

**TERMS OF SERVICE**  
**TILL PAYMENTS SUB-MERCHANT AGREEMENT**

These terms of service (the “**General Terms**”), to include all appendices attached hereto, including the Till Payments, LLC. Application (“**Application**”), Privacy Policy located at [Till Payments | Privacy Page](#) and Merchant Services Agreement for Sub-Merchants (collectively, the “**Agreement**”) govern the Sub-Merchant’s participation in the Services. The Sub-Merchant agrees to be bound by the terms and conditions of the Agreement, as evidenced either by the signature of an authorized representative of the Sub-Merchant on the Application or by the transmission of a Transaction receipt or other evidence of a Transaction. The parties to this Agreement shall be the Sub-Merchant as named in the Application that applies to participate in Transactions using Till Payments’ processing products (“**Sub-Merchant**,” “**Merchant**,” or “**you**”) and Till Payments, LLC with its principal place of business at 200 Broadhollow Road, Suite 207, Melville, New York 11747 (“**Till Payments**,” “**we**,” or “**us**”) each of which may be referred to individually as a “**Party**” or collectively as “**Parties**.” The effective date of this Agreement shall be the date Till Payments approves Sub-Merchant for participation in the Processing Services (“**Effective Date**”).

**WHEREAS**, Sub-Merchant and Till Payments are entering into the Agreement to set forth, among other things, terms and conditions under which Till Payments will provide to Sub-Merchant services that facilitate Sub-Merchant’s acceptance of card payments, e-check, and/or ACH payments for goods and services provided, and Till Payments as an agent for Sub-Merchant, may accept settlement payments from the Acquirer or other third parties on behalf of Sub-Merchant;

**WHEREAS**, Till Payments is party to an agreement with an Acquirer and a Bank under which Acquirer and Bank provide payment processing and Association sponsorship services to Till Payments on behalf of Sub-Merchant and other sub-merchants of Till Payments; and

**WHEREAS**, as a condition of providing services to Till Payments on behalf of Sub-Merchant, Acquirer, and Bank require that Till Payments include certain terms and conditions in the Agreement relating to the payment processing services being provided to Sub-Merchant.

**THEREFORE**, Till Payments and Sub-Merchant hereby agree to the terms and conditions set forth herein.

On and subject to the terms and conditions hereof, Till Payments is: (i) acting in the capacity of a “**Payment Service Provider**” (under the Visa Rules) and a “Payment Facilitator” (under the MasterCard Rules) and will provide you card processing services as described herein; (ii) entering into this Agreement as an agent of the Acquirer, and (iii) will provide you with additional services as agreed by the Parties. Till Payments provides processing services with respect to credit card transactions including Visa U.S.A., Inc. (“**Visa**”), MasterCard Worldwide (“**MasterCard**”), DFS Services LLC (“**Discover Network**”), American Express, JCB, Discover, Diners Club (“**Associations**”), as well as e-check, ACH, and any other transactions as decided by Till Payments. The National Automated Clearing House Association, which governs ACH Transactions, shall be included in the definition of Association. We are intending for you to be able to accept transactions for all of these Associations, at your discretion, and all the other Services designated in this Agreement or any attachment to this Agreement. You will honor a card by accepting it for payment. You will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular card type elected by you and approved by us, in favor of any competing card brand also elected and approved. You understand and agree that you are expressly prohibited from presenting sales transactions for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities. For all Cards issued by U.S. Issuers, you will honor all cards within the card types you accept in accordance with this Agreement. For example, if you accept Visa credit cards, you will submit payments from Visa-branded credit card Cardholders without regard to whether the credit card is a Visa-branded rewards credit card or Visa-branded business purpose credit card. You acknowledge that (i) no party will acquire any right, title, or interest in or to the marks of any Associations, (ii) the Associations are the sole and exclusive owners of their marks, (iii) you will not contest the ownership of the Association’s marks, and (iv) that any Association may prohibit you from using their marks (and you will immediately comply with such prohibition). You will not assign to any third party any of the rights to use the marks of any Associations, and the Associations may use information obtained in the Application to monitor you in connection with Card marketing and administrative purposes.

1. **DEFINITIONS.** For the purposes of the General Terms, the definitions contained in Appendix I apply to capitalized words contained within the Agreement unless the context otherwise requires or unless the term is assigned an alternative definition within the General Terms.

2. **SERVICES AND PRIORITY.** Subject to the terms and conditions of the Agreement, the Parties will provide those Services for which they are respectively responsible as set forth in the Agreement. In the event that terms and conditions described within the appendices differ from those indicated within the General Terms, the terms and conditions contained within the Appendices shall prevail over any conflicting terms and conditions in the General Terms.

3. **SUB-MERCHANT OBLIGATIONS AND REQUIREMENTS.**

A. **Association Operating Rules and Compliance.** Sub-Merchant acknowledges that Acquirer and Bank must maintain closer controls over high-volume sub-merchants of Till Payments and, therefore, Sub-Merchant must immediately notify us if it has, or in Sub-Merchant’s reasonable opinion will, have greater than \$1,000,000 in annual card sales volume processed hereunder (based upon the date Sub-Merchant’s account is boarded) for any one Association. In the event that more than \$1,000,000 in Visa transactions, \$1,000,000 in MasterCard transactions, and/or \$100,000 in Discover transactions (or such other amount provided by the Operating Regulations) (“**Benchmark Amount**”) is processed through and on behalf of Sub-Merchant in any 12-month period, Sub-Merchant will automatically be deemed to have accepted, and will be bound by, the “Merchant Services Agreement for Sub-Merchants” with Acquirer (included below), the terms of which will be independently enforceable by Acquirer.

You shall comply with the Associations’ operating rules (“**Operating Rules**”), including the Operating Rules applicable to the Visa PSP and MasterCard Payment Facilitator programs, American Express Merchant Operating Guide, Program Merchant Data Security Requirements, and all applicable local, state, and federal laws, rules, and regulations (“**Applicable Laws**”). The Operating Rules are available on websites, such as <http://www.usa.visa.com/merchants> and [https://icm.aexp-static.com/content/dam/gms/en\\_us/optblue/us-mog.pdf](https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf) as updated from time to time. Without limiting the foregoing, Sub-Merchant agrees that it will fully comply, with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, including but not limited to Payment Card Industry Data Security Standard (“**PCI**”), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. Should any Operation Rules(s) not be publicly available or otherwise made available to Sub-Merchant, such unavailability shall not alter or limit Sub-Merchant’s obligation to comply with the Operating Rules. Notwithstanding Till Payments’ assistance in understanding the Operating Rules, Sub-Merchant expressly acknowledges and agrees that it is assuming the risk of Sub-Merchant’s compliance with all provisions of the Operating Rules, regardless of whether Sub-Merchant has possession of those provisions. Both MasterCard and VISA make excerpts of their respective Operating Rules available on their internet sites. Sub-Merchant agrees that it will not take any action that could interfere with or prevent the exercise of this right by the Associations. In the event of any inconsistency between any provisions hereof and the Operating Rules, the Operating Rules will govern to the fullest extent possible under Applicable Laws.

B. On an ongoing basis, you must promptly provide Till Payments with the current address of each location, all “doing business as” (DBA) names used by you, and a complete description of goods sold and services provided by you. You agree to provide Till Payments with 30 days’ prior written notice of your intent to change your business form or entity in any manner (e.g., a change from a limited liability company to a corporation), and/or of your intent to sell all of its stock or assets to another entity. You may not use the Services for any service other than as set forth in this Agreement.

C. **Identify Sub-Merchant.** To the extent Sub-Merchant interacts with Cardholder, Sub-Merchant will prominently and unequivocally inform the Cardholder of the identity of the Sub-Merchant at all points of interaction so that the Cardholder readily can distinguish the Sub-Merchant from any other party, such as a supplier of products or services to Sub-Merchant, including Till Payments. Further, Sub-Merchant must ensure that the Cardholder understands who is responsible for the card transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the card transaction, and for customer

service and dispute resolution, all in accordance with the terms applicable to the card transaction.

