credit entries to the Account, as the Account may be changed from time to time, and to any other account maintained by Organization at any institution that is a receiving bank of ACH, all in accordance with this Agreement. In the event Organization changes the Account, Organization will notify Paya, with a copy to Bank, and this authorization will apply to the new Account. This authorization will be effective until both: (i) Paya and Bank have received written notification from Organization terminating this authorization, and (ii) all obligations of Organization to Paya and Bank have been paid in full. Organization will provide to Paya and Bank a voided Account check, and will fill in the Account numbers on the Application.

**6.11 Fees and Other Amounts Owed.** (a) Organization shall pay the fees and charges as set forth on the Schedule of Fees, attached and incorporated in this Agreement as Exhibit "A," which may be amended from time to time. Unless otherwise noted, Organization shall pay all fees monthly, with the exception of the Discount Fee and/or interchange, which shall be paid either monthly or daily, as determined by Paya in its sole discretion. Organization may choose, however, to pay the discount fee on a daily basis by notice to Paya. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Organization and associated with processing services. Organization is also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. Bank and Paya shall have the right to change fees, including adding fees for additional services utilized by Organization, in accordance with Section 6.08. Interchange Pass Through pricing ("IPT") as specified in this Agreement is comprised of interchange, fees, dues, and assessments assessed by card association. Cost-Plus pricing ("CP") is comprised of IPT plus the Cost Plus Rate set forth in this Agreement, which is charged to each settled Card and Debit Card Transaction. Organization may call Paya customer service with any questions regarding pricing, qualifications exceptions, and billing. Paya does not refund fees for returns; (b) Organization will immediately pay Paya and Bank any amount incurred by Paya attributable to this Agreement or any other agreement between Organization and Paya or any subsidiary or affiliate of Paya, including but not limited to equipment fees, Chargebacks, fines imposed by a third party, non-sufficient fund fees, and ACH debits that overdraw the Account, Reserve Account, or are otherwise dishonored. Organization authorizes Paya and Bank to debit via ACH the Account, Reserve Account, any other account Organization has with Paya, an affiliate or subsidiary of Paya, Bank or at any other financial institution for any amount Organization owes under this Agreement or under any other contract, note, guaranty, or dealing of any kind now existing or later entered into between Organization and Paya or any subsidiary or affiliate, whether Organization's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse Paya and Bank for the amount owed, Organization will immediately pay Paya and Bank such amount.

**6.12 Costs.** Organization will be liable for and will indemnify and reimburse Paya and Bank, subject to the limitations of Section 768.28, Florida Statutes, for all costs paid or incurred by Paya or Bank in the enforcement of this Agreement, including but not limited to attorneys' and investigators' fees, or in collecting any amounts due from Organization or resulting from any breach by Organization of this Agreement.

## **ARTICLE VII- MISCELLANEOUS**

**7.01 Waiver.** Failure by Bank or Paya to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future. The waiving party must sign all waivers.

**7.02 Notices.** All notices and other communications required or permitted under this Agreement shall be deemed delivered when sent by e-mail or mailed, postage prepaid, addressed as follows:

<b>If to Paya:</b>  <b>Paya</b>  <b>12120 Sunset Hills Rd STE 500</b>  <b>Reston, Virginia 22102</b>  <b>Attn: Chief Financial Officer</b>	<b>If to Bank:</b>  <b>BMO Harris N.A.</b>  <b>111 W. Monroe</b>  <b>Chicago, IL 60603</b>  <b>Attn. Customer Service</b>

If to Organization, at the address provided as the billing address and to the contact listed on the Application or e-mail. To the fullest extent permitted by applicable law, notices or other communications regarding the Company Services (“Communications”) may be provided to Organization electronically and Organization agrees to receive all Communications from Company in electronic form. Electronic Communications may be delivered to Organization’s email address specified by Organization), if Organization has selected such method of notification. All Communications delivered by Company to Organization in either electronic or paper format will be considered to be in “writing,” and to have been received no later than five (5) business days after posting or dissemination, whether or not Organization has received or retrieved the Communication. Company reserves the right but assumes no obligation to provide certain notices hereunder in paper format.

