

# Merchant Credit Card Processing Terms & Conditions

Accelerated Card Company, LLC. is a registered ISO of Fifth Third Bank, N.A., Cincinnati, OH.

THIS AGREEMENT is made by and between First American Payment Systems, L.P. ("First American"), and Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, (collectively, "Bank") and "MERCHANT," whose name and address are stated on the Service Provider Agreement.

WHEREAS, Bank is engaged in the business of financial transaction processing which includes, but is not limited to, the processing of and providing for the payment of charges created by the holders of bank cards bearing the Visa U.S.A. Incorporated ("Visa") MasterCard International Incorporated ("MasterCard"), American Express Travel Related Services Company, Inc. ("American Express"), DFS Services LLC ("Discover") and PayPal ("PayPal") trademarks, as well as certain other credit, debit, and other electronic payment cards (each of such cards hereinafter referred to as a "bank card"); and

WHEREAS, Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, has entered into an agreement with First American authorizing First American, on its own behalf and on behalf of Certified Payments, to perform the processing functions, and exercise the legal rights set out herein; and

WHEREAS, MERCHANT currently accepts or desires to accept bank cards for its customers' payments for goods and services provided or to be provided by, or obligations to, MERCHANT.

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

**1. Acceptance of Bank Cards.** MERCHANT agrees to honor without discrimination all lawful and valid bank cards when properly presented as payment by customers and within MERCHANT's approved processing profile parameters, in connection with bona fide, legitimate business transactions arising out of MERCHANT's usual trade or business as disclosed in the Service Provider Agreement. The acceptance of all bank cards is subject to the rules and regulations of the issuing organizations. Such rules and regulations are incorporated herein by this reference.

**2. Point-of-Sale Devices.** MERCHANT agrees to keep all imprinters and POS terminals used to process bank card transactions in good working order. MERCHANT understands that Bank cannot and does not warrant the connectivity, performance of equipment, or quality of services as a result of MERCHANT's data or voice connection, or similar type service. MERCHANT agrees that Bank is not responsible for, and MERCHANT accepts full responsibility for issues that may arise when utilizing data or voice connections, or similar service, including but not limited to: failure to obtain authorizations, batching, settlement, equipment, equipment/Software installation, communications, downloads and internet connectivity. Further, MERCHANT acknowledges it will not make any claim against Bank relating to the use or connectivity of any data or voice connections or similar services.

**3. Bank Card Authorization.** MERCHANT understands and acknowledges that all transactions must be authorized. MERCHANT also understands that transaction authorization is not a guarantee of payment from Bank, nor does the transaction authorization prohibit the card holder or card issuer from initiating a chargeback.

**4. Payments.** All payments to MERCHANT for legitimate and authorized bank card sales shall be made by Bank through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. Bank is not responsible for incorrect account numbers. MERCHANT must notify Bank in writing of any errors on any statement promptly after its receipt of the first statement on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account.

**5. Sales Slip Storage and Retrieval.** Visa, MasterCard, American Express, Discover and PayPal require Bank to obtain from MERCHANT and forward to bank card issuers, upon request, copies of sales or credit slips. MERCHANT shall set up a system satisfactory to Bank to store and maintain sales slips and MERCHANT shall deliver to Bank within 24 hours of request copies of any sales slip requested by Bank. MERCHANT agrees to retain for one (1) year and make available within three (3) days of a request all pertinent records pertaining to each transaction in question, including, but not limited to, itemized bills, authorization requests, and other related documents

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

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

- The sales slip, transaction receipt, or other evidence of the transaction (the "Receipt") is valid in form and has been completed in accordance with current instructions, if any, furnished by Bank;
- MERCHANT has made available to the cardholder a true and complete copy of the Receipt evidencing the transaction involving use of the bank card;
- Each Receipt represents the cardholder's indebtedness to MERCHANT for the amount shown;
- The cardholder has no defense, right of offset, or counterclaim against MERCHANT in connection with the payment;

(e) Unless expressly authorized in writing by Bank and as permitted by Visa, MasterCard, American Express, Discover and PayPal rules and regulations, MERCHANT has not made and shall not make any cash advances to cardholder, either directly or by deposit to the cardholder's account;