- D. Third Parties. Till Payments and Sub-Merchant may use one or more third party service providers (“TPSP’s”) in connection with the Services and/or the processing of some or all of its Card transactions. In no event shall Sub-Merchant use a TPSP unless such TPSP is compliant with PCI and/or the Payment Application Data Security Standard (“PA-DSS”), depending on the type of TPSP, as required by the Operating Rules. Sub-Merchant acknowledges and agrees that Sub-Merchant shall cause its TPSP to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc). Sub-Merchant shall cause its TPSP to cooperate with Acquirer in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such TPSP. Sub-Merchant shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations and certifications. Sub-Merchant shall bear all risk and responsibility for conducting Sub-Merchant’s own due diligence regarding the fitness of any TPSP(s) for a particular purpose and for determining the extent of such TPSP’s compliance with the Operating Rules and applicable law. Sub-Merchant expressly agrees that neither Acquirer, Bank, or Till Payments shall in any event be liable to Sub-Merchant or any third party for any actions or inactions of any TPSP used by Sub-Merchant, even if Acquirer, Bank or Till Payments introduced or recommended such TPSP.
- E. Operating Account. Sub-Merchant shall establish an Operating Account at a financial institution of Sub-Merchant’s choice prior to processing any payments. The Operating Account shall be utilized for deposits from Payment Card or eCheck Processing Transactions. Sub-Merchant shall advise Till Payments of the name and address of the financial institution, routing number and account number of the account. Sub-Merchant authorizes Till Payments to debit fees and charges from the Operating Account either daily, monthly or at other times deemed appropriate by Till Payments through the ACH Network or by a manual debit of the account.
- F. Maintenance of the Operating Account. Sub-Merchant shall maintain the Operating Account throughout the term of this Agreement, to include any extensions or renewals thereof. Sub-Merchant shall, at all times, maintain sufficient funds in the Operating Account to ensure that all credit Entries originated and returns of debit Entries originated, as well as any and all fees, charges, and costs provided for under the Agreement are paid, including any reserve requirements set by Till Payments in accordance with this Agreement. Sub-Merchant agrees to deposit funds into the Operating Account as required in order to ensure that sufficient funds are maintained in the Operating Account at all times.
- G. Sub-Merchant Authorization and Waiver. Sub-Merchant authorizes Till Payments, Acquirer, or Member Bank to make deposits to or withdrawals from the Operating Account. Till Payments will have no signatory or ownership rights in the Operating Account and will have no right to negotiate or assert ownership rights in deposited funds. Sub-Merchant shall be responsible for all Bank charges and Sub-Merchant shall designate employees authorized to make changes to the Operating Account. Any changes proposed to the Operating Account shall be submitted in writing to Till Payments and must be approved in writing by Till Payments. Should Sub-Merchant modify these terms without following the aforementioned process, Sub-Merchant indemnifies and holds Till Payments harmless for any administration and ACH activity initiated by Till Payments or its employees. If required by Till Payments or any other financial institution where the Operating Account is maintained, Sub-Merchant agrees to sign any other additional documents to authorize the deposits and withdrawals, including without limitation, ACH Transactions. Sub-Merchant waives any claims for loss or damage arising out of any charges or debits to the Operating Account against any other designated financial institution where the account is maintained.
- H. Retention of Sales Information. Sub-Merchant shall store all sales/service drafts and Transaction records in strict compliance with the Operating Rules, and in a limited access area for at least eighteen months after the date of sales.
4. **SECURITY INTEREST; RESERVE; SETOFF RIGHTS.**
- A. Security Interest and Lien. Sub-Merchant hereby grants a security interest and lien upon funds payable to or in the Operating Account or any substitute account now and in the future and all proceeds thereof to Till Payments to secure all fees, costs, and charges due in accordance with this Agreement (the “**Amounts Due**”). In the exercise of its rights with regard to the security interest and lien, Till Payments may only debit the Operating Account to the extent of the then existing amounts due and shall only do so if Till Payments becomes reasonably concerned about whether the Sub-Merchant will otherwise fulfill its financial obligations. The security interest and lien granted herein shall survive the termination of this Agreement until all amounts due are determined and paid in full. Sub-Merchant hereby authorizes Till Payments to prepare all documents or to take other actions reasonably necessary to perfect its security interest or lien in the Operating Account or any substitute account therefor.
- B. Establishment of Reserve Account. We may withhold funds by temporarily suspending or delaying payouts of proceeds to you and/or designate in a separate reserve account (“**Reserve**”) to secure the performance of your obligations under any agreement between you and Till Payments. We may require a Reserve for any reason related to your use of the Services. The Reserve will be in an amount as reasonably determined by us to cover potential losses to Till Payments. If you do not have sufficient funds in your Reserve, we may fund the Reserve from any funding source associated with the Services, including any funds (a) deposited by you, (B) due to you, or (c) available in your Operating Account, or other payment instruction registered with us.
- C. Set-Off Rights. To the extent permitted by law, we may set off against the proceeds for any obligation you owe us under any agreement with Till Payments (e.g., Disputes or refunds). If you owe us an amount that exceeds your cumulative incoming proceeds, we may debit the Operating Account. Your failure to fully pay amounts that you owe us would be a breach of these terms. You are liable for any of our costs associated with collection in addition to any amounts owed, including attorneys’ fees and expenses, collection agency fees, and any applicable interest.
- D. Auditing and Credit Investigation. Sub-Merchant authorizes Till Payments or its respective agents to investigate the background and personal and business credit history of any of the principals and employees associated with Sub-Merchant’s business from time to time, and to obtain a business report on Merchant’s business from any company providing credit reporting service. Till Payments may terminate this Agreement if the information received in any investigation is unsatisfactory in Till Payments’ sole discretion. Till Payments may also audit from time to time Sub-Merchant’s compliance with the terms of this Agreement. Sub-Merchant shall provide all information requested by Till Payments necessary to complete the audit. Upon Till Payments’ request, Sub-Merchant shall provide all of its books and records, including financial statements for Sub-Merchant and personal financial statements for all guarantors. Sub-Merchant authorizes Till Payments to make on-site visits to any and all of the Sub-Merchant’s locations with regard to all information necessary or pertinent to the Services.

5. **SUB-MERCHANT REPRESENTATIONS AND WARRANTIES.**

- A. Without limiting any other warranties hereunder, you represent, warrant and covenant with us and with the submission of each card transaction, the following representations, warranties and covenants:
- Each transaction is genuine and arises from a bona fide transaction, permissible under the Operating Rules and Applicable Law, by the Cardholder directly with you;
  - Each transaction represents a valid obligation for the amount shown on the sales draft and does not involve the use of a card for any other purpose (including but not limited to illegal or prohibited activity such as money-laundering or financing of terrorist activities);
  - Each transaction represents an obligation of the related Cardholder for the amount of the transaction;
  - The amount charged for each Card Transaction is not subject to any dispute, set off or counterclaim;

- v. Each transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased, or rented to a Cardholder by you and, except for any delayed delivery or advance deposit transactions disclosed on the Application and authorized by this Agreement, that merchandise or service was actually delivered to or performed for the Cardholder entering into that transaction simultaneously upon your accepting and submitting that transaction for processing;
- vi. With respect to each transaction, you have no knowledge or notice of any fact, circumstance, or defense which would indicate that such transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that transaction or relieve that Cardholder from liability with respect thereto;
- vii. Each transaction is made in accordance with this Agreement and Applicable Law;
- viii. Each sales draft is free of any alteration not authorized by the related Cardholder; and
- ix. It has not opened multiple processing accounts without having provided information sufficient to demonstrate that such additional processing accounts are necessary for legitimate business.

Further, you are authorized to carry on your own business as it is conducted and to enter into this Agreement. You further represent that no other authorizations, consents, or approvals are required in connection with the validity and enforceability of this Agreement or your execution, delivery, and performance of this Agreement. You have not changed the nature of your business, card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different merchant category code under Operating Rules, in a way not previously disclosed to us. You will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any person. You, or your third-party service providers, have not filed, or intend to file, a bankruptcy petition not previously disclosed to us. All information and data you provide to us, or for which you engage a third party to provide to us, is complete, truthful, accurate, valid, your lawful property, and you have the right to communicate such information. You own or otherwise have the full right and authority to use and disseminate all information, data, graphics, text, video, music, or other intellectual property which forms a part of your website, or which you use in your advertising. You and your third-party service providers are legally authorized to sell any product or services offered and have obtained all necessary regulatory approvals and certificates ("Certificates"), and you have the proper facilities, equipment, inventory, agreements, and personnel required to conduct business. You will provide us any copies of Certificates immediately upon receipt of our request.

## 6. **TERM AND TERMINATION.**

- A. **Term.** This Agreement shall become effective on the Effective Date and, unless sooner terminated in accordance with this Agreement, continue on a month-to-month basis until terminated by either Party upon notice to the other Party. Till Payments and/or the Associations may terminate your use of the Services and/or this Agreement at any time for any reason. Any termination of these terms does not relieve you of obligations to pay fees or costs accrued prior to termination, Disputes, and any other amounts owed to us as provided in this Agreement, including the General Terms, or any other agreement between you and Till Payments. Any funds that we are holding in custody for you at the time of closure, less any applicable fees, will be paid out according to your payout schedule, subject to other conditions in this Agreement. If an investigation is pending at the time you close your Till Payments account, we may hold your funds as described herein. If you are later determined to be entitled to some of the funds, we will release those holds for you. Further, Till Payments will immediately terminate this Agreement if any Association de-registers Till Payments. If the Acquirer ceases to be a member of any of the Associations for any reason, or if the Acquirer no longer has a license to use an Association's marks, then the Acquirer will cease processing with respect to that Association's transactions and Till Payments may engage another processor.
- B. **Suspension of Services.** Till Payments may, in its sole discretion, suspend the Services at any time in its upon notice to you. Till Payments may selectively terminate one or more of Sub-Merchant's approved locations or certain Services without terminating this Agreement. Sub-Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the posted transaction date of the Transaction.
- C. **Deconversion Fees.** If this Agreement is terminated and Sub-Merchant requests assistance from Till Payments with moving to a new processor, Sub-Merchant agrees to pay Till Payments for its then-current fees associated with such deconversion services as provided by Till Payments; provided, however, in no event shall Till Payments be obligated to provide deconversion services to Sub-Merchant.
- D. **Early Termination Fee.** Till Payments will suffer substantial injury, and it would be difficult to determine the damages, if Sub-Merchant terminates this Agreement without cause before the end of the Term. Till Payments and Sub-Merchant agree an accurate reflection of the damages caused by an early termination of this Agreement is an amount equal to a percentage of the average monthly fees paid to Till Payments during the 12-month period (excluding third party fees) preceding the termination corresponding to the then-current contract year in the table below, multiplied by the number of months (including partial months) remaining in the Term (the **Early Termination Fee**). Sub-Merchant will pay Till Payments an Early Termination Fee if Sub-Merchant terminates this Agreement without cause prior to the end of its Term (no Early Termination Fee will be due if this Agreement is terminated due to Till Payment's uncured breach).

Contract Year	Percentage of Average Monthly Fees
1	50%
2	30%
3	20%

7. **FEES.** Sub-Merchant agrees to pay all fees, including, but not limited to processing fees, monthly service fees and set-up fees as specified on the Till Payments dashboard, and in accordance with this Agreement and any other agreement between you and Till Payments. Sub-Merchant also agrees to pay Till Payments as applicable, the amount of any fees, charges, or penalties assessed against Till Payments as applicable, by any Association, Issuer, Acquirer, Bank, NACHA, or any other third party. Notwithstanding anything to the contrary, Till Payments may change or add Fees upon notice to you, and such Fees and/or charges shall be immediately payable by you when assessed by Till Payments. In the event Till Payments changes or adds Fees pursuant to the immediately preceding sentence ("Fee Change"), then you may, subject to the following provisions, terminate the Agreement upon sixty (60) days advance written notice to Till Payments provided Till Payments receives such written notice from you within ninety (90) days of the date the Fee Change becomes effective. Upon Till Payments' receipt of your written notice pursuant to the immediately preceding sentence, you and Till Payments shall have thirty (30) days to come to a mutually agreeable resolution to the Fee Change, and, in the event a resolution is reached or Till Payments rescinds or waives the Fee Change, then you shall not have the right to terminate this Agreement. You acknowledge and agree that this section shall not be intended or construed to permit you to terminate the Agreement as a result of a change or increase in fees from third parties or in passthrough fees.
- A. **Third Party Assessments.** Notwithstanding any other provision of this Agreement, Sub-Merchant shall be responsible for all amounts imposed or assessed to Sub-Merchant, Till Payments Acquirer, or Bank in connection with this Agreement by third parties such as, but not limited to, Associations and third-party service providers (including telecommunication companies) to the extent that such amounts are not the direct result of the gross negligence or willful misconduct of Acquirer, Bank or Till Payments as applicable. Such amounts include, but are not limited to, fees, fines, assessments, penalties, loss allocations etc. Any changes or increases in such amounts shall automatically become effective upon notice to Sub-Merchant. In the event that Acquirer assesses Till Payments with the cost of funds associated with a circumstance where Acquirer, for whatever reason, advances settlement or any amounts and/or delays the assessment of any fees, Sub-Merchant shall be fully responsible for any portion of such assessment that is attributable to the Services for Sub-Merchant.

