

MERCHANT AGREEMENT

This Merchant Agreement (“Agreement”) is for payment card processing programs and services between the merchant identified in the Merchant Application (hereinafter referred to as “You” or “Your”) and Fulton Bank N.A. (hereinafter referred to as the “Bank”).

BACKGROUND

You, as a merchant, are in the business of selling or leasing goods to or performing services for Your customers and You desire to accept certain credit and debit cards transaction cards as a form of payment for such goods and services. The Bank provides, among other services, commercial services to merchants, including the authorization, processing, transaction data capture, and payment transmittal to merchants resulting from payments initiated by customers making payment for goods and services by means of certain credit cards, debit cards and other electronic payment methods approved by the Bank.

You have requested, and the Bank has agreed to permit, subject to the terms and conditions of this Agreement, Your participation in the Bank’s payment card processing programs and services as indicated in the Merchant Application.

NOW THEREFORE, in consideration of the covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All terms not otherwise defined in this Agreement, shall have the meaning set forth below:

- a) “Affiliate” shall mean any business entity, including any corporation, limited liability company, limited liability partnership, joint venture, sole proprietorship or other organization that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such person,
- b) “American Express” shall mean the American Express Travel Related Services Company, Inc. and its Affiliates.
- c) “Approved Cards” shall mean the Credit Cards, Debit Cards, EBT Cards, Voyager Cards and Authorization Only Cards approved for processing by the Bank.
- d) “Authorization Only Cards” shall mean credit cards bearing the American Express identifying logo.
- e) “Batch” has the meaning set forth in Section 7(a).
- f) “Card Acceptance Agreement” shall mean an agreement between American Express and You governing Your American Express Card acceptance. For clarification, Card Acceptance Agreements are applicable only if You exceed the eligibility thresholds for accepting American Express Cards.
- g) “Cards” shall mean (i) valid credit or debit cards issued under license from a Card Brand or (ii) any other valid credit or debit cards accepted by You by agreement with the Bank.
- h) “Card Brands” means Visa, MasterCard, Discover, American Express, Voyager or any other Card Issuers that provide Approved Cards that are accepted by You by agreement with the Bank.
- i) “Cardholder” shall mean the person (i) in whose name the Approved Card has been issued or (ii) who purports to be the person in whose name the Approved Card was issued or who purports to be an authorized user of the Approved Card.
- j) “Card Issuer” shall mean the financial institution or company that has provided the Approved Card to the Cardholder.
- k) “Card Not Present Transaction” has the meaning set forth in Section 4(a).
- l) “Credit Cards” shall mean a Card that may be used to defer payment of debt or incur debt and defer its payment for which the Bank offers card processing services.
- m) “Debit Cards” shall mean PIN-based Debit Cards and such other debit cards for which the Bank offers card processing services.
- n) “Discover” shall mean DFS Services LLC and its Affiliates.
- o) “EBT Card” shall mean a card utilized for electronics benefits transfers.
- p) “E-commerce” has the meaning set forth in Section 4(a).
- q) “Effective Date” has the meaning set forth in Section 17.

- r) "Initial Term" has the meaning set forth in Section 17.
- s) "Laws" has the meaning set forth in Section 21.
- t) "MasterCard" shall mean MasterCard International Incorporated and its Affiliates.
- u) "Merchant Application" means the application submitted by You to the Bank in connection with the proposed provision of merchant services.
- v) "Merchant Discount Rate" has the meaning set forth in Section 11(a).
- w) "Merchant Item Fee" has the meaning set forth in Section 11(a).
- x) "Non-Compliance" has the meaning set forth in Section 11(d).
- y) "Operating Account" has the meaning set forth in Section 2(e).
- z) "Operating Regulations" has the meaning set forth in Section 21.
- aa) "PCI Non-Compliance Fee" the meaning set forth in Section 11(d).
- bb) "Permissible Prepayment" means any prepayment accepted for Transactions prior to the delivery of goods or services by You involving special orders for items not normally stocked by You, ecommerce, catalog sales, or reservations provided such form of Transaction is approved by Bank in advance.
- cc) "PIN-based Debit Cards" shall mean debit cards utilizing a personal identification number ("PIN").
- dd) "Pricing Schedule" shall mean the schedule of fees and charges included as part of the Merchant Application, along with any supplemental pricing addendum or other changes implemented by the Bank.
- ee) "Recurring Transaction" has the meaning set forth in Section 4(d).
- ff) "Renewal Term" has the meaning set forth in Section 17.
- gg) "Secured Assets" has the meaning set forth in Section 16(a).
- hh) "Term" has the meaning set forth in Section 17.
- ii) "Transactions" has the meaning set forth in Section 2(c).
- jj) "Visa" shall mean Visa U.S.A., Inc., Visa International, Inc. and its Affiliates, as applicable.
- kk) "Voyager Card" shall mean Voyager commercial fleet fuel cards and its