**7.03 Choice of Law: Jurisdiction**. If Organization is a governmental entity and is restricted by other jurisdictions, the laws of the state where its principal place of business is located govern all claims, regardless of conflict of laws principles. Otherwise, this Agreement and all matters related thereto shall be construed in accordance with the laws of the State of Florida. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Broward County, Florida, for all disputes arising out of or relating to these Terms and Conditions.

**7.04 Entire Agreement: Assignability**. This Agreement, these Terms and Conditions of Payment Processing Agreement and any supplementary documents indicated herein, expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, may be modified only in writing executed by all parties. This Agreement may be assigned by Paya and Bank, but may not be assigned by Organization, directly or by operation of law, without the prior written consent of Bank and Paya. In the event, for whatever reason, Organization’s Application does not meet standard underwriting criteria, and satisfies only sub-standard underwriting criteria, Organization acknowledges the completed Application may be forwarded to an alternative Member processor for review and approval. If Organization nevertheless assigns this Agreement without such consent, the Agreement will be binding on the assignee. This Agreement shall be binding upon and inure to the benefit of the parties’ respective successors and permitted assigns. .

**7.05 Credit and Financial Inquiries: Inspections**. (a) Organization authorizes Bank and Paya to make, at any time, any credit inquiries which either may consider necessary to accept or review acceptance of this Agreement or investigate Organization’s deposit or Card acceptance subsequent to acceptance of this Agreement. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, partners, principal owners or officers. If requested to do so by Bank or Paya, Organization shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or Paya may consider necessary to perform initial or periodic reviews of Organization’s financial stability and business practices; (b) Organization may honor Cards only at locations approved by Paya and Bank. Additional locations may be added, subject to Paya and Bank’s written approval. All current and future locations are bound by the terms and conditions of this Agreement. Either Organization or Paya may delete any location by providing notice as provided in this Agreement; (c) Organization agrees to permit Bank or Paya at any time from time to time, to inspect locations to confirm that Organization 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 Section shall be deemed to waive Organization’s obligation to comply in all respects with the terms of this Agreement; (d) Representatives of Bank or Paya may, during normal business hours, inspect, audit and make copies of Organization’s books, accounts, records and files pertaining to any Transaction.

**7.06 [Deleted]**

**7.07 [Deleted]**.

**7.08 American Express Card Acceptance**. In addition to other applicable provisions of this Agreement, the following provisions apply to Organization’s acceptance of American Express Cards: (a) This Agreement governs Organization’s acceptance of American Express Cards under American Express’s “OptBlue Program”. If and when the Transactions submitted by American Express Cardholders exceed the charge volume eligibility criteria for the OptBlue Program, American Express may require Organization to convert to a direct Card Acceptance Agreement with American Express. If this occurs, upon such conversion, (i) Organization will be bound by American Express’s then-current Card Acceptance Agreement; and (ii) American Express will determine the pricing and other fees payable by Organization under the Card Acceptance Agreement; (b) Organization’s participation in the OptBlue Program is subject to the approval of American Express. Organization authorizes Paya and/or its affiliates to submit Transactions to, and receive settlement on such Transactions from, American Express on behalf of Organization; (c) Organization shall not assign to any third party any payments due to it for American Express Card Transactions, and all indebtedness arising from such Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Organization may sell and assign future receivables to Paya, its affiliated entities and/or any other cash advance funding source that partners with Paya or its affiliated entities; (d) American Express shall have third-party beneficiary rights, but not obligations, to enforce the terms of this Agreement applicable to American Express Card acceptance against Organization; (e) Organization may opt out of accepting American Express Cards under this Agreement by providing 30 days’ notice to Paya without directly or indirectly affecting its rights to accept other Payment Brand Cards; (f) Except as provided in Section 7.08(g), Paya may disclose to American Express information regarding Organization and Organization’s Transactions to American Express, and American Express may use such information to (i) perform its responsibilities in connection with American Express Card acceptance, (ii) promote American Express, (iii) perform analytics and create reports, and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of American Express Card acceptance, and to provide important transactional or relationship communications from American Express. American Express may also use such information about Organization obtained in connection with this Agreement at the time of setup to screen and/or monitor Organization in connection with American Express marketing and administrative purposes; (g) Organization may opt-out of receiving American Express commercial marketing communications about products and services by selecting the opt-out option on its Application or subsequently by providing written notice to its primary relationship contact at Paya. Organization may continue to receive such communications from American Express after opting out while American Express updates its records to reflect Organization’s opt-out choice; and (h) Organization may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Organization has fully paid for such Chargeback, and it otherwise has the right to do so.