(f) MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange bank card account number information in the form of imprinted sales slips, mailing lists, tapes, or any other media obtained by reason of a bank card transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, to Bank, to Visa, to MasterCard, to American Express, to Discover, or to PayPal, or pursuant to a valid subpoena;

(g) MERCHANT may use the proprietary names and symbols associated with Bank or with bank cards only to indicate that bank cards are accepted for payment and shall not indicate, directly or indirectly, that Bank, Visa, MasterCard, American Express, Discover, PayPal, or any other bank card brand/organization endorses MERCHANT's products or services;

(h) MERCHANT understands that MERCHANT's transactions may not be processed through another merchant, and another merchant's transactions may not be processed through MERCHANT;

(i) MERCHANT shall not, under any circumstances, present to Bank a transaction which has been split into multiple bank card transactions; and

(j) If an authorization number is required or requested, MERCHANT warrants it shall use only the authorization number obtained through the Voice Authorization Network phone number provided by Bank. MERCHANT shall not use any number given by the cardholder or any type of number which has been obtained from any other source.

(k) MERCHANT is responsible for its employees' actions while in its employ.

**7. Business Changes.** MERCHANT shall provide at least thirty (30) days written notice to Bank for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, address, change of sales profile as described in the Service Provider Agreement, any ownership change, or transfer or sale of substantially all of the assets of MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, utilize the merchant account to process e-commerce transactions or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining Bank's prior written consent to the change, move, or addition.

**8. Returns and Credits.** Bank shall charge the transaction fee as well as other fees applicable to all credit transactions to the MERCHANT or, where one exists, to the convenience fee account associated with the MERCHANT's account (the "Convenience Fee Account"). MERCHANT shall not, under any circumstances issue: (i) cash or MERCHANT's check for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (ii) credit MERCHANT or its Affiliates for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (iii) a credit slip to a cardholder without having completed a previous purchase transaction with the same cardholder.

**9. Chargebacks.** MERCHANT expressly acknowledges and agrees:

(a) Bank may charge or debit against any of MERCHANT's accounts as a result of the exercise of chargeback or retrieval rights by a cardholder, issuing bank, processor, or other intermediary pursuant to and in accordance with applicable operating regulations of Visa, MasterCard, American Express, Discover, PayPal or other card brands/organizations as the same may be in effect from time to time;

(b) if with respect to any of MERCHANT's locations the ratio of bank card counterfeit and fraud volume to bank card sales volume, or the ratio of the number of bank card chargebacks to the number of bank card sales, exceeds one percent (1%) or credits processed exceed ten percent (10%) for any given month, Bank may, in its sole discretion, charge back all bank card sales for all of MERCHANT's locations;

(c) Bank will assess MERCHANT or the Convenience Fee Account, as applicable, a fee as well as administrative costs as determined by Bank for each chargeback;

(d) MERCHANT, regardless of whether consented to by cardholder, shall not present to Bank for processing any sales slip representing a transaction which has been previously charged back to Bank and returned to MERCHANT; and

(e) MERCHANT's obligations and Bank's rights under this section shall survive the termination of this Agreement.

**10. Electronic Commerce.** If Bank approves MERCHANT to accept bank cards via the Internet, then MERCHANT will provide secure encryption capability, such as Secure Socket Layer (SSL), to cardholders. MERCHANT agrees that it must also, in addition to and in lieu of, other applicable procedures and rules, post its privacy (including without limitation its consumer data privacy policy), security and refund policy on its website, where such policies shall be clearly marked for consumers to see and clearly review, and list its customer service contact, including email address and/or telephone number.

**11. Rules and Regulations.** This Agreement shall be subject to the bylaws and operating rules and regulations of Visa, MasterCard, American Express, Discover and PayPal as amended from time to time.

**12. PCI DSS Compliance and Customer Information Security.** Bank shall implement policies and procedures to maintain the security of cardholder data that Bank possesses, stores, processes or transmits on behalf of MERCHANT, or to the extent that Bank could impact the security of MERCHANT's cardholder data environment, in accordance with applicable Payment Card Industry Data Security Standard (PCI-DSS) requirements.