Affiliates. 2. Card Types and Acceptance.

- a) General: By completing the Merchant Application, You apply for the Bank's payment card processing programs and services as selected by You on the Merchant Application. In its sole discretion, the Bank may accept or reject Your Merchant Application. By agreeing to participate in the Bank's card processing program You will comply with the terms and conditions of this Agreement for submitting and processing credit card transactions, debit card transactions and other electronic payment methods offered by the Bank. The Bank is responsible to You for processing transactions for the card program services to which You subscribe, which may vary among card types.
- b) Accepting Approved Cards: You understand and acknowledge that You are solely responsible for assuring that You accept Approved Cards. You may elect to accept only one of the following types of cards: (i) "Debit Cards", or (ii) "Credit Cards", as selected by You on the Merchant Application.
- c) Transactions: You will sell or lease goods and/or provide services to the holders of all valid, unexpired and properly tendered Approved Cards and agree to accept Approved Cards, and those Cards that may be added from time to time by agreement of You and the Bank, and receive payment for these from the Bank in accordance with the terms of this Agreement (herein individually or collectively called a "Transaction"). You may, subject to applicable Law and the Operating Regulations: (i) impose a surcharge, under certain conditions and with proper notification to a Cardholder who elects to use an Approved Credit Card (but not an Approved Debit Card) in lieu of payment by cash, check or other mode of payment; *or*, (ii) You may offer a discount or incentive to Your customers making payment by a preferred method. However, You may not (i) provide cash to a Cardholder; or (ii) charge the holder of a Debit Card more than the amount the Cardholder would pay if payment was made by cash or check. Many states prohibit or limit cases where merchants can surcharge a Cardholder and we recommend that

You carefully consider and comply with all applicable legal requirements and the Operating Regulations before You begin surcharging Cardholders.

- d) Signs and Advertising: Subject to the Operating Regulations, You will (i) prominently display at Your place of business Card Brand emblems and other promotional material and literature provided by the Bank, and (ii) if permitted and approved by the Bank, You may use Card Brand service marks or design marks in Your advertisements and promotional materials.
- e) Operating Account: Prior to accepting any Approved Card, You will establish and maintain a deposit operating account at the Bank or at a financial institution acceptable to the Bank (the "Operating Account") to facilitate payment for Transactions. You will maintain sufficient funds in the Operating Account to accommodate all Transactions contemplated by this Agreement and all other fees, charges, credits or other payment or amounts due under this Agreement. You hereby authorize the Bank and its authorized vendors and agents to initiate ACH debit and credit entries to and from the Operating Account or, if applicable, the reserve account, to collect payments from You due under this Agreement or other amounts owed to the Bank by You. You hereby further agree that Bank shall have a priority position as to the funds in the Operating Account to collect such payments, and You shall execute such other instrument or agreements as Bank may request to memorialize the priority position of Bank in the Operating Account.

3. Documenting Approved Card Transactions. Except to the extent otherwise provided by Section 4(a), each Transaction shall be reflected on a sales receipt or a credit receipt supplied or approved by the Bank and shall contain the following information:

- a) Your legal name and/or Your registered trade name, Your location, and Your merchant identification number designated by the Bank;
- b) The truncated version of the Card number as provided in the Operating Regulations;
- c) A brief description of the goods or services involved in the Transaction;
- d) The selling price, together with applicable taxes, other charges or gratuities, and the total amount of the Transaction;
- e) Signature of the Cardholder or authorized user, date of the Transaction and the Transaction approval number for the Transaction;
- f) Certain requirements of the Card Brands that may be applicable to specific merchant or transaction types, as amended from time to time; and
- g) Such additional information which may from time to time be required by the Bank, the Card Brands or Card Issuers.