- B. Late Fees. If Sub-Merchant does not pay amounts owed to Till Payments when due, Till Payments may charge and Merchant agrees to pay a late fee of 1.5% per month on the outstanding balance, or the highest amount allowed by law, whichever is less.
- C. Collection Charges. Should Till Payments take any action against Sub-Merchant to collect sums due hereunder, Sub-Merchant agrees to pay all costs associated with such collection efforts, including but not limited to reasonable attorney's fees.
- D. Taxes, Information Filings and Backup Withholding. Sub-Merchant agrees to pay all federal, state, and local sales, use, income, property and excise taxes, which may be assessed in connection with the Services and related products provided under this Agreement. Sub-Merchant agrees and understands that Till Payments or its designee will provide information reporting to the Internal Revenue Services and applicable state treasurers for all reportable payment transactions of Sub-Merchant as defined in IRC § 6050W. If necessary, Till Payments or its designee will conduct backup withholding on the revenue generated by the reportable payment transactions of the Sub-Merchant.

## **8. INDEMNIFICATION AND LIMITATIONS OF LIABILITY.**

- A. Indemnification. Sub-Merchant shall indemnify, defend, and hold harmless Till Payments and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Till Payments its directors, officers, employees, affiliates and agents resulting from or arising out of the Services in this Agreement, Sub-Merchant's payment activities, the business of Sub-Merchant or its customers, any sales transaction acquired by Acquirer or Member Bank, any information provided by Sub-Merchant on which Till Payments relied in determining to grant, extend or continue Services was inaccurate, misrepresented or fraudulent, use or alleged misuse of the ACH system and/or fines assessed against Till Payments, Bank, or any Financial Institution in connection therewith, any noncompliance with the Operating Rules (or any rules or regulations promulgated by or in conjunction with the Associations) by Sub-merchant or its agents (including any TPSP), any issue, problems, or disputes between Acquirer and any Sub-merchant, or Bank and Sub-Merchant, any Data Incident, any infiltration, hack, breach, or violation of the processing system of Sub-merchants, TPSP, or any other third party processor or system, or by reason of any breach or nonperformance of any provision of this Agreement, on the part of Sub-Merchant, or its employees, agents, TPSPs, or customers. The indemnification obligations hereunder shall survive the termination of the Agreement.

"**Data Incident**" is defined as any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of a Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

- B. Limitation of Liability. Neither Party shall be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether arising out of circumstances known or foreseeable by the other Party) suffered by such Party, their customers or any third party in connection with the Services. However, nothing in the foregoing sentence is in any way intended, and shall not be construed, to limit (i) Sub-Merchant's obligation to pay any fees, assessments or penalties due under this Agreement, including but not limited to those imposed by telecommunications services providers, VISA, MasterCard and/or other Association(s); or (ii) Sub-Merchant's obligation to indemnify Till Payments pursuant to this Agreement. In no event will Till Payments be liable for any damages or losses (i) that are wholly or partially caused by Sub-Merchant, or its employees, agents, or TPSPs. Further, neither Till Payments nor Bank shall be liable to Sub-Merchant or Sub-Merchant's customers or any other person for any of the following: (i) any loss caused by a Transaction downgrade resulting from defective or faulty software or equipment; (ii) any loss or liability resulting from the product or service of a third party; (iii) denial of credit to any person or Merchant's retention of any Card or any attempt to do so; or (iv) any delay by an ACH Operator or Receiving Depository Bank in processing any credit or debit Entry, nor for the failure of a third party to process, credit, or debit any such Entry or for other acts of omission.
- C. Limitation of Damages. TILL PAYMENTS SHALL NOT BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES TO SUB-MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY TILL PAYMENTS PURSUANT TO THIS AGREEMENT. IN NO CASE SHALL SUB-MERCHANT BE ENTITLED TO RECOVER DAMAGES FROM TILL PAYMENTS THAT EXCEED THE FEES RETAINED BY TILL PAYMENTS FROM THIS AGREEMENT DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES.
- D. Warranty Disclaimer. SUB-MERCHANT ACKNOWLEDGES THAT Till Payments HAS NOT PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS, OR DELAYS RESULTING FROM TILL PAYMENTS' PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, TILL PAYMENTS' LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE. SUB-MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND SUB-MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.
9. NOTICE. Except for notices provided by Till Payments to Sub-Merchant on the Sub-Merchant Statement, all notices, requests, demands or other instruments, which may be or are required to be given by any Party herein, shall be in writing and each shall be deemed to have been properly given (i) three Business Days after being sent by certified mail, return receipt requested or (ii) upon delivery by a nationally recognized overnight delivery service to the addresses listed herein for the respective Parties. Notices shall be addressed as follows:

If to Till Payments:  
Till Payments, LLC  
200 Broadhollow Road, Suite 207  
Melville, New York 11747  
Attn: Legal Department

If to Sub-Merchant:  
The physical or email address provided in the Application  
Any Party may change the address to which subsequent notices are to be sent by notice to the other Parties given as set forth above in this Section.

10. AMENDMENTS. Pass-through charges from third parties, including, but not limited to, Payment Card Processing assessments and interchange or ACH related fees may be changed by such third parties from time to time. Till Payments will provide Sub-Merchant with as much notice as is reasonably possible in the event of any such changes in pass-through charges. From time to time, Till Payments may change all non-pass through rates, fees and charges set forth in the Agreement. Till Payments will provide a minimum of 10 days written notice to Sub-Merchant of all amendments to non-pass through rates, fees, and charges. Notice may be given on the Sub-Merchant Statement. Till Payments may amend or modify this Agreement and any such amendment or modification will be effective and binding on Sub-Merchant upon notice. Sub-Merchant's continued use of Services after the effective date of any such amendment or modification shall signify Sub-Merchant's

acceptance of, and agreement to, abide by the terms and conditions contained in any such amendment or modification.

## 11. MISCELLANEOUS

- A. Rights to Dispute Charges; Reports; Invoices. You expressly agree that your failure to notify us that you have not received any settlement funds within three (3) business days from the date that settlement was due to occur, or fail to reject any report, notice, or invoice within thirty (30) business days from the date the report or invoice is made available to you, shall constitute your acceptance of the same. In the event you believe that Till Payments has failed in any way to provide the Services, you agree to provide Till Payments with written notice, specifically detailing any alleged failure, within sixty (60) days of the date on which the alleged failure first occurred.
- B. Investigations. Sub-Merchant shall assist Till Payments in any and all investigations of Transactions in a timely manner and will provide written reports of investigated transactions to Till Payments upon Till Payments' request.
- C. Confidentiality. Neither Party shall disclose to any third Party the Confidential Information disclosed by the other Party and shall not use any such Confidential Information for any purpose other than the purpose for which it was originally disclosed to the receiving Party. Each Party agrees to treat Confidential Information with the same degree of care and security as it treats its most confidential information, but in no circumstance less than a reasonable degree of care. Each Party may disclose such Confidential Information to employees and agents who require such knowledge to perform services under this Agreement, provided that such employees and agents are subject to obligations of confidentiality in regards to the protection of the Confidential Information no less binding than those set forth herein. Confidential Information shall not include information that (i) is known to the receiving Party at the time it receives Confidential Information; (ii) has become publicly known through no wrongful act of the receiving Party; (iii) has been rightfully received by the receiving Party from a third Party authorized to make such communication without restriction; (iv) has been approved for release by written authorization of the disclosing Party; or (v) is required by law to be disclosed. In the event either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information, the recipient shall promptly notify each other Party of such receipt and may, thereafter, comply with such subpoena or process to the extent permitted by law. The terms and conditions and commissions associated with this Agreement are specifically included in the definition of Confidential Information. The obligations of the Parties under this Section will survive termination of this Agreement for whatever reason, and will bind the Parties, their successors and assigns. Notwithstanding anything to the contrary, Sub-Merchant hereby permits Till Payments to share any and all information with the Associations, Acquirer, and Member Bank, and each of the foregoing may use the same without restriction for marketing, analysis, transactions or relationship communication, and any other lawful business purpose.
- D. Independent Contractor; Third Party Beneficiary. In the performance of its duties herein, each Party shall be an independent contractor, not an employee or agent of the other Party. You are not a third-party beneficiary to any agreement between Till Payments and the Bank, and you may not bring any claims related thereto against the Bank. The Associations, Acquirer, or Member Bank may enforce the terms of this Agreement against Sub-Merchant.
- E. Cooperation. In their dealings with one another, each Party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the matters contemplated by this Agreement.
- F. Entire Agreement. This Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into by any Party (or by any officer or officers of any Party) relating to the matters covered herein and constitutes the entire agreement of the Parties hereto. In the event that there is a conflicting term between the Merchant Application and the General Terms, the General Terms supersede the Till Payments Application.
- G. Assignment. Neither this Agreement nor any of Sub-Merchant's rights or obligations may be assigned by Sub-Merchant without the prior written consent of Till Payments. A change in control of Sub-Merchant as a result of a sale, reorganization, merger or otherwise, shall be deemed an assignment and shall require the written consent of Till Payments.
- H. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
- I. Governing Law; Arbitration. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to its principles of conflict of laws. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The number of arbitrators shall be one. The place of arbitration shall be in Delaware. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- J. Power of Attorney. Sub-Merchant appoints Till Payments as its attorney-in-fact to execute such documents as necessary or desirable to accomplish perfection of any security interests. The appointment is coupled with an interest and shall be irrevocable as long as Sub-Merchant owes any amount to Till Payments.
- K. Attorneys' Fees. If Till Payments takes legal action against Sub-Merchant for any amounts due to Till Payments or if Sub-Merchant is required to indemnify Till Payments pursuant to this Agreement, Sub-Merchant shall pay reasonable costs and attorneys' fees incurred by Till Payments whether suit is commenced or not. Attorneys' fees are due whether or not an attorney is an employee of Till Payments or its affiliates.
- L. No Waiver. Any delay, waiver, or omission by a Party to exercise any right or power arising from any breach or default of the other Party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the Party. Any waiver shall not be deemed to modify any of the terms of the Agreement. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
- M. Bankruptcy. Sub-Merchant shall notify Till Payments within five days upon filing of voluntary or involuntary bankruptcy proceedings by or against Sub-Merchant. The Parties acknowledge that this Agreement constitutes an extension of financial accommodations by Till Payments to Sub-Merchant within the meaning of Section 365 of the Bankruptcy Code. The right of Sub-Merchant to receive any amounts due from Till Payments hereunder is expressly subject and subordinate to Disputes, Return Entries, recoupment, lien, set-off and security interest rights of Till Payments regardless of whether such Disputes, Return Entries, recoupment, lien, set-off and security interest rights are claims that are liquidated, unliquidated, fixed, contingent, matured, or un-matured.
- N. Compliance with Laws. Sub-Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations of the United States pertaining to Transactions.
- O. Force Majeure. Till Payments shall be excused from performing any of its obligations under this Agreement that are prevented or delayed by any occurrence not within Till Payments' control including, but not limited to, strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, war, riots, emergency conditions, interruption of transmission or communications facilities, equipment failure, or any regulation, rule, law, ordinance or order of any federal, state or local government authority.
- P. Survival; Severability. In the event of termination, all obligations of Sub-Merchant incurred or existing under this Agreement prior to termination shall survive the termination. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof. It is the Parties' desire that if any provision of this Agreement is determined to be ambiguous, then the rule of construction that such provision is to be construed against its drafter shall not apply to the interpretation of the provision.