**7.10 [Deleted] Signature**. Organization represents and warrants that the person executing this Agreement is duly authorized to bind Organization to all provisions of this Agreement, and that such person is authorized to execute any documents and to take any action on behalf of Organization, which may be required by Paya now or in the future.

**7.11 Force Majeure**. The delay or inability of party to perform its obligations hereunder when required (other than Organization’s payment obligations) if caused by events of Force Majeure, as defined herein, shall not constitute a breach or default and shall not subject such party to liability to any other party so long as such Force Majeure event exists. Force Majeure events shall include, without limitation, civil disturbances, epidemics, pandemics, natural disasters, wars, acts of terrorism, acts of God, economic downturn and all other such events outside the control of the parties that make it impossible for one party to comply with its obligations hereunder.



**7.12 General.** If any provision of this Agreement is illegal or unenforceable, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Organization is responsible for its employees' actions while in its employ. The parties do not intend to confer any benefits on any person or entity other than Organization, Bank and Paya. Article I, Sections 3.02, 3.04, Article V, Article VI, Article VII and any other provision that by their nature should survive termination will survive expiration or termination of this Agreement.

**7.13 Public records.** Paya shall comply with all provisions of Florida Statutes Chapter 119. Specifically Paya shall: 1. Keep and maintain public records required by the Organization in order to perform the service; 2. Upon request from the Organization's custodian of public records, provide the Organization with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Paya does not transfer the records to the Organization; and 4. Upon completion of the contract, transfer, at no cost to the Organization, all public records in possession of Paya, or keep and maintain public records required by the Organization to perform the service. If Paya transfers all public records to the Organization upon completion of the contract, Paya shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Paya keeps and maintains public records upon completion of the contract, Paya shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Organization, upon request from the Organization's custodian of public records in a format that is compatible with the information technology systems of the Organization.

Failure to comply with said statutory requirements may subject Paya to penalties under 119.10, Florida Statutes, as amended.

### BANKCARD CERTIFICATION AND AGREEMENT

By signing below, the Organization named: (1) certifies to Paya that it is authorized to execute and deliver this Agreement on behalf of the Organization; (2) and the person executing on behalf of the Organization is authorized to do so; (3) certifies that all information and documents submitted in connection with this Agreement are true and complete; (4) authorizes Paya to verify any of the information given, including credit references, and to obtain credit reports on the Organization; (5) has read, agrees to, and acknowledges receipt of the Terms and Conditions, presented above and incorporated herein by reference. The Terms and Conditions and the Payment Acceptance Application constitute the entire Agreement by and between Organization, Paya and Bank; (6) agrees that Organization is responsible for the acts, omissions and obligations of any unit or division receiving services hereunder; (7) certifies that each such unit or division has the same Tax Identification Number as the Organization; (8) acknowledges that if Paya, in its reasonable discretion, determines that any particular unit or division is in breach of the terms of the agreement with Paya, Paya may terminate the unit or division and cease the provision of services to such unit or division without terminating the agreement with the Organization; (9) agrees that Organization and each transaction submitted to Paya will be bound by the Agreement in its entirety; and (10) agrees that Organization will submit transactions to Paya only in accordance with the information in the Payment Acceptance Application and will immediately inform Paya, in writing at the address above if any information in the Payment Acceptance Application changes. Organization further acknowledges that, as used in this paragraph, "Bank" means the banking institution identified at the top of the first page of this document as the Settlement Bank.

By signing below, I represent that the information I have provided on the Payment Acceptance Application is complete and accurate and I authorize American Express Travel Related Services Company, Inc (American Express) to verify the information on this Payment Acceptance Application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a credit report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the Organization indicated below to accept the American Express Card, the Terms and Conditions for American Express Card Acceptance ("Terms and Conditions") will be sent to such Organization along with a Welcome Letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

Organization Name			
Authorized Officer (1)			
Signature	Printed Name	Title	Date
Authorized Officer (2)			
Signature	Printed Name	Title	Date