## MERCHANT PROCESSING TERMS & CONDITIONS

### Merchant Credit Card Processing Terms & Conditions, continued

MERCHANT and Agent (as defined below) will exercise reasonable care to prevent disclosure or use of Customer Information (as defined below), other than (i) to MERCHANT's agents and contractors for the purpose of assisting MERCHANT in completing a payment transaction, (ii) to the applicable card brand or organization or governmental entities and authorities, or (iii) as specifically required by law. MERCHANT is prohibited from storing CVV2 or CV2, magnetic stripe track data and PIN data. "Customer Information" means personal information related to a customer of MERCHANT or a customer's payment instrument that is obtained by MERCHANT through the processing of a transaction. Such information shall include a customer's name, address, phone number, date of birth, payment instrument account number and expiration date, PIN data, and CVV2 or CVC2 data, and any data read, scanned, or otherwise obtained from the payment instrument, whether printed thereon, or magnetically, electronically or otherwise stored thereon. MERCHANT will store all media containing allowed Customer Information, currently limited to customer name, payment instrument account number and expiration date, in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only and prior to either party discarding any material containing Customer Information, the party will destroy it in a manner rendering the account numbers unreadable. If at any time MERCHANT determines that Customer Information has been compromised MERCHANT will notify Bank immediately and assist in providing notification to the proper parties, as we deem necessary. MERCHANT information may be shared by Bank with Bank's affiliates and with governmental entities and authorities and the card brands or organizations subject to the provisions of this Agreement and the bylaws, rules and regulations, as they exist from time to time, of the card brands and organizations, as well as applicable laws and/or regulations (the "Rules"). MERCHANT agrees to comply with all security standards and guidelines that may be published from time to time by any card brand or organization, including, without limitation, the Payment Card Industry Data Security Standards ("PCI DSS"), the Visa Cardholder Information Security Program ("CISP") the MasterCard Site Data Protection program ("SDP"), the American Express® Data Security Operating Policy - United States ("DSOP"), and the Discover/PayPal-Security Requirements (collectively, the "Security Guidelines"). All Service Providers MERCHANT uses must be recognized by Visa as CISP compliant service providers and payment applications MERCHANT uses must be recognized by VISA as compliant with the Payment Application Data Security Standards ("PA-DSS"). "Service Provider" means any party that processes, stores or transmits Customer Information on MERCHANT's behalf. MERCHANT understands that failure to comply with the Rules, including PCI DSS, CISP, SDP or other Security Guidelines, or the compromise of any customer account information, may result in assessments, fines, and/or penalties by the card brands and organizations or governmental entities or authorities, and MERCHANT agrees to indemnify and reimburse Bank immediately for any assessment, fine, penalty, or other cost (including, but not limited to, cost of forensic investigations required by any such brands, organizations, entities or authorities) imposed on Bank due to any such event. MERCHANT further agrees to (i) exercise reasonable due diligence to ensure that all of MERCHANT's Service Providers, payment applications, agents, business partners, contractors, and subcontractors maintain compliance with the Security Guidelines and (ii) provide Bank upon Bank's request with the assessment of MERCHANT's compliance with the Rules, Security Guidelines and PA-DSS as required by the card brands and organizations. If any card brand and organization, governmental entity or authority requires an audit of MERCHANT or any of MERCHANT's Service Providers, payment applications, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, MERCHANT agrees to reasonably cooperate with such audit. MERCHANT's obligations and Bank's rights under this section shall survive the termination of this Agreement.

MERCHANT may elect to use a third party as MERCHANT's agent ("Agent") to perform some of MERCHANT's obligations under this Agreement. Agents include, but are not limited to, MERCHANT's software providers and/or equipment providers. MERCHANT shall bear all risk and responsibility for conducting MERCHANT's own due diligence regarding the fitness of an Agent for a particular purpose and for determining the extent of an Agent's compliance with the Bank Rules, the Operating Regulations, and the Laws. MERCHANT acknowledges and agrees that MERCHANT shall cause its Agent to complete any steps or certifications required by any Brand (e.g., registrations, PA-DSS, PCI, audits, etc.) If an Agent is designated a service provider under any applicable Operating Regulation, MERCHANT shall cause such Agent to cooperate with Bank in completing any due diligence and/or steps required for registration and/or certification. MERCHANT is solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. MERCHANT expressly agrees that Bank shall in no event be liable to MERCHANT or any third party for any actions or inactions of any Agent used by MERCHANT, and MERCHANT hereby expressly assumes all such liability.