## AGREED AND ACCEPTED

## APPENDIX I TO TERMS OF SERVICE DEFINITIONS

“**ACH**” means the Automated Clearing House.

“**ACH Network**” means the funds transfer system (network) governed by the Operating Rules providing for the inter-financial institution clearing of electronic entries for participating financial institutions.

“**ACH Transaction**” means the acceptance of a check, whether in electronic or paper form, or routing and account information associated with Payor’s bank account for payment for goods sold and/or leased or services provided to Payor by Merchant and receipt of payment by Merchant via the ACH Network.

“**Account**” means a demand deposit account or other deposit account Till Payments or Sub-Merchant has with a financial institution that is permitted to be linked to a Service.

“**Acquirer**” shall mean First Data Merchant Services, located at 5565 Glenridge Connector North, Suite 2000, Atlanta, Georgia 30342, which is the entity contracted by Till Payments to submit sales drafts and transaction information to the Associations on behalf of Till Payments and to receive and pay to Till Payments settlement funding for such sales transactions.

“**Address Verification**” means a service that allows Sub-Merchant to verify Cardholder’s billing address with Issuer.

“**Agreement**” consists of the Till Payments Application, General Terms, and/or Transaction Services Agreement including all appendices, schedules, exhibits and attachments.

“**Application**” means the document or API by which Sub-Merchant applies to participate in Transactions using our products and services

“**Authorization**” means an affirmative response by or on behalf of an Issuer, to Sub-Merchant’s request to affect a Payment Card Processing Transaction, that a Payment Card Processing Transaction is within the Cardholder’s available credit limit and that the Cardholder has not reported the Card lost or stolen. All Payment Card Processing Transactions require Authorization.

“**Bank**” shall collectively refer to Acquirer and Member Bank.

“**Business Day**” means any day other than: Saturday or Sunday; or a day on which banking institutions are authorized by law or executive order to be closed; or a day on which the Federal Reserve Bank is closed.

“**Card(s)**” means a Visa, MasterCard, American Express or Discover Network credit card or debit card.

“**Card-Not-Present**” means mail order, telephone order, e-commerce (Internet) order, or other transactions that are not Card-Present Transactions.

“**Card-Present Transaction**” means a Payment Card Processing Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the magnetic strip or Chip.

“**Cardholder**” means a person authorized to use a Card.

“**Confidential Information**” means any information of a Party (including, without limitation, information received from third parties) disclosed to another Party, which is identified as, or should be reasonably understood to be, confidential to the disclosing Party or a third party, including, but not limited to non-public financial information that is personally identifiable to a customer, know-how, trade secrets, technical processes and formulas, software, merchant lists, unpublished financial information, business plans, projections, marketing data and the terms and conditions of this Agreement.

“**CVV/CID**” means a service that allows Sub-Merchant to verify Cardholder’s possession of Card through the identification of unique digits on Card.

“**Dispute**” means a Payment Card Processing Transaction that Till Payments returns to Sub-Merchant pursuant to this Agreement.

“**eCheck Processing**” means the acceptance of an ACH or EFT transaction for payment of goods sold or services provided to bank account holders by Sub-Merchant and receipt of payment by Sub-Merchant via the ACH Network, whether the transaction is approved, declined, or processed as a NOC or other exception.

“**Effective Entry Date**” means the date placed on an ACH Transaction by the Originator of the transaction or the ODFI. The Effective Entry Date is normally the date the transfer is intended to take place. The Effective Entry Date may be, but is not necessarily always, the same date as the settlement of funds.

“**Electronic Funds Transfer Act**” means the law passed by the US congress in 1978, which set out the rights and obligations of consumers and their financial institutions regarding the use of electronic systems to transfer funds. This act is implemented in the Federal Reserve Bank’s Regulation E.

“**Entries**” means credit Entries, debit Entries, on-us Entries consistent with the NACHA Operating Rules, and any data for entries or any pre-notification entries.

“**Entry Settlement Limit**” means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Sub-Merchant by Till Payments in writing from time to time.

“**File**” means a group of ACH entries stored for delivery to an ACH receiving point.

“**Forced Sale**” means a Payment Card Processing Transaction processed without an approved electronic authorization number being obtained for the full amount of the

sales Transaction at the time the Transaction is processed.

“**In-Process Entries**” means the aggregate dollar amount of all credit or debit Entries initiated by Till Payments and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries. “**Issuer**” means an Association member that issued a Card to a Cardholder.

“**IVR**” means interactive voice response unit used for an Authorization.

“**Member Bank**” shall mean Pathward, National Association, located at 5501 S Broadband Lane, Sioux Falls, South Dakota 57108, which is the financial institution contracted by the Acquirer that is a member of the Associations and provides Association sponsorship for card transactions submitted by Till Payments for processing.

“**NACHA**” means the National Automated Clearing House Association, which governs ACH Transactions.

“**ODFI or Originating Depository Bank**” means financial institutions that originate ACH Transactions on behalf of its customers. ODFIs must abide by NACHA Rules.

“**Operating Account**” means a demand deposit account at a financial institution through which fees, charges and credits due in accordance with this Agreement may be processed. Operating Account shall be used to describe all accounts established by the Sub-Merchant for the purposes described herein.

“**Originator**” means a company or entity that initiates entries into the ACH Network.

“**Overlimit Entry**” means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit.

“**Password**” means confidential, unique personal numbers, codes, marks, signs, public keys, or other information composed of a string of characters used as a means of authenticating and accessing a Service.

“**Payment Card Processing**” means the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Sub-Merchant and receipt of payment from Till Payments whether the transaction is approved, declined, or processed as a Forced Sale.

“**Payor**” means a person authorized to use a Card or pay with a check.

“**Pre-Authorized Recurring Order Transactions**” means Transactions which have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Sub-Merchant without having to obtain approval from the Cardholder each time.

“**Pre-notification Entry**” means a non-dollar Entry entered prior to a dollar Entry to verify the accuracy of the routing and account numbers.

“**Processing Services**” means the Services.

“**RDFT**” or “**Receiving Depository Bank**” means a financial institution qualified by NACHA to receive ACH Transactions.

“**Regulation E**” means the regulation published by the “Federal Reserve.”

“**Return Entry**” or “**Return Entries**” means any item, which cannot be processed and is being returned by the RDFT to the ODFI for correction or re-initiation.

“**Rules**” means the by-laws, operating regulations and/or all other rules, guidelines, policies and procedures of VISA, MasterCard, Discover, American Express and/or other networks, and all other applicable rules, regulations and requirements of Member Bank, Till Payments providers, banks, institutions, organizations, associations, or networks which govern or affect any services provided under this Agreement, and all state and federal laws, rules and regulations which govern or otherwise affect the activities of Sub-Merchant, including, but not limited to, those of the National Automated Clearing House Association (“**NACHA**”) and the Federal Trade Commission (“**FTC**”), as any or all of the foregoing may be amended and in effect from time to time, and the regulations and requirements of Member Bank or Till Payments.

“**SEC Codes**” or “**Standard Entry Class Codes**” means the three-character code within an ACH company/batch header, which identifies the type of transactions.

“**Security Procedures**” means, unless Till Payments and Sub-Merchant agree otherwise, the security requirements and procedure necessary to verify the authenticity of Entries.

“**Services**” means the Transaction processing services provided by Till Payments under this Agreement and features of those services that Till Payments may provide from time to time. Transaction processing services shall include Payment Card Processing Services, eCheck Processing Services, or both, depending upon whether Sub-Merchant applies for the Services set forth in Appendix II or Appendix III, or both.

“**Settlement Date**” means the date, on which settlement occurs, i.e., funds actually change hands as a result of an ACH entry.

“**Sub-Merchant Statement**” means an accounting or statement of all charges and credits to the Operating Account.

“**Transaction**” means an eCheck Processing Transaction or a Payment Card Processing Transaction, as applicable. “**Transaction**” also includes credits and voids.

## APPENDIX II TO TERMS OF SERVICE PAYMENT CARD PROCESSING

Till Payments shall provide, and Sub-Merchant shall receive, the services described below (the “**Payment Card Processing Services**”). Sub-Merchant agrees that pursuant to any such Payment Card Processing Services it will be receiving under the terms of the Agreement it will also be bound by the terms and conditions of this Appendix II. Sub-Merchant acknowledges that no other agreements or understandings pursuant to such Payment Card Processing Services, unless otherwise stated by Till Payments shall be applicable to the Payment Card Processing Services.

1. **PAYMENT CARD PROCESSING.** Sub-Merchant is in the business of selling and/or leasing goods or providing services to its customers as described in the Till Payments Application. Sub-Merchant has requested and Till Payments has agreed to permit Sub-Merchant’s participation in the Processing Services. Without the prior written consent of Till Payments Sub-Merchant is not authorized to process Payment Card Processing Transactions for payment for any other type of goods or services other than as set forth in the Till Payments Application. Till Payments reserves the right to establish certain limits on volume of daily, weekly, and monthly transactions and dollar limits per Payment Card Processing Transaction that Sub-Merchant may process.

2. **Till Payments OBLIGATIONS AND REQUIREMENTS.**

A. **Till Payments will provide Payment Card Processing Services to Sub-Merchant.** Till Payments agrees to sponsor Sub-Merchant’s acceptance of cards for Payment Card Processing Transactions. Till Payments agrees to provide Sub-Merchant with the Payment Card Processing Services indicated on the Till Payments Application, as amended from time to time by Till Payments during the term of the Agreement, subject to the terms and conditions of the Agreement.

B. **Electronically Transmitted Transactions.** Till Payments shall deliver payment to Sub-Merchant by a credit to the Operating Account equal to the reconciled summary of Sub-Merchant’s total summary Payment Card Processing Transactions since the previous credit. This credit will be net of following charges:

- i. The sum of all Cardholder charges denied, refused or charged back;
- ii. All refunds processed on account of Cardholders during said time period;
- iii. All taxes, penalties, charges and other items incurred by Till Payments that are reimbursable pursuant to this Agreement; and
- iv. Fees, including but not limited to an amount equal to a specified percentage of the total cash price of each draft (“Merchant Discount Rate”), a specified amount per Payment Card Processing Transaction (“Transaction Fee”), any processing fees collected from cardholder (convenience fee and or payment plan setup fees) and additional fees such as a monthly terminal fee, monthly statement fee, installation fees and any other fees agreed to by the Parties.
- v. Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Till Payments until such time that the Payment Card Processing Transaction is final and no longer subject to dispute by the Issuer, Cardholder, or Associations.