You will deliver to Your customer in each Transaction a true and completed copy of a sales receipt or credit receipt. Except with respect to Permissible Prepayments, You will not transmit a sales receipt to the Bank until such time as You have performed Your obligations to the Cardholder through the delivery of goods or the performance of the services in connection with such Transaction. Any Transaction that involves a Permissible Prepayment shall be completed and transmitted to Bank in accordance with Operating Regulations and any guidelines or direction provided by Bank.

4. Types of Transactions.

- a) Sales Without Presentation of an Approved Card: If the Bank has specifically approved You in writing prior to accepting any such Transactions, You may accept, subject to the additional requirements set forth in this Section 4, transactions initiated by mail, by telephone, and by the Internet, all without presentation of an Approved Card (herein referred to as a "Card Not Present Transaction"). If You, at any time, accept a Card Not Present Transaction without the prior approval of the Bank, the Bank may immediately terminate this Agreement and chargeback to You the value of all Transactions processed by the Bank from the date of this Agreement to the date of such termination. Any Card Not Present Transaction accepted by the Bank shall, notwithstanding the prior authorization by the Bank, be accepted with full recourse and risk to You. You will comply with any supplemental authorization or verification procedures from time to time required by the Bank or the Operating Regulations in connection with Card Not Present Transactions. In addition to the Transaction information required by this Agreement, in the case of Card

Not Present Transactions, You must record, retain, and promptly produce upon request the “ship to address” and address verification service code (where applicable) for each Transaction. You shall be deemed to warrant the person whose name appears on the sales draft as the Cardholder is the person making the purchase. You further agree to abide by applicable Laws, the Operating Regulations, and other applicable procedures of processing Transactions including, but not limited to, telephone order, mail order, E-commerce order, pre-authorized order or recurring sale transactions: Sales Drafts/Order Forms: (i) in addition to all information presently or hereafter required in this Agreement, the Sales Draft or Order Form shall show on the signature line “MO” (Mail Order), “TO” (Telephone Order), “PO” (Pre-Authorized Order), “E-Commerce” (E-Commerce Order), “Pre-Authorized Health Care,” “Recurring Transaction,” “No Show,” “Advance Deposit,” or “Priority Check-Out,” as applicable; (ii) No Cardholder signature is required on mail orders or telephone orders; and (3) for internet based transactions (“E-commerce”), the transaction receipt shall identify Your online Uniform Resource Locator (“URL”).

- b) Pre-Authorized Orders – General: If You agree to accept a pre-authorized order, the Cardholder shall execute and deliver to You a written request for such pre-authorization which will be retained by You and made available upon request to the Bank. You will not deliver goods or perform services covered by a pre-authorization after receiving specific notification that the pre-authorization is cancelled or that the card covering the pre-authorization is not to be honored.
- c) Pre-Authorization Health Care Transactions: If You are a “Health Care Merchant” as indicated on Your Merchant Application and accept a pre-authorized health care Transaction(s) from a Cardholder, You agree to comply with any requirements in the Operating Regulations related to such Transactions.
- d) Recurring Transactions: If You agree to accept a recurring transaction from a Cardholder for the purchase of goods or services which are delivered or performed periodically (a “Recurring Transaction”), the Cardholder shall complete and deliver to You an order form containing a written request for such goods or services to be charged to the Cardholder’s account, the frequency of the recurring charges and the duration of time for which such Cardholder’s permission is granted. In the event a Recurring Transaction is renewed, the Cardholder shall complete and deliver to You a subsequent order form for continuation of such goods or services to be charged to the Cardholder’s account. A Recurring Transaction may not include partial payments made to You for goods or services purchased in a single Transaction, nor may it be used for periodic payments of goods or services on which You assess additional finance charges. A copy of the order form must be retained for the duration of the recurring charges and provided in response to the Bank’s request. In addition, You must record, retain, and promptly produce upon request the “ship to address” and address verification service code (where applicable) for each transaction. You must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, the Card Issuer, the Bank or other party or a response that the Approved Card is not to be honored.
- e) Installment Payments: You may offer Cardholders an installment payment option under the following conditions: You must clearly disclose in writing the installment terms including but not limited to (i) the availability of the plan for selected items or the total amount of the order and (ii) the handling of the shipping and handling charges and any applicable tax. You must also advise Cardholders, if applicable, that the installment billing amount may vary due to the fluctuation of currency conversion rates between the Transaction currency and the billing currency at the time each installment is processed. No finance charges may be added by You. The sum of the installment Transaction may not exceed the total sale price of the merchandise on a single Transaction basis. An authorization is required for each installment Transaction. You may not deposit the first installment Transaction with the Bank until the merchandise is shipped or the services are performed. Subsequent installment Transaction(s) must be deposited at intervals of (i) 30 days or more or (ii) the anniversary date (i.e. the same date each month).