**13. Assignment.** This Agreement and the rights and obligations underlying this Agreement may be assigned by Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, or First American Payment Systems, L.P., or their respective affiliates or subsidiaries. This Agreement may not be assigned by MERCHANT.

**14. Term; Termination. The term of this Agreement is as stated in the Service Provider Agreement.** Notwithstanding, the Agreement, or any service(s) provided hereunder, may be terminated by Bank, with or without cause, reason or notice, at any time. In the event MERCHANT submits bank card transactions to Bank after the date of termination, the bank card transactions may (at Bank's option) be processed subject to the terms and conditions of this Agreement.

**15. Rates; Fees; Adjustments.** Bank may debit MERCHANT's bank account for all fees and charges relating to the MERCHANT account; provided, however, that such fees shall be debited to the related Convenience Fee Account if one exists. "Discount Rate" shall mean a percentage of the total sales submitted to Bank for processing. "Transaction Fee" shall mean a fee charged on each sales draft and each credit draft regardless of the total stated. "Authorization Fee" shall mean the fee charged on each transaction attempted

whether approved or declined and whether or not the sale was actually charged. A "Batch Settlement Fee" will be charged on all batch settlements. "Per Item Fee" shall mean the fee charged on each specified settled transaction. Additionally dues, fees, and assessments ("DF&A") associated with transactions may be charged. DF&A may include, without limitation, Brand charges, bank sponsorship fees, bank reconciliation cost, and any other expenses associated with transaction processing. The Visa, MasterCard, American Express, Discover and PayPal Discount Rate listed in the Service Provider Agreement applies to "Qualified Transactions" only. If the version of the agreement signed by Merchant lists a Credit Card Discount Rate (for Visa, MasterCard, American Express, Discover and PayPal) the rate shall apply to Qualified Credit Card transactions. If the Agreement lists a Check Card Discount Rate it will apply solely to Qualified Check Card transactions. If the Agreement lists a Credit/Check Discount Rate the rate would apply to Qualified Transactions for both Credit Cards and Check Cards. Qualified transactions are those in which an authorization was obtained electronically, the transaction was settled within the appropriate time frame, and the transaction meets all other requirements. Other transactions have higher Discount Rates and are categorized as "Mid-Qualified" or "Non-Qualified" transactions. Mid-Qualified transactions include but are not limited to those transactions where the card is affiliated with a special issuer program or did not meet other requirements. Non-Qualified transactions include but are not limited to those transactions where the authorization was obtained by calling a voice or Voice Recognition Unit (VRU) authorization number, the card is affiliated with a special issuer program, the transaction was not settled in the appropriate time frame, or the transaction did not meet other requirements. Merchant acknowledges and understands that PayPal card transactions may be accepted by eligible merchants for card present/swipe transactions only. If the terminal is unable to read the PayPal card, an alternate form of payment should be obtained.

POS Terminal replacement services shall consist of replacement or repair, at Bank's option, of MERCHANT's processing equipment. Bank will perform this service if (i) MERCHANT has honored and paid all amounts owed to Bank including, but not limited to, all amounts owed for Chargebacks and ACH rejects, (ii) the equipment has been verified to be in working order with Bank (verification of this shall occur by MERCHANT submitting a transaction to Bank using the equipment that is being requested to be replaced). Bank, at its option, may use refurbished equipment for replacement and at Bank's sole discretion may substitute comparable equipment. MERCHANT is required to return all defective equipment replaced by Bank to Bank. If equipment is not returned, bank, at its sole discretion, may assess a fee of not less than five-hundred dollars (\$500.00) for each piece of equipment not returned. Bank reserves the right to assess a fee, to be determined by Bank, for equipment upgrades when compatible equipment is not available or when MERCHANT's existing equipment is obsolete or no longer supported by Bank.