C. **Sub-Merchant Statement.** Till Payments shall make available a Sub-Merchant Statement or similar information on no less than a monthly basis. All information appearing on the Sub-Merchant Statement shall be deemed accurate and affirmed by Sub-Merchant unless Sub-Merchant objects by written notice specifying the particular item in dispute within twenty (20) days after the date of the Sub-Merchant Statement became available to Sub-Merchant. Delivery of the Merchant Statement may be in written or electronic form as determined by Till Payments in its sole discretion

D. **Disputes.** Sub-Merchant understands and agrees that Till Payments is not in any way financially responsible for Disputes. Till Payments shall be authorized to dispute to Sub-Merchant any Payment Card Processing Transactions as specified throughout this Agreement and for reasons including, but not limited to, the following:

- i. No specific prior authorization for the Payment Card Processing Transaction was obtained;
- ii. The Payment Card Processing Transaction was made at or by a Merchant or Sub-Merchant other than the Sub-Merchant named in this Agreement;
- iii. The Payment Card Processing Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
- iv. Any representation or warranty made by Sub-Merchant in connection with the Payment Card Processing Transaction is false or inaccurate in any respect;
- v. The Payment Card Processing Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been cancelled;
- vi. The Card giving rise to the Payment Card Processing Transaction

was cancelled prior to, or at the time of, the Payment Card Processing Transaction;

- vii. The Card expired prior to the date of the Payment Card Processing Transaction or the date of Payment Card Processing Transaction was prior to the validation date, if any, indicated on the Card;
- viii. All required information was not submitted to Till Payments;
- ix. Till Payments or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Sub-Merchant and Cardholder;
- x. The Cardholder makes a written complaint to Till Payments or Issuer that the Cardholder did not make or authorize the Payment Card Processing Transaction;
- xi. A setoff or counterclaim of any kind exists in favor of any Cardholder against Sub-Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Payment Card Processing Transaction; or
- xii. A Payment Card Processing Transaction is charged back by an Issuer.

In any case, including those defined above, Till Payments shall not be obligated to accept a Payment Card Processing Transaction for credit to the Operating Account. If Till Payments has credited the Operating Account or Reserve Account for such Payment Card Processing Transaction, Till Payments may return the Payment Card Processing Transaction to the Sub-Merchant, and Till Payments shall recover the amount of the Transaction from the aforementioned account. Sub-Merchant agrees that Till Payments without prior notice to Sub-Merchant, may:

- i. Charge the amount of the Payment Card Processing Transaction to the Operating Account or Reserve Account;
- ii. Recoup the amount of the Payment Card Processing Transaction by adjustment of the credits due to Sub-Merchant; or
- iii. Set off the amount of the Payment Card Processing Transaction against any account or property Till Payments holds for or on behalf of Sub-Merchant.

3. **SUB-MERCHANT OBLIGATIONS AND REQUIREMENTS.**

A. **Adjustments and Returns.** Sub-Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold or leased to its customers whenever appropriate. In the event that goods are returned, or any services are discounted, written off, or cancelled, or any price is adjusted on a Payment Card Processing Transaction, Sub-Merchant will prepare and transmit a credit or return Payment Card Processing Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of sales drafts transmitted that day. In the event the amount of credit or return transactions exceeded the amount of sales draft transactions, Till Payments shall charge the Operating Account for the excess. Sub-Merchant shall make no cash refunds on Payment Card Processing Transactions and shall handle all credit adjustments as provided in this Section. Sales drafts for any Payment Card Processing Transaction for which no refund or return will be given must be conspicuously marked as a “final sale” and “no returns” on the customer’s copy of the sales draft at the time of the Payment Card Processing Transaction. All Sub-Merchants must follow Visa, MasterCard, American Express, and Discover Network reservation/no-show policy. All Sub-Merchants must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified of the exact number of days required for reservation deposit refunds. A Sub-Merchant not following Visa, MasterCard, and Discover Network reservation/no-show policy may receive a Dispute to the Operating Account for lodging regulation violations.

B. **Customer Complaints.** Sub-Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. Till Payments reserve the right to charge Sub-Merchant reasonable fees and reimbursement, in addition to any applicable Association fees or charges, on account of excessive Cardholder inquiries, refunds, or Disputes. Sub-Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Sub-Merchant has received notice:

- i. The Cardholder’s name;
- ii. A unique confirmation number, transaction sequence number, or



other identifier that the Sub-Merchant can use to reference the transaction in subsequent communications with Till Payments;

- iii. The date and time the Cardholder asserted the claim or defense;
- iv. The nature of the claim or defense; and
- v. The action that Sub-Merchant took in an attempt to resolve the dispute.

Upon request, Sub-Merchant shall furnish Till Payments with this information in writing within ten (10) days.

- C. Sub-Merchant shall not (i) disclose any cardholder data or other transaction data to any entity except for necessary disclosures to affected cardholders, and through Acquirer to the Associations, (ii) transfer, or attempt to transfer, financial liability by asking or requiring cardholders to waive their dispute rights, or (iii) submit transactions on behalf of another entity that the Associations would consider a sub-ISO, payment service provider, payment facilitator, or other third-party payment provider.

#### **4. COMPLIANCE.**

- A. **Use of Marks.** Merchant will display prominently at its place of business, where payments are accepted for card present transactions, Card emblems and other promotional material and literature provided by Till Payments. Subject to the prior written consent of Till Payments and upon such conditions as authorized by Till Payments Sub-Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
- B. You will immediately notify us of any suspected, alleged, or confirmed compromised data ("Compromised Data Event"), regardless of the source, including any from any of your third-party service providers. We or servicers may engage a forensic vendor approved by an Association. You must cooperate with the forensic vendor so that it may immediately conduct an examination of your equipment, systems, and your third-party service providers' procedures and records and issue a written report of its findings. You agree that upon your suspected or actual discovery of a Compromised Data Event, you will not alter or destroy any related records. You agree to maintain complete and accurate documentation regarding any modifications made to the records. You will share with us and our servicers information related to your or any Associations' investigation related to any actual or suspected Compromised Data Event (including, but not limited to, forensic reports and systems audits), and we and our servicers may share that information with Associations. Upon notice to you, we or our servicers, or the respective representatives of each may conduct remote electronic scans of your systems to confirm compliance with the requirements of the Associations and Applicable Laws. You must promptly cooperate with any such parties to facilitate the scans.
- C. Sub-Merchant is responsible for the security of Cardholder data.
- D. In the event this Agreement is terminated by either of the Parties, each Party agrees to continue to treat account holder data as confidential.
- E. **Website Requirements for E-Commerce Sub-Merchants.** A website operated by the Sub-Merchant that accepts Card Transactions must contain all of the following information:
- i. Complete description of the services offered;
  - ii. Return merchandise and refund policy, which includes the communication of the return policy during the order process and the requirement that the cardholder must be allowed to select a "click to accept" option or other affirmative button to acknowledge the policy;
  - iii. Terms and conditions must be displayed on the same screen view as the Till Payments screen used to present the total purchase amount or within the sequence of web pages the cardholder accesses during the Till Payments process;
  - iv. Customer service contact including e-mail address or telephone number;
  - v. Transaction currency;
  - vi. Export or legal restrictions;
  - vii. Delivery policy;
  - viii. Consumer data privacy policy;
  - ix. The security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
  - x. Address of the Sub-Merchant outlet's permanent establishment, including the Sub-Merchant outlet country.

The above information must be provided either (i) on the same screen view as the Till Payments screen used to present the total purchase amount or (ii) within the sequence of web pages the Cardholder accesses during the Till Payments process.

#### **5. TERMINATION.**

In order to protect Till Payments and the Associations, Till Payments may, in

addition to the rights granted in the General Terms, terminate this Agreement, or any or all of the Services provided hereunder, immediately in any of the following circumstances:

- A. Disputes in excess of Association monitoring guidelines;
- B. Sub-Merchant's percentage of error Payment Card Processing Transactions or retrieval requests is excessive in the opinion of Till Payments; or
- C. Sub-Merchant appears on the Association Terminated Merchant File.

6. **AUDITS.** At any reasonable time (during normal business hours) upon reasonable notice to you, you shall allow auditors, including the auditors of any Association or any third party designated by Till Payments Member Bank, or the applicable Association, to review the files held and the procedures followed by you at any or all of your offices or places of business. You agree that the cost of such audit shall be borne by you. You shall assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is required by an Association, Member Bank or regulatory agency, and/or required by the Operating Rules or applicable law, Till Payments may, at its option, and at Sub-Merchant's sole expense, either retain a third party to perform the audit, or require that Sub-Merchant directly retain a specific third party auditor. If Till Payments requires that Sub-Merchant directly retain the auditor, Sub-Merchant shall promptly arrange for such audit to be performed, and will provide Till Payments Member Bank, and the Associations with a copy of any final audit report.

#### **7. COLLECTION AND USE OF PAYMENT CARD PROCESSING TRANSACTION INFORMATION.**

- A. **Documenting Payment Card Processing Transactions.** Merchant shall submit the following information to Till Payments in connection with Transaction processing:
- i. The DBA name of Merchant, name of Merchant and Merchant's address;
  - ii. Merchant customer service telephone number;
  - iii. Merchant Internet address;
  - iv. Merchant Number assigned by Member Bank;
  - v. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card;
  - vi. Name, address and telephone number of Cardholder (when required by the Associations); and
  - vii. Such additional information as may be required by Till Payments or Member Bank and/or the Associations, from time to time.

Merchant shall not submit a Payment Card Processing Transaction (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Payment Card Processing Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant must not transmit a Payment Card Processing Transaction that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Payment Card Processing Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Payment Card Processing Transaction and within time limits established by the Associations.

- B. **Authorization for Payment Card Processing Transactions.** Merchant shall obtain Authorization for Payment Card Processing Transactions as follows:
- i. Electronically Transmitted Transaction. Sub-Merchant shall submit each Payment Card Processing Transaction for Authorization to Till Payments' designated authorization center. Till Payments' designated authorization center shall respond with the Issuer's authorization or rejection to a Payment Card Processing Transaction transmitted for Authorization and shall capture and process for Sub-Merchant the information relating to the Payment Card Processing Transaction.
  - ii. Card-Present Transactions. The following additional requirement applies to Card-Present Transactions: If a terminal or software application is inoperable at the time of an Authorization request, the Payment Card Processing Transaction may be manually authorized. In that case, the Payment Card Processing Transaction shall be entered as a Forced Sale, provided the approval number is also entered, and Sub-Merchant shall be subject to an additional IVR authorization fee as outlined in the Application.
  - iii. Card-Not-Present Transactions. The following additional requirements apply to Card-Not-Present Transactions:
    - a. All Card-Not-Present Transactions are at Sub-Merchant's risk. As to each Card-Not-Present Transaction, Sub-Merchant warrants to Till Payments that the person whose



name is submitted as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Till Payments may dispute the Payment Card Processing Transaction to Sub-Merchant. If Till Payments charges back the Payment Card Processing Transaction to Sub-Merchant, Sub-Merchant shall pay Till Payments the amount of the Payment Card Processing Transaction, a Dispute fee, plus any Association fine or assessment. Till Payments may charge the Payment Card Processing Transaction to the Operating Account or Reserve Account without prior notice to Merchant;

- b. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required for Documenting Payment Card Processing Transactions, also shall indicate an authorization code, if required; customer address and address verification; CVV (card verification value), CID (card identification data);
- c. If Sub-Merchant accepts a Recurring Order Transaction, the Cardholder shall execute and deliver to Sub-Merchant a written request for this pre-authorization. This written request shall be maintained by Sub-Merchant and made available upon request to Till Payments. All annual billings must be reaffirmed at least once a year. Sub-Merchant shall not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled or from Till Payments that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored; and
- d. For Card-Not-Present Transactions Sub-Merchant shall verify Cardholder's address through the Association network. For telephone or mail order sales, Sub-Merchant shall transmit a ticket/invoice number and shall perform Address Verification Service (AVS), CVV2, and CID and only accept as approved those Payment Card Processing Transactions receiving at least a partial match or system unavailable response.