5. Prohibited Transactions. You will not (i) extend credit for, or defer the payment of, the total cash price in any Transaction, unless approved by the Bank; (ii) honor an Approved Card except in a transaction where a total cash price is due and payable; (iii) make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction; (iv) transmit or accept for payment any sales receipt for a Transaction which was not originated as a result of a direct Transaction between You and a Cardholder for the bona fide sale of goods or services of the type indicated in the Merchant Application; or (v) honor or accept an Approved Card in payment for any legal services or expenses arising out of or related to (A) dishonored checks, (B) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on the Approved Card or (C) any bankruptcy, insolvency, compromise, composition, or other proceeding affecting Cardholder’s creditors; (vi) honor or accept an Approved Card in payment for any child support owed; (vii) use Your own Approved Card, or one to which You have access, to process a Transaction for the purpose of obtaining credit for Your own benefit; (viii) re-deposit a previously charged-back transaction, regardless of whether the Cardholder consents; or (ix) submit any Transaction to

the Bank which You know or should have known through the exercise of reasonable care in accepting the Transaction to be fraudulent or not authorized by the Cardholder. If You elect to dispute a chargeback, You will do so by sending the Bank a written request for representation, accompanied by supporting documentation.

6. Authorizations. You will submit each Transaction to the Bank for authorization using a means approved by the Bank, or as otherwise directed by the Bank. If You accept PIN-based Debit Cards or other approved Debit Card Transactions, the approved device must provide both a PIN-pad capable of processing the Cardholder's personal identification number (PIN) together with a printer. If the device is inoperable at the time of an authorization request, PIN-based Debit Card Transactions will be declined by You, but other Transactions for Approved Cards other than PIN-based Debit Cards may be authorized by using the appropriate dial-up facility and entered into the device later that day as a forced-sale, with the obtained approval number. If such alternate authorization is granted, You will obtain a manual imprint of the card and an authorized signature and will enter the approval number on the sales receipt. You must submit an authorization reversal or adjustment within the Card Brand's required time frame if the transaction is not completed, authorization was submitted in error or the final amount is less than the approved amount.

7. Transmittal of Drafts and Payments to Merchant's Operating Account.

- a) Electronic Transmittal of Sales Receipts: You will submit each Transaction for authorization via the approved means as provided in Section 6 hereof. The Bank shall authorize or decline such Transactions transmitted for authorization and shall capture and process for You the information relating to the Transaction. The information to be transmitted by You shall include, but not limited to, the information required on a sales receipt except for the description of the goods or services provided, and the Cardholder signature. You will include any additional information necessary for the Bank to comply with all Laws and Operating Regulations for billing Cardholders or as may from time to time be required by the Bank and/or the Card Issuer. Prior to the cut-off time established by the Bank, You will submit to the Bank for settlement that days amount Transactions (the "Batch"). The Bank will provisionally (subject to final payment of such Transactions) credit Your Operating Account in an amount equal to the Batch, less any fees or other amounts. This credit will not include (i) any Transactions initiated with an Authorization Only Card, since these are settled separately to You by the Card Issuer of the Authorization Only Card. Credits to Your Operating Account will be available on the business day following the receipt by the Bank of the Batch, unless the Bank has notified You of an alternate availability schedule. The Bank reserves the right to change the availability schedule from time to time, with any such change effective upon written notice to You. If You have not established an Operating Account at the Bank, You will be credited as the Bank shall deem appropriate. If You fail to initiate and submit a Batch, the Bank will not grant a credit for such day. In addition to information identifying You as the merchant, an appropriate installment Batch descriptor (e.g., 1 of 5, 2 of 5, etc.) must be included in the "merchant" name field of the Transaction clearing record.
- b) Suspension of Transmittal Processing: In the event the Bank, at any time determines or reasonably believes that You have transmitted Transactions which are not in compliance with the Laws, Operating Regulations or this Agreement in any respect, the Bank may, in addition to taking any other action permitted under this Agreement, suspend processing for payment to You of any or all Transactions submitted to the Bank until such time as You provide evidence satisfactory to the Bank that such Transactions are in all respects in compliance with the Laws, Operating Regulations and this Agreement.
- c) Authorization Only Card Transactions: The Bank's sole responsibility with respect to any Transactions initiated with an Authorization Only Card shall be to request Transaction authorization from the Card Issuer of the Authorization Only Card or its designated processor and, upon transmittal of the Transaction to the Bank, to transmit or send the Transaction to the Card Issuer of the Authorization Only Card or its designated processor. The Bank shall have no liability for the payment to You of Transactions initiated with an Authorization Only Card, and You will indemnify and hold harmless the Bank from and against any and all liabilities, losses, claims, damages, and expenses, including reasonable attorneys' fees, suffered or incurred by the Bank arising out of, or resulting from any Transaction initiated with an Authorization Only Card, except such liabilities, losses, claims, damages, and expenses which are caused solely by the Bank's gross negligence or willful misconduct in performing its obligations.
- d) Hold on Funds: The Bank may immediately upon notification put a hold on funds in Your Operating Account in the event of any request for retrieval of a sales receipt, any existing or potential chargeback, and any transaction considered by the Bank to be suspicious or fraudulent.