POS Terminals may be made available for use by MERCHANT free of charge ("complimentary equipment"), at Bank's option. MERCHANT is required to return all complimentary equipment at the termination of the processing agreement with Bank. Failure to return the complimentary equipment may result in Bank assessing a fee of not less than five-hundred dollars (\$500.00) for each piece of equipment not returned.

**16. Variances.** If in MERCHANT's processing there is a variance from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Service Provider Agreement as approved by Bank or if Bank determines that such variance may otherwise be detrimental to Bank, then Bank shall have no obligation to pay MERCHANT any settlement funds until MERCHANT has provided to Bank documentation sufficient for Bank to determine that the variance is verified, legitimate, and Bank's risk has been mitigated. MERCHANT further acknowledges that Bank, at its sole discretion, may hold or delay settlement of funds, suspend MERCHANT's processing, terminate this Agreement, or require MERCHANT to run a return/credit on a sale with or without notice upon the occurrence of any of the events specified above. MERCHANT shall immediately contact Bank in writing if variances occur from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Service Provider Agreement as approved by Bank. For purposes hereof, Bank's determination of detriment or risk to Bank shall be binding upon MERCHANT. MERCHANT hereby releases and holds Bank harmless for any losses or damage MERCHANT may incur as a result of Bank's actions taken in accordance with this Agreement, or as a consequence of the settlement funds being held, delayed or suspended. All bank fees associated with processing any transaction shall be paid by MERCHANT or the associated Convenience Fee Account, as applicable, even if funds are held, delayed, suspended or if MERCHANT is required to run a return/credit.

**17. Credit Card/Money Laundering.** MERCHANT agrees to abide by all local, state, and federal laws and statutes and Visa, MasterCard, American Express, Discover and PayPal regulations regarding Credit Card/Money Laundering. MERCHANT acknowledges that it may enter transactions into the credit card system only if (i) transactions are originally generated by MERCHANT, (ii) transactions are between MERCHANT and a bona fide cardholder, and (iii) transactions are submitted from MERCHANT's own accounts.

**18. Governmental Reporting Requirements.** MERCHANT acknowledges and agrees that all information provided in the Agreement is true and correct. MERCHANT also acknowledges that Bank may be required to report certain information regarding MERCHANT including but not limited to MERCHANT's TIN, Entity Name, DBA, processing volume, and principal's Social Security Number to governmental agencies such as the Internal Revenue Service (IRS). Bank shall have the absolute and unconditional right to impose a monthly fee to MERCHANT when the information provided by MERCHANT is incorrect or does not match government agency information. MERCHANT agrees to fulfill any request from Bank for additional information which may be required or requested by



## MERCHANT PROCESSING TERMS & CONDITIONS

### Merchant Credit Card Processing Terms & Conditions, continued

any government agency. Notwithstanding the foregoing, MERCHANT understands that Bank may be required to withhold processing funds and forward such funds to the IRS as a result of incorrect information provided by MERCHANT or at the direction of a government agency. MERCHANT expressly agrees and releases Bank from any and all liability hereunder resulting from incorrect information provided by MERCHANT. MERCHANT is responsible for any fines or penalties which may be assessed to MERCHANT and/or Bank as a result of incorrect information provided by MERCHANT.

**19. Amendments.** Bank has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than ten (10) days after MERCHANT's receipt of notice. MERCHANT shall have the right to terminate this Agreement at any time within thirty (30) days after MERCHANT's receipt of notice of any such amendment.

**20. Taxes.** Unless MERCHANT is exempt from such taxes and duties, MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

**21. Force Majeure.** Bank is released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any acts of any other party or third party or any acts of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, software failure, program failure, network problem, sabotage, war, military operation, national emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or Bank's compliance therewith or government proration, regulation, or priority, or any other cause beyond Bank's reasonable control whether similar or dissimilar to such causes.