C. Prohibited Payment Card Processing Transactions. You are not permitted to submit a transaction for payment that is illegal, fraudulent, damaging to the reputation or brand of any card network, or not authorized by the cardholder. Transactions submitted must result from bona fide activity between you and a cardholder. Transactions must not involve any coercion, intimidation or unfair act upon the cardholder. The Associations' Operating Rules (links provided on page 1 of this Agreement) provide guidance as to certain transactions that may be prohibited, restricted or otherwise limited. You are responsible for completing transactions that comply with the same. The following are several examples of transactions, transaction limits or transaction characteristics for which you should determine if your intended actions are permitted and/or limited in any manner:

- i. The establishment of minimum or maximum transaction amounts;
- ii. Transactions with charges related to the payment transaction itself, above and beyond the goods or services sold;
- iii. Any determination as to whether certain cards may or may not be accepted including whether cash payment discounts would be offered to a consumer;
- iv. Acceptance of cards for other than the sale of goods or services such as transactions involving debt repayment;
- v. Submission of a transaction for payment from card belonging to you;
- vi. Transactions involving the disbursement of cash; or
- vii. Refunding a prior payment transaction to other than the original charged card.

D. Disclosure and Storage of Payment Card Processing Transaction

Information.

- i. A Merchant must not disclose a Card account number, personal information, or other Payment Card Processing Transaction information to third Parties other than to Till Payments or Merchant Servicers or Member Bank for the sole purpose of:
  - a. Assisting the Merchant in completing the transaction; or
  - b. As specifically required by law.
- ii. Merchant may only disclose Payment Card Processing Transaction information to approved third Parties for the sole purpose of:
  - a. Supporting a loyalty program; or
  - b. Providing fraud control services.
- iii. A Merchant must store all material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and render all data unreadable prior to discarding. A Merchant must not do any of the following:
  - a. Retain or store full contents of any track on the magnetic stripe subsequent to a Payment Card Processing Transaction;
  - b. Retain or store CVV/CID data subsequent to Authorization of a Payment Card Processing Transaction; and
  - c. Request the CVV/CID data on any paper form.
  - d. The sale or disclosure of databases containing cardholder account numbers, personal information, or other Card Transaction information to third Parties is prohibited.

E. Use and Disclosure of BIN Information. A Merchant that receives BIN information from Bank must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

8. AMERICAN EXPRESS

- A. You may opt-out of receiving marketing messages; however, this will not preclude you from receiving important transactional or relationship communications from an Association.
- B. You may be converted to a direct card acceptance relationship with American Express if and when you become a High CV Merchant. Upon conversion, (i) you will be bound by American Express's then-current Card Acceptance Agreement and (ii) American Express will set pricing and other fees payable by you for card acceptance.
- C. a third-party beneficiary provision, conferring on American Express third-party beneficiary rights but not obligations to the Sponsored Merchant Agreement that will fully provide American Express with the ability to enforce the terms of the Sponsored Merchant Agreement against the Sponsored Merchant.
- D. You may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept any other charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products

9. AMENDMENTS TO CARDS AND/OR PAYMENT CARD PROCESSING SERVICES.

Amendments to Cards and/or Payment Card Processing Services. Till Payments or Member Bank may amend or delete Cards or Payment Card Processing Services listed in the Merchant Application by notifying Merchant in writing. All provisions of this Agreement shall apply to Cards or Payment Card Processing Services added to this Agreement. Till Payments shall notify Merchant of the fees to be charged for processing the additional Cards and Payment Card Processing Services. Acceptance by Merchant of a new approved Card as payment for a Payment Card Processing Transaction or continued use of Payment Card Processing Service after Till Payments or Member Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.

**APPENDIX III TO TERMS OF SERVICE**  
**eCHECK/ACH PROCESSING**

Till Payments shall provide, and Sub-Merchant shall receive (if indicated in the Application), ACH (“**eCheck Processing Services**”). The eCheck Processing Services shall include Entries to Accounts maintained by Till Payments or at a financial institution (“**Financial Institution**”) initiated by Till Payments on behalf of Sub-Merchant by means of the ACH Network where standards, rules, and procedures are established by NACHA. Sub-Merchant agrees that pursuant to any such eCheck Processing Services it will be receiving under the terms of the Agreement, it will also be bound by the terms and conditions of this Appendix III. Sub-Merchant acknowledges that no other agreements or understandings pursuant to such eCheck Processing Services, unless otherwise stated by Till Payments shall be applicable to the eCheck Processing Services. Till Payments shall, where necessary to provide an eCheck Processing Service, utilize the services of its chosen Financial Institution.

not receive final settlement, it is entitled to a refund from the credited Party and the originator of the Entry shall not be deemed to have paid the Party.

**1. TYPES OF ENTRIES.**

Financial Institution will transmit debit and/or credit Entries initiated by Till Payments on behalf of Sub-Merchants to the ACH Network as provided in the Rules and this Agreement. As used in this Agreement, “Internet-Initiated Entry” (aka “WEB”) shall mean a debit Entry or enrollment in recurring debit to a consumer account initiated by an Originator pursuant to an authorization that is obtained from the receiver via the Internet.

**2. TERMINATION.**

Till Payments may, in addition to the termination rights granted in the General Terms, terminate this Agreement immediately in the following circumstances:

- A. Sub-Merchant’s total of unauthorized returns, summary of losses suffered or incurred by Merchant in connection with failed or reversed transactions are excessive in the opinion of Till Payments;
- B. Sub-Merchant is in violation of the Rules or applicable laws provided that such violation presents a reputational, financial or regulatory risk in the reasonable judgment of Till Payments;
- C. Sub-Merchant completed transactions in violation of the laws and regulations of the United States;

**3. WARRANTIES.**

Sub-Merchant certifies to Till Payments that it is in compliance with all warranties a Party is deemed by the Rules to make with respect to Entries originated by Sub-Merchant. These warranties include, but are not limited to, the following:

- A. Each Entry is accurate, is timely, has been authorized by the Party whose account will be credited or debited, and otherwise complies with the Rules;
- B. Each debit Entry is for the sum which, on the settlement date with respect to it will be owing to Sub-Merchant from the Payor, whose account will be debited, is for a sum specified by such Party to be paid to Sub-Merchant, or is a correction of a previously transmitted erroneous credit Entry;
- C. Sub-Merchant will comply with the terms of the Electronic Funds Transfer Act of Regulation E, if applicable, or UCC4A, if applicable and Merchant shall otherwise perform its obligations under this Agreement in accordance with all applicable laws and regulations; and
- D. Merchant certifies its compliance with all warranties made by a Party pertaining to such Entries exchanged through the ACH Network.

**5. AUTHORIZATIONS.**

A. Authorization Agreement. All debits to Payor accounts must be authorized by the Payor in writing and must be signed or similarly authenticated in a manner that is compliant with the Rules. Sub-Merchant agrees that it will obtain proper authorization in accordance with the Rules and U.S. laws for each initiation debit or credit Entry to a Payor’s account. An authorization agreement must be readily identifiable as either an ACH credit or ACH debit authorization and must clearly and conspicuously state the terms of the authorization in order that the Parties to the ACH Transaction understand the authorization.

B. Retention of Authorizations. Sub-Merchant must retain the signed or authenticated authorization for a period of two (2) calendar years following the termination or revocation of the authorization. Sub-Merchant must promptly present a copy of the Payor’s authorization to Till Payments upon Till Payments’ request.

C. Termination of Authorization. Sub-Merchant agrees that it will not initiate an Entry after the termination or revocation of a consumer’s authorization.

**6. NAME AND ACCOUNT NUMBER INCONSISTENCY.** Sub-Merchant acknowledges that if an Entry describes the receiver inconsistently by name and account number, payment of the Entry may be made as provided in the Rules on the basis of the account number even if it identifies a Party different from the named receiver.

**7. PROVISIONAL CREDIT.** Sub-Merchant acknowledges that the Rules make provisional any credit given for an Entry until Till Payments crediting the account specified in the Entry receives final settlement. If Till Payments does

**8. TRANSMISSION OF ENTRIES.**

A. Transmission of Entries. Sub-Merchant shall comply with any and all of Till Payments’ procedures for conforming all Entries to the format, content, data encryption, and other specifications contained in the Rules. Sub-Merchant authorizes Till Payments and Financial Institution to transmit all Entries received in accordance with the terms of this Agreement and to credit or debit such Entries to the specified accounts.

B. Security of Transmission. Till Payments is responsible for establishing and maintaining the procedures to safeguard against unauthorized transmissions. Sub-Merchant agrees to comply with any procedures or safeguards required by Till Payments in carrying out its security obligations.

**9. EXPOSURE LIMITS.** Sub-Merchant shall comply with any and all limits communicated to it from time to time by Till Payments.

**10. CANCELLATION, REJECTION, RETURN OR CHANGE OF ENTRIES.**

A. Cancellation or Amendment of Entries. Sub-Merchant shall have no right to cancel or amend any Entry/File after receipt of Entry/File by Till Payments.

B. Return Entries. To the extent Till Payments has allowed Sub-Merchant to withdraw funds related to a Return Entry and sufficient funds are not available in the Operating Account to reimburse Till Payments Sub-Merchant shall provide the immediately available funds to Till Payments in the amount necessary to reimburse Till Payments or Till Payments shall be authorized to take the outstanding funds from the Reserve Account if one has been established.

C. Notification of Change. Till Payments will notify Sub-Merchant of Correction Entries (“COR”), which are commonly referred to as Notification of Change (“NOC”) Entries, received no later than two (2) banking days after the settlement date of the NOC. Sub-Merchant shall make the submitted changes within six (6) days of receipt of the NOC information or before the next “live” Entry, whichever is later. If the NOC is incorrect, Sub-Merchant shall notify Till Payments who shall direct Financial Institution to generate a Refused NOC and deliver it to Sub-Merchant within fifteen (15) calendar days.

**11. REVERSALS.** Sub-Merchant may initiate a reversing Entry or File of Entries for erroneous or duplicate transactions. In doing so, Sub-Merchant warrants that it has initiated the Entries or Files within five (5) banking days of the original Entry or Entries and within 24 hours of discovery of the error. Sub-Merchant also warrants that the account holder of a reversing Entry will be notified of the reversal, and the reason for the reversal, no later than the settlement day of the reversal. Notwithstanding the foregoing, reversals, whether for Entry or File of Entries for erroneous or duplicate transactions or otherwise, are not available and may not be initiated in connection with payments received through the Till Payments Bank Bill Payments solution.