8. Chargebacks. You agree to accept for chargeback, and will be liable to the Bank in the amount of any Transaction disputed by the Cardholder or Card Issuer for any reason under the Operating Regulations. You authorize the Bank to

offset from funds due You or to debit the Operating Account or, if applicable, the reserve account for the amount of all chargebacks. You will fully cooperate with the Bank in complying with the Operating Regulations regarding all chargebacks. Subject to any contrary provisions in this Agreement, the acceptance by the Bank of any sales receipt for deposit to Your Operating Account shall be made with full recourse to You, including without limitation, where:

- a) The Approved Card giving rise to the Transaction has been cancelled and prior to, or at the time of, the Transaction You received notice of such cancellation through the electronic terminal or otherwise.
- b) The Approved Card had expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Approved Card.
- c) The sales receipt does not contain the signature that appears in the AUTHORIZED SIGNATURE panel of the Approved Card or is unsigned by the Cardholder or the electronic transmittal does not contain the required information.
- d) The electronic transmittal for a PIN-based Debit Card Transaction does not include the Personal Identification Number (PIN) of the Cardholder.
- e) The sales receipt represents a Transaction on which the Bank has received a complaint from or on behalf of a Cardholder stating there is an unresolved dispute between You and the Cardholder or the Cardholder did not make or authorize the Transaction.
- f) A setoff or counterclaim of any kind shall exist in favor of any Cardholder against You that may be asserted in defense of an action to enforce payment against such Cardholder in a Transaction.
- g) The sales receipt represents a transaction that was made at or by a merchant other than You as named in the Merchant Application.
- h) You fail to take an impression of an Approved Card that was not electronically read by the terminal for a Card present transaction.
- i) There is an attempt to circumvent a card issuer's Authorization Limit by splitting the transaction or otherwise deposit or payment.
- j) The Transaction otherwise violates the terms of this Agreement, the Laws or the Operating Regulations.

In any such case, the Bank shall not be obligated to accept a sales receipt for deposit to Your Operating Account. If the Bank has credited Your Operating Account for a Transaction involving any of the circumstances indicated above, the Bank may chargeback the amount of such Transaction without prior notification, which amount You will pay in the manner hereinafter provided.

9. Adjustments and Returns. If goods are returned or any services are terminated or cancelled, or if any price adjustment on a Transaction is allowed by You, You will prepare and transmit a credit or return Transaction for the amount of the adjustment as a deduction from the total amount of sales receipts transmitted. Credit or return Transactions may only be processed for the Approved Card used for the original Transaction and may not exceed the amount of the original Transaction. If the amount of the credit or return Transactions exceeds the amount of the sales receipts transmitted that banking day, the Bank will charge the Operating Account for such excess amount. The sales receipt for any Transaction for which no refund or return will be given must be conspicuously marked as "final sale" and "no returns" in letters .25 inches high near the Cardholder signature area on all copies of the transaction receipt or invoice. An E-commerce Merchant must display any return/refund policy during checkout process and require the Cardholder to "click to accept" the policy. You will make no cash refunds on Approved Card Transactions and agree to handle all credit adjustments as provided above.