**22. Release and Hold Harmless.** MERCHANT hereby releases and holds Bank harmless for any losses, claims, costs or damages to MERCHANT as a result of MERCHANT's acts or omissions under this Agreement. The provisions herein shall survive the termination of this Agreement.

**23. Limitation of Damages.** Bank shall not be liable for special, consequential, exemplary, or punitive damages. In no event shall Bank's cumulative liability to MERCHANT hereunder exceed the amount of processing fees paid by MERCHANT in the 90 days immediately preceding the occurrence of damages.

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

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

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

First American Payment Systems, L.P.  
Attn.: General Counsel  
100 Throckmorton Street, Suite 1800  
Fort Worth, TX 76102

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

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

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Service Provider Agreement.

**27. Survival.** Any and all provisions of this Agreement that impose or could be construed to impose a continuing obligation, duty, or requirement upon MERCHANT including, but not limited to limitation of damages, indemnification, PCI DSS Compliance, and chargeback liability, shall survive the expiration or termination, for any reason, of this Agreement.

**28. Visa Member Bank Disclosure.** The responsibilities listed below do not supersede terms of the Service Provider Agreement or these terms and conditions and are provided to ensure MERCHANT understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should MERCHANT have any problems.

(a) Member Bank (Acquirer) Information:

Acquirer Name: Fifth Third Bank, N.A.  
Acquirer Address: 38 Fountain Square Plaza  
Cincinnati, OH 45263  
Attn: Relationship Manager  
Contact Phone: 817-317-2996  
Acquirer Phone: 866-250-9764

(b) Important Member Bank (Acquirer) Responsibilities:

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

(c) Important MERCHANT Responsibilities:

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

(iv.) Comply with Visa Operating Regulations.

**29. Entire Agreement; Changes.** The Service Provider Agreement, these terms and conditions and any applicable supplements contain the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by Bank.

**30. If any term, provision, covenant or condition of this Agreement is determined by any local, state or federal court or law enforcement agency to be invalid, illegal, void or unenforceable in any jurisdiction, then such provision, covenant or condition shall, as to such jurisdiction, be modified or restricted to the extent necessary to make such provision valid, binding and enforceable, or, if such provision cannot be modified or restricted, then such provision shall as to such jurisdiction, be deemed to be excised from this Agreement and any such invalidity, illegality or unenforceability with respect to such provision shall not invalidate or render unenforceable such provision in any other jurisdiction, and the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.**

## Additional American Express Card Acceptance Requirements

High CV Merchant. In the event MERCHANT's American Express annual charge volume exceeds \$1,000,000 in a rolling twelve month period or is greater than \$100,000 in any three consecutive months, MERCHANT will be considered a High CV Merchant by American Express and will be required to enter into a direct merchant card acceptance agreement with American Express. Upon any conversion to a direct agreement with American Express, MERCHANT will be bound by American Express' then current Card Acceptance and to any pricing and fees set by American Express.

Marketing and Communications. Upon agreement by MERCHANT to accept American Express transactions, MERCHANT consents to receive commercial marketing communications from American Express. After account setup, MERCHANT may contact BANK directly and request to opt-out of future marketing communications from American Express. This will not preclude MERCHANT from acceptance of important transactional or relationship communications from American Express. After a request to opt-out is received, MERCHANT may continue to receive marketing communications while BANK and American Express updates its records to reflect MERCHANT's request.

Rights and Obligations. MERCHANT agrees that American Express shall have third-party beneficiary rights to enforce this Agreement, but shall hold no obligations to the MERCHANT. MERCHANT warrants that it does not hold third-party beneficiary rights to any agreements between Payment Service Provider and American Express and at no time will attempt to enforce any such agreements against American Express. MERCHANT agrees BANK shall submit Transactions to, and receive settlement from, American Express. MERCHANT agrees (i) BANK shall disclose Transaction Data, Merchant Data, and other information about the MERCHANT to American Express; and (ii) American Express to use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program Agreement, and important transactional or relationship communications from American Express. MERCHANT agrees that American Express may use the information obtained in the Merchant application at the time of setup to screen and/or monitor MERCHANT in connection with Card marketing and administrative purposes. MERCHANT may opt-out of accepting Cards at any time without penalty and without directly or indirectly affecting its rights to accept Other Payment Products. MERCHANT's refund policies for purchases on the Card must be at least as favourable as its refund policy for purchase on any Other Payment Product and the refund policy be disclosed to Card Members at the time of purchase and in compliance with Applicable Law. MERCHANT must report all instances of a Data Incident immediately to BANK. MERCHANT must cease all use of and remove American Express Licensed Marks from the MERCHANT's website and wherever else they are displayed upon termination of the Merchant Agreement or a MERCHANT's participation in the Program.