**12. COMPLIANCE.** Sub-Merchant agrees to comply with and be bound by the current Rules in existence as they may be amended from time to time. The duties of Merchant set forth in this Appendix in no way limits the requirements of complying with the Rules. Any fines or liabilities imposed against Till Payments or Financial Institution for a violation of the Rules caused by an action and/or inaction of Merchant shall be assessed against Merchant. Costs associated with Rules publications and/or association membership will be the responsibility of Merchant.

## MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS (“**Sub-Merchant Agreement**”) is made among First Data Merchant Services LLC (“Acquirer”), Pathward, National Association (“Member Bank”), Till Payments LLC (“Provider”), and the Sub-Merchant as named in the Application that applies to participate in Transactions using Till Payments’ processing products (“Sub-merchant”) in connection with the agreement between Sub-merchant and Provider pursuant to which Provider will act as a payment facilitator for Sub-merchant (“**Agreement**”). Acquirer will provide Sub-merchant with certain payment processing services (“**Services**”) in accordance with the terms of this Sub-Merchant Agreement. In consideration of Sub-merchant’s receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. (“**MasterCard**”), VISA U.S.A. Inc. (“**VISA**”), Discover (“**Discover**”), and certain similar entities (collectively, “**Associations**”), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operating Regulations or an Association or the Operating Regulations otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Sub-Merchant Agreement, Sub-merchant has fulfilled such requirement. Member Bank is the member of VISA and MasterCard that sponsors Provider, Acquirer, and Sub-merchant’s acceptance of VISA and MasterCard transactions. Member Bank will also facilitate a portion of the debit transactions as set forth in the Acquirer Agreement. As between Member Bank and Acquirer and Member Bank and Provider, only Member Bank is approved to extend acceptance of VISA and MasterCard transactions directly to Provider and/or Sub-merchant. Member Bank is responsible for providing Provider (as allowed by the Operating Rules) or Sub-merchant with settlement funds for VISA and MasterCard transactions. The acquiring services that Sub-merchant receives from any Association other than VISA, MasterCard, and certain debit Associations are provided by Provider and/or Acquirer and not by Member Bank.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. **Certain Sub-Merchant Responsibilities.** For purposes of this Sub-merchant Agreement, “Card” refers to a card, code, device, or other means allowing access to a credit, debit, prepaid, stored value, or similar account, and a “Cardholder” refers to the person to whom a Card was issued. Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant’s agent (“**Agents**”) to comply, with the Association’s and other payment network’s by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively “**Operating Regulations**”). Sub-merchant may review the VISA, MasterCard, and Discover websites for a copy of the VISA, MasterCard and Discover regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations (“**Laws**”). Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury’s Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sub-merchant’s software providers and/or equipment providers.  
Sub-merchant represents and warrants that it shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to Cardholders (each, a “Payor”) and will not submit transactions for payment until the goods are delivered or shipped or until the services are performed.
2. **Data Security.** Sub-merchant further agrees and represents that it does not have access to Card information (such as the Cardholder’s account number, expiration date, and CVV2) and will not request access to such Card information from Acquirer or Member Bank. In the event that Sub-Merchant receives such Card information in connection with the Services provided under this Sub-Merchant Agreement, Sub-Merchant agrees not to use it for any fraudulent purpose or in violation of any Operating Regulations, including but not limited to Payment Card Industry Data Security Standards (**PCI DSS**), or applicable Law. If at any time Sub-Merchant has reason to believe Card information has been compromised, Sub-Merchant will notify Acquirer and Member Bank promptly and assist in providing notification to the proper parties. Sub-Merchant will ensure its compliance and the compliance of any third party service provider utilized by Sub-Merchant with all security standards and guidelines that are applicable to Sub-Merchant or such third party service provider and published from time to time by VISA, MasterCard, or any other Association, including without limitation, the VISA U.S.A. Cardholder Information Security Program (**CISP**), the MasterCard Site Data Protection (**SDP**), and (where applicable) the PCI Security Standards Council, VISA, and MasterCard PA-DSS (**Payment Application Data Security Standards**). If any Association requires an audit of Sub-Merchant due to a data security compromise event or suspected event, Sub-Merchant will cooperate with such audit. Sub-Merchant may not use any Card information other than for the sole purpose of completing the transaction authorized by the Payor for which the information was provided or as specifically allowed by Operating Regulations, the Your Payments Acceptance Guide provided by Provider, or required by applicable Laws. Sub-Merchant will reimburse Acquirer and/or Member Bank for all fines, fees, penalties, assessments, or other obligations of any kind imposed by an Association or a regulator on Acquirer or Member Bank due to a data security compromise event (i) caused by Sub-Merchant or its third party service providers or (ii) that otherwise takes place on Sub-Merchant or its third party service providers systems to the extent not caused by Acquirer or Member Bank.
3. **Settlement; Chargebacks.**
  - a. **Settlement.** Upon receipt of Sub-merchant’s sales data for Card transactions (“**Transaction Data**”), Acquirer will process Sub-merchant’s Transaction Data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such Transaction Data, subject to the terms set forth herein, Acquirer, or Member Bank will provide provisional credit of funds to Sub-merchant, either directly to the Sub-merchant-Owned Designated Account or through Provider to an account designated by Provider (“**Provider Designated Account**”) for such Card transactions.
  - b. Sub-merchant Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-merchant and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-merchant’s designated demand deposit account (“**Sub-merchant-Owned Designated Account**”) upon receipt of such account information from Sub-merchant or Provider, or if Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Provider will remit to Sub-merchant in accordance with the Agreement or apply as an offset to any obligation that Sub-merchant may have to Provider, any such payments that Provider receives on Sub-merchant’s behalf.

- c. **Chargebacks.** If a Cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or Provider. Sub-merchant is solely responsible to pay the amount of any chargebacks resulting from transactions submitted by Sub-merchant under this Sub-Merchant Agreement.

- 4. **Term and Termination.** This Sub-Merchant Agreement shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Sub-Merchant Agreement shall begin and the terms of the Sub-Merchant Agreement shall be deemed accepted and binding upon Acquirer and Member Bank on the date Acquirer and Member Bank accepts this Sub-Merchant Agreement by issuing a merchant identification number. Unless otherwise terminated pursuant to this Sub-Merchant Agreement, the term of this Sub-Merchant Agreement shall be coterminous with Provider's Agreement with Sub-merchant.

Notwithstanding the foregoing, Acquirer or Member Bank may immediately cease providing Services and/or terminate this Sub-Merchant Agreement without advance notice for any reason, without cause. For example purposes only, Acquirer or Member Bank may terminate this Sub-Merchant Agreement if (i) Sub-merchant or Provider fails to pay any amount to Acquirer or Member Bank when due, (ii) in Acquirer's or Member Bank's opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations or any Laws, (iii) Acquirer or Member Bank believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquire or Member Bank determines Sub-merchant poses a financial or regulatory risk to Acquirer, Member Bank, or an Association, (v) Acquirer and Member Bank's agreement with Provider terminates, (vi) any Association deregisters Provider, (vii) Acquirer or Member Bank ceases to be a member of the Associations or fails to have the required licenses, or (viii) Acquirer or Member Bank is required to do so by any of the Associations.

- 5. **Indemnification; Limits of Liability; Exclusion of Damages.**

- a. **Indemnification.** Sub-merchant will indemnify Acquirer and Member Bank (including their respective affiliates, directors, officers, managers, and employees) for losses, damages, costs, or expenses (together, **Losses**) due to third party claims that result from Sub-merchant's or Sub-merchant's third party service providers' gross negligence, willful misconduct, or breach of this Sub-Merchant Agreement. The indemnified party will promptly notify Sub-merchant of any third party claim that is subject to indemnification under this Sub-merchant Agreement. The indemnifying party will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts to the indemnified party. The parties will cooperate with regard to any other conditions of settlement as well as in providing records and access to personnel or other information reasonably necessary to defend any indemnified claims.

- b. **Limits of Liability; Exclusion of Damages.**

- i. Sub-merchant agrees to provide Acquirer and Member Bank, via a communication with Provider, with written notice of any alleged breach by Acquirer or Member Bank of this Sub-Merchant Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed a waiver by Sub-merchant of any and all rights to dispute such breach.
- ii. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS SUB-MERCHANT AGREEMENT, IF ANY, ACQUIRER AND MEMBER BANK DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- iii. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer and Member Bank arising out of or in any way related to the transactions contemplated herein shall be termination of this Sub-Merchant Agreement. In the event that Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Sub-Merchant Agreement, Sub-merchant shall proceed against Provider and not against Acquirer or Member Bank, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirer or Member Bank have any liability to Sub-merchant with respect to this Sub-Merchant Agreement or the Services. Sub-merchant acknowledges that Acquirer and Member Bank are providing the Services contemplated in this Sub-Merchant Agreement to assist in Provider's processing relationship with Sub-merchant, that Acquirer and Member Bank are not liable for any action or failure to act by Provider, and that Acquirer and Member Bank shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider. If Provider is unable to provide its services to Sub-merchant in connection with this Sub-Merchant Agreement and Acquirer or Member Bank elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Sub-Merchant Agreement will no longer apply and that Sub-merchant will enter into a separate processing agreement with Acquirer and/or Member Bank, as applicable, which would govern the provision of such services.
- iv. In the event that, notwithstanding the foregoing, Sub-merchant or Provider has any claim against Acquirer or Member Bank in connection with this Sub-Merchant Agreement, the following will apply:
  - (i) **Exclusion of Damages** Neither Member Bank nor Acquirer are liable under any theory of tort, contract, strict liability, or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect, or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.
  - (ii) **Limitation of Liability** Member Bank and Acquirer's liability, in the aggregate (inclusive of any and all claims made by Sub-merchant, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Sub-merchant Agreement) and regardless of the form of action or legal theory shall not exceed the lesser of (i) \$100,000; or (ii) the amount of fees received by Provider for services provided under this Sub-merchant Agreement in the immediately preceding 12 months.