10. Retention of Original Sales Receipts and Copies. You will retain the original sales or credit receipt for a period of not less than the longer of the following: (i) two (2) years after a Transaction is completed, (ii) the period required by Law or the Operating Regulations, or (iii) if a dispute is pending, until such dispute is resolved, whichever is longer. Within one (1) business day of receipt of the Bank's request, You shall mail the original or a legible copy of the executed sales or credit receipt to the Bank. Further, a sales receipt or credit receipt which does not contain the information required pursuant to this Agreement and the Operating Regulations, including, without limitation, a Card Not Present Transaction, shall be subject to full recourse if the Cardholder continues to dispute the validity of the charge after the Bank has presented Your evidence of validity of the charge to the Cardholder.

11. Pricing, Fees, Costs, Billing.

- a) For each Approved Card sales receipt accepted using the service, the Bank will charge You an amount equal to a specified percentage of the total cash price of such draft (“Merchant Discount Rate”) and/or a specified amount per transaction (“Merchant Item Fee”), as set forth on the Pricing Schedule, which is incorporated herein by reference, and which may be amended from time to time by the Bank. Not less than once per month, the Bank shall provide You with an itemized statement (“Merchant Statement”) of all charges and credits to Your Operating Account. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by You, unless You object by written notice specifying the particular item in dispute delivered to the Bank within ninety (90) days of delivery of the Merchant Statement.

Regardless of whether the Bank has accepted any Transactions from You, the Bank will charge You a monthly minimum fee (the “Account Minimum Fee”) equal to the lesser of (but not less than \$0.00): (i) the Minimum Discount or Account Minimum Fee amount set forth on the Pricing Schedule (the “Pricing Schedule Minimum Fee”); or (ii) the Pricing Schedule Minimum Fee minus the following fees reflected on your periodic monthly Merchant Statement: if interchange fees appear on your Merchant Statement, the total amount of interchange fees; or, if interchange fees do not appear on your Merchant Statement, the sum of the total amount of discount fees and the total amount of transaction fees.

- b) The Bank will charge You a non-refundable annual or non-refundable monthly fee for the costs associated with the approved PCI DSS Vendor in accordance with the Pricing Schedule, payable to the Bank upon execution of the Merchant Application and each anniversary thereof.
- c) If the Bank determines, in its sole discretion, that You have failed to comply with any of the terms of Section 12 (“Non-Compliance”), You shall be required to pay a non-compliance fee (the “PCI Non-Compliance Fee”) in accordance with the Pricing Schedule for each month or partial month that You are in Non-Compliance. The PCI Non-Compliance Fee shall be assessed on a per-location basis, so that multiple locations shall be required to pay a PCI Non-Compliance Fee for any location that is in Non-Compliance. The PCI Non-Compliance Fee shall be non-refundable once paid by You, even if compliance is achieved during the month of payment. The Bank reserves the right to increase the PCI Non-Compliance Fee by providing fifteen (15) days’ notice to You.
- d) You will reimburse the Bank for any fees, charges, or other amounts assessed against the Bank by the Card Brands for Your violation of the Laws or Operating Regulations.
- e) All fees or other monetary obligations due from You to the Bank for any other services that are provided to You by the Bank, including but not limited to chargebacks, provided for in this Agreement or otherwise, shall be charged to You by an adjustment to any credit due You, a charge to Your Operating Account or any other method appropriate under the terms of Your deposit and payments arrangements with the Bank.
- f) Any fees or other monetary obligations due from You, payment of which has not been effected by any of the aforesaid means, shall be paid by You to the Bank upon demand.
- g) The Bank shall have a right of “set-off” and claim against the Operating Account, and in conjunction with the set-off, or in the alternative, place a hold on the Operating Account, whether maintained at the Bank, or at any other institution. The Bank may exercise its right of “setoff” or place a hold on any other account You maintain at the Bank or any affiliate of Fulton Financial Corporation.

12. Payment Card Industry Data Security Standard (PCI DSS); Data Breach.

- a) Certain Card Brands (Visa/MasterCard/American Express and Discover) jointly aligned data security requirements to establish a global standard for the protection of Cardholder data. The result, Payment Card Industry Data Security Standard (or PCI DSS) outlines the requirements with which all entities, including any third party vendors that store, process or transmit payment card data must comply. The Cardholder Information Security Program CISP is Visa’s data security program, the Site Data Protection (SDP) Program is MasterCard’s data security program and Discover Network Information Security and Compliance (DISC) is Discover’s data security program. Each of these are based on the PCI DSS industry aligned validation requirements. The requirements for PCI DSS compliance validation are described in the Bank’s “Merchant Data Security Service/PCI DSS Compliance Validation Requirements” as the same is amended from time to time, which is incorporated herein by reference into this Agreement.

“Merchant Equipment” as used in this section means any and all equipment You use in connection with storing Card data, Card authorization, clearing, completing, settling, transmitting, or any other related processing, including all telecommunication lines, wireless connections, software, systems, point of sale devices, card readers, card scanners, printers, PIN-pad devices and other hardware used by You.

The Card Brands or the Bank may impose fines or penalties on You if it is determined You or any vendor You use to transmit, store or process cardholder data are not in compliance with the applicable PCI DSS standards. Furthermore, the Card Brands or the Bank may suspend, restrict or terminate the Services under this Agreement for any actual or suspected data security compromise. Under no circumstances shall You disclose cardholder account information to third parties, except when needed to complete a Transaction or when required by Law or the Operating Regulations.

You must and agree to comply with the data security requirements described in this Section 12, including without limitation PCI DSS, CISP, SDP and DISC and any additional Card Brand requirements applicable to PIN debit transactions. Detailed PCI DSS information can be found at the PCI DSS Council’s website: www.pcisecuritystandards.org.

- b) You shall notify the Bank within twenty-four (24) hours if You know or reasonably suspect that Cardholder information, customer information, or Transaction information has been accessed or used without Your or Your Affiliate’s authorization (a “Data Event”). Without waiving any of the Bank’s other rights and remedies, You are liable for all fraudulent transactions related to any Data Event and all costs that Bank incurs as a result of such Data Event, including any fees, fines, penalties, or assessments by the Card Brands, claims from third parties, all costs related to the notification of Cardholders or customers and cancellation and re-issuance of Cards (including underlying accounts), forensic investigations, and PCI DSS reviews for a report of compliance.

13. Representations and Warranties. You represent and warrant to the Bank as of the time the Effective Date, and reaffirm to the Bank each time a Transaction is effected during the Term of this Agreement, the following:

- a) Organization. You are a corporation, company, limited liability company, unlimited liability company, limited liability partnership, limited partnership, general partnership, business trust, association or sole proprietorship validly existing and organized in the jurisdiction identified in the Merchant Application.
- b) Corporate Power. You and the persons signing this Agreement have the power to execute and perform this Agreement. You represent and warrant that the person executing this Agreement is duly authorized to bind You to all provisions of this Agreement and that such person is authorized to execute any document and to take any action on behalf of You which may be required by the Bank, now or in the future. Further, You represent and warrant that signing and/or performing in accordance with this Agreement will not violate any Law, or conflict with any other agreement to which You are subject.
- c) No Litigation. There is no action, suit, or proceeding pending, or to Your knowledge, threatened which if decided adversely would impair Your ability to carry on Your business substantially as now conducted or which would adversely affect Your financial condition or operations. You have never (i) been placed on the MasterCard MATCHTM system (formerly known as the Combined Terminated Merchant File), (ii) been named to the Consortium Merchant Negative File maintained by Discover, or (iii) been placed on or named to any other negative or terminated merchant file of any other Card Brand or payment network, or, if You have, You have disclosed that fact to the Bank in writing.
- d) Transactions. All Transactions are bona fide. No Transaction involves the use of an Approved Card for any purpose other than the purchase of goods or services from You or a return or adjustment related to such purchase. You will not submit unlawful or illegal Transactions. You have all power and authority to provide all customer information, Cardholder data and Transaction information that You provide to the Bank. No Transaction involves a customer obtaining cash from You unless allowed by the Operating Regulations and agreed to in writing with the Bank.
- e) Compliance with Laws and Operating Regulations. You will comply with all Laws and the Operating Regulations, as the same may be amended or changed from time to time.
- f) Business Use. You are obtaining and using the services provided by the Bank for business purposes only and to facilitate lawful business Transactions with Your customers. You will not submit Transactions for processing to the Bank for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of the Bank. You also

acknowledge that the Operating Account into which debits and credits are made is being used for lawful business purposes only.

- g) Responsibility for Actions. You are responsible for any violations of this Agreement that result from the actions of or failure to act by Your officers, directors, employees, agents, and those of any other person or entity who, with or without Your consent or cooperation, obtains access to information related to Transactions from You or access to systems under Your control.

14. Credit Investigation; Financial Reports; Audit Rights; Change in Business.

- a) You authorize the Bank from time to time to request consumer credit reports and to conduct investigations of the background and credit history of You and any principal, officer, director, member, partner, manager, sole proprietor, employee or agent of You. You represent and warrant to the Bank the financial statements and other information heretofore furnished by You to the Bank are true and correct and fairly represent the financial condition of You and, since the time of furnishing to the Bank, there has been no material adverse change in the financial condition or operations of You. You shall furnish or cause to be furnished to the Bank from time to time upon request Your most recent annual financial statement (including a balance sheet, income statement, and statement of cash flows), a personal financial statement (dated not more than twelve months prior to the date requested by the Bank) for each principal, officer, director, member, partner, manager, sole proprietor of You, and such other financial information as the Bank may reasonably request. You authorize the Bank to obtain any of the information described in this Section 14 from any guarantor of Your obligations under this Agreement, to request such information directly from such guarantor, and to perform any investigation of such guarantor that the Bank is permitted to perform on You hereunder. In addition, You agree to provide any information on any guarantor of Your obligations under this Agreement that the Bank may reasonably request.
- b) You shall, upon request of the Bank, permit the Bank to verify any or all sales completed by You and to examine books, records, and other documents related to any Transactions submitted to the Bank. In the event that the Bank reasonably suspects that it is subject to financial or reputation risk due to the actions or omissions of You, You authorize the Bank to perform an audit or inspection of Your operations to confirm compliance with this Agreement upon reasonable advance notice (unless such advance notice would contradict the purposes of such audit or inspection) at the Bank's expense. Your agreement to cooperate, in good faith, with any such audit or inspection conducted by the Bank. You authorize the Bank to report or communicate from time to time information concerning Your Transaction activity to the Card Brands, any Card Issuer, other payment network or any governmental authority or law enforcement agency.
- c) You must give the Bank written notice, not less than sixty (60) days beforehand, of (i) the commencement of E-commerce Transactions; (ii) any change in ownership or control of at least ten percent (10%) of Your business; (iii) any significant change in the nature or mode of operation of Your business; (iv) the sale or transfer of at least ten percent (10%) of the assets of Your business; or (v) alter in any way Your monthly volume or average ticket. After receipt of this written notice as required in this Section 14, the Bank may require You to complete and submit, within twenty (20) days, a new merchant account application in the form provided by the Bank and such other information concerning the change in business as the Bank may reasonably require, including credit bureau reports.

15. Additional Terms for the Use of American Express Cards

- a) American Express Approval. Your participation in accepting American Express Cards is subject to the approval of American Express.
- b) You authorize the Bank and/or its affiliates to submit sales using American Express Cards to and receive settlement on such sales from American Express on behalf of You.
- c) Sales Information and Communication by American Express.
 - i) You agree that the Bank and/or its affiliates may disclose to American Express information regarding You and Your sales, and that American Express may use such information to perform its responsibilities in connection with accepting American Express Cards, promote American Express, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of accepting

American Express Cards, and important transactional or relationship communications from American Express.

- ii) American Express may use the information about You obtained in this Agreement at the time of setup to screen and/or monitor You in connection with American Express marketing and administrative purposes. You agree that You may receive messages from American Express, including important information about American Express products, services and resources available to its business. These messages may be sent to Your mailing address, phone numbers, email addresses or fax number. You may be contacted at Your wireless telephone numbers and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. You agree that You may be sent fax communications.
 - iii) You may opt-out of receiving future commercial marketing communications from American Express by contacting the Bank and/or its affiliates. You may continue to receive marketing communications while American Express updates its records to reflect Your choice. This option will not preclude You from receiving important transactional or relationship messages from American Express.
- d) Direct