## MERCHANT PROCESSING TERMS & CONDITIONS

### Additional American Express Card Acceptance Requirements, continued

MERCHANT shall not assign to any third-party any payments due to it under this Agreement, and all indebtedness arising from charges will be for bona fide sales of goods and services (or both) or charitable contributions at its establishments free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that MERCHANT may sell and assign future transaction receivables to BANK, its affiliated entities and/or any other cash advance funding source that partners with BANK or its affiliated entities, without consent of American Express.

MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, IT AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

\*Please visit [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide) for a full copy of the American Express Merchant Operating Guide.

### Debit Card Processing Terms & Conditions

The following Debit/EBT Processing Terms & Conditions apply only if MERCHANT has agreed to process Debit/EBT transactions.

WHEREAS: Debit networks are sponsored by Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, or as amended from time to time; and

WHEREAS: First American provides Electronic Benefits Transfer (EBT) processing capabilities which includes acceptance of EBT cards from cardholders that receive food stamp benefits and/or cash benefits from the individual states and/or United States Government.

**1. Acceptance of Debit Cards or EBT Cards.** MERCHANT agrees to honor without discrimination all lawful and valid debit cards or EBT cards when properly presented as payment by customers in connection with bona fide, legitimate business transactions arising out of MERCHANT's usual trade or business as disclosed in the Merchant Application & Agreement. MERCHANT agrees not to submit any transactions that will violate applicable laws, rules and regulations. MERCHANT shall not honor expired, counterfeit, or revoked cards, nor honor cards presented by persons other than the proper cardholder as authorized by the entry of a Personal Identification Number (PIN).

**2. Payments.** MERCHANT understands that an authorization is not a guarantee of payment from First American. All payments to MERCHANT for legitimate and authorized Debit/EBT transactions shall be made by First American through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, First American cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, MERCHANT agrees to assist First American to help resolve any problems in crediting/debiting MERCHANT's account. MERCHANT agrees to provide First American three (3) days prior written notice of any change of account and to abide by First American's policies regarding changes to accounts. MERCHANT and not First American or any processor shall be responsible for verifying that account information is correct on the Merchant Application & Agreement, voided check and all account statements. First American is not responsible for incorrect account numbers. Unless MERCHANT provides proper notice to First American, MERCHANT shall not change any of its accounts.

All payments to MERCHANT for the amount of debit or EBT card transactions properly submitted to First American may be less amounts owed by MERCHANT. Any payment made by First American to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by First American. MERCHANT acknowledges and agrees that First American shall have no obligation to make any payment to MERCHANT with respect to transactions described in Sections 12, 13, 14 and 28 of this Agreement unless and until MERCHANT provides to First American the requested documentation. If MERCHANT fails to provide requested documentation, such payments shall be earned compensation of First American. Fees and other charges due First American hereunder shall be deducted from amounts due MERCHANT or may be debited against any of MERCHANT's accounts at First American's sole discretion. The network fees and other fees shall be collected by First American on a daily, monthly, or other basis, as determined by First American. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's account, or paid directly by MERCHANT through ACH or otherwise at First American's sole discretion. MERCHANT must notify First American in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of First American and MERCHANT subject to or relating to this Agreement or First American's obligations hereunder. Save and except First American's right to funds owed First American under this Agreement or incorrectly paid to MERCHANT, if no notice of error is received within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. Any amount inadvertently or incorrectly paid to MERCHANT may be debited from any account of MERCHANT, at the sole discretion of First American and, in any event, remains an obligation of MERCHANT to First American payable in full and on demand.