6. **Reserve.**
- a. In addition to any holdback and/or reserve rights that Provider may have in the Agreement, Member Bank or Acquirer may require Sub-merchant to fund a cash reserve (**Reserve**) in an amount that reflects Member Bank's or Acquirer's assessment of risk, as each may determine in its discretion from time-to-time. The Reserve is a payment obligation of Member Bank and Acquirer, established by holding back transaction proceeds or debiting the Sub-merchant-Owned Designated Account in order to potentially offset any obligations that Sub-merchant may have to Member Bank or Acquirer. The Reserve is not a segregated fund that Sub-merchant may claim to own. Member Bank and Acquirer are obligated to pay to Sub-merchant any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Sub-merchant's payment transactions have expired (as provided for under the Operating Regulations).
  - b. The obligations due to Sub-merchant from the Reserve will not accrue interest unless required by applicable Laws.
  - c. Member Bank or Acquirer will notify Sub-merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified.
  - d. Member Bank or Acquirer may set off any obligations that Sub-merchant owes to Member Bank or Acquirer from the Reserve.
  - e. Although Sub-merchant acknowledges that the Reserve is a general obligation of Member Bank and Acquirer, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Sub-merchant that is held by Member Bank or Acquirer, Sub-merchant grants and acknowledges that Member Bank and Acquirer have a security interest in the Reserve and, at Member Bank's or Acquirer's request, will provide documentation to reflect this security interest.
  - f. Set-off. All funds that Member Bank or Acquirer owe to Sub-merchant under this Sub-Merchant Agreement are subject to Sub-merchant's payment obligations under this Sub-Merchant Agreement. Member Bank or Acquirer may set off amounts Sub-merchant owes to either or both of Member Bank or Acquirer against any funds that either or both of Member Bank or Acquirer owe to Sub-merchant.
7. **Financial Information; Audit.** Sub-Merchant will promptly provide any financial or other information reasonably requested by Acquirer or Member Bank to perform credit risk, security, qualification, and other reviews related to the provision of the services, transactions submitted, fulfillment of obligations to Provider, Acquirer, Member Bank, or Cardholders, or the financial condition of Sub-Merchant. Sub-Merchant authorizes Acquirer and Member Bank to obtain information from third parties when performing credit risk, security, qualification, and other reviews. Acquirer, Member Bank, or their designees may perform a reasonable audit of Sub-merchant's records related to its performance under this Sub-Merchant Agreement with 30 days' advance written notice to Sub-Merchant, during Sub-Merchant's normal business hours, and at Acquirer's or Member Bank's expense, as applicable.
8. **Notice of Material Change; Third Parties.** Sub-Merchant will provide Acquirer with reasonable advance notice of any material change in the nature of Sub-Merchant's business (including any change in control or merger, any liquidation, any transfer or sale of substantially all of its assets, or any change to Sub-Merchant's operations that would materially affect the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to a Cardholder). Sub-Merchant will provide Acquirer with written disclosure identifying the third parties, systems, and services that Sub-Merchant uses to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, encryption or firewall providers) related to the transaction information or payment data processed in connection with this Sub-Merchant Agreement (these third parties must be registered providers with the Associations).
9. **Confidentiality.**
- a. Confidentiality. No party will disclose non-public information about another party's business (including the terms of this Sub-Merchant Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.
  - b. Disclosure. The recipient may disclose another party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors, or vendors) that need to know it in connection with the recipient's performance under this Sub-Merchant Agreement and that are bound by confidentiality obligations materially similar to those required under this Sub-Merchant Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable Laws or Operating Regulations.
10. **MATCH Reporting.** If this Sub-Merchant Agreement is terminated for cause, Sub-merchant acknowledges that Member Bank or Acquirer may be required to report Sub-merchant's business name and the names and other identification of Sub-merchant's principals to the Associations. Sub-merchant expressly agrees and consents to such reporting in the event Sub-merchant is terminated as a result of Member Bank's, Acquirer's, or Provider's termination for cause or for any reason specified by the Association(s) as cause. Furthermore, Sub-merchant agrees to waive and hold Member Bank and Acquirer harmless from and against any and all claims which Sub-merchant may have as a result of such reporting.
11. **Notices.**
- a. Notice to Sub-merchant will be sent to: The physical or email address provided in the Application
  - b. Notice to Provider will be sent to: 200 Broadhollow Road, Suite 207, Melville, New York 11747

- c. Notice to Acquirer will be sent to: First Data Merchant Services LLC, Attn: Executive Vice President – Operations, 5565 Glenridge Connector NE, Atlanta, Georgia 30342; with a copy to: First Data Merchant Services LLC, Attn: General Counsel's Office, 6855 Pacific Street, AK-32, Omaha, NE 68106. Emailed notices to Acquirer will be sent to: [legalpapers@firstdata.com](mailto:legalpapers@firstdata.com).
- d. Notice to Member Bank will be sent to: Pathward, Attn: Vice President - Operations, 5501 South Broadband Lane, Sioux Falls, South Dakota 57108; with a copy to: Pathward, Attn: Legal, 5501 South Broadband Lane, Sioux Falls, South Dakota 57108.

## 12. Arbitration.

- a. This arbitration provision will be broadly interpreted. If Sub-merchant has a dispute with Acquirer or Member Bank that cannot be resolved informally, Sub-merchant, Member Bank, or Acquirer may elect to arbitrate that dispute in accordance with the terms of this arbitration provision rather than litigate the dispute in court.
- b. The parties agree that the following will not be subject to arbitration: (a) disputes relating to the scope, validity, or enforceability of this arbitration provision; (b) any claim filed by either party in which the amount in controversy is properly within the jurisdiction of a small claims court; and (c) any dispute related to the validity of any party's intellectual property rights.
- c. If a party elects to resolve the dispute through arbitration pursuant to this arbitration provision, the party initiating the arbitration proceeding must open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-495-4185, [www.adr.org](http://www.adr.org).
- d. Because the services provided to Sub-merchant under this Sub-Merchant Agreement concern interstate commerce, the Federal Arbitration Act (FAA) will govern this arbitration provision, including the issue of whether the dispute is subject to arbitration. The Commercial Arbitration Rules of the American Arbitration Association (AAA) will govern any arbitration. If there is a conflict between this arbitration provision and the AAA Rules, this arbitration provision will govern. If the AAA will not administer a proceeding under this arbitration provision as written, it cannot serve as the arbitration organization to resolve the dispute. If this situation arises, the parties will agree on a substitute arbitration organization. If the parties are unable to agree, the parties will mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this arbitration provision as written. If there is a conflict between this arbitration provision and the rest of this Sub-Merchant Agreement, this arbitration provision will govern.
- e. A single arbitrator will resolve the dispute. The arbitrator will honor claims of privilege recognized by applicable Law and will take reasonable steps to protect each party's information and other confidential or proprietary information. If the claim alleged in the dispute is for \$10,000 or less and the dispute is not excluded based on Section 16.2 above, Sub-merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.
- f. If an award granted by the arbitrator exceeds \$50,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within 30 days from the date of entry of the written arbitration award. The arbitration organization will then notify the other party that the award has been appealed. The members of the three-arbitrator panel will be selected according to the AAA's Commercial Arbitration Rules. The three-arbitrator panel will issue its decision within 120 days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel will be final and binding, except for any appellate right which exists under the FAA.
- g. **All parties to an arbitration must be individually named. There will be no right or authority for any claims to be arbitrated or litigated on a class action, joint, or consolidated basis or on a basis involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other clients, or persons.**
- h. The arbitrator may award injunctive or similar relief only in favor of the individually named party and only to the extent necessary to provide relief warranted by that individual party's claim. The arbitrator may not award injunctive relief applicable to any class or similarly situated individual or groups.
- i. The arbitration will take place in Suffolk County, NY.
- j. Member Bank or Acquirer will pay arbitration filing fees and arbitrator's costs and expenses of which Sub-merchant provides notice to Member Bank or Acquirer prior to the commencement of the arbitration. Sub-merchant is responsible for all additional costs that Sub-merchant incurs in the arbitration, including fees for attorneys or expert witnesses. If the arbitration is resolved in Member Bank and Acquirer's favor, Sub-merchant will reimburse Member Bank and Acquirer for the filing fees and costs paid to Sub-merchant only up to the extent awardable in a judicial proceeding. If the arbitration is resolved in Sub-merchant's favor, Sub-merchant will not be required to reimburse Member Bank or Acquirer for any of the fees and costs paid by Member Bank or Acquirer. Notwithstanding anything to the contrary in this arbitration provision, Member Bank or Acquirer will pay all fees and costs that Member Bank or Acquirer are required by applicable Law to pay.
- k. **If Sub-merchant does not wish to arbitrate disputes, Sub-merchant must notify Member Bank and Acquirer in writing within 30 days of the date that Sub-merchant first receives this Sub-Merchant Agreement by writing a notice including Sub-merchant's name, address, and account number, as well as a clear statement that Sub-merchant does not wish to resolve disputes through arbitration and sending that notice (a) by e-mail to [arbitrationoptout@firstdata.com](mailto:arbitrationoptout@firstdata.com); (b) by fax to 402-916-2200; or (c) by mailing to "Arbitration Opt Out Notice, 3975 N.W. 120th Ave, Coral Springs, FL 33065 (These Fax Numbers and Addresses are only for submitting the notice described in this Section). Sub-merchant's decision to opt out of arbitration will have no adverse effect on Sub-merchant's relationship with Member Bank, Acquirer, or the services provided under this Sub-Merchant Agreement.**

- l. If a court of competent jurisdiction finds any part of Section 16.7 to be illegal or unenforceable, the entire arbitration provision will be unenforceable, and the dispute will be decided by a court. If any other clause in this arbitration provision is found to be illegal or unenforceable, that clause will be severed from this arbitration provision, and the remainder of this arbitration provision will be given full force and effect.
  - m. **Sub-merchant, Acquirer, and Member Bank have each agreed to waive the right to trial by jury.**
13. **Publicity.** No party will make any press release or other public disclosure concerning the terms and conditions of this Sub-Merchant Agreement without the prior written consent of the other party.
14. **Miscellaneous.**
- a. This Sub-Merchant Agreement is entered into, governed by, and construed pursuant to the laws of the State of New York without regard to conflicts of law provisions.
  - b. This Sub-Merchant Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer and Member Bank. Member Bank or Acquirer may each, in whole or in part, assign or transfer this Sub-Merchant Agreement or delegate or subcontract its respective rights, duties, or obligations under this Sub-Merchant Agreement without Sub-merchant's or Provider's consent. Sub-merchant further acknowledge that another financial institution may be substituted for Member Bank with respect to Member Bank's obligations.
  - c. This Sub-Merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Sub-Merchant Agreement is for the benefit of, and may be enforced only by, Acquirer, Member Bank, Provider, and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party.
  - d. Except as otherwise provided in this Sub-Merchant Agreement, this Sub-Merchant Agreement can be changed only by a written agreement signed by all parties.
  - e. If any provision of this Sub-Merchant Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Sub-Merchant Agreement will be construed as if such provision is not contained in this Sub-Merchant Agreement.
  - f. This Sub-Merchant Agreement constitutes the entire agreement between the parties with respect to the subject matter discussed in this Sub-Merchant Agreement and supersedes any previous agreements and understandings.
  - g. A party's waiver of a breach of any term or condition of this Sub-Merchant Agreement will not be deemed a waiver of any subsequent breach of the same or another term or condition.

IN WITNESS WHEREOF, this Sub-Merchant Agreement has been accepted and executed by Sub-merchant's authorized officer as of the Effective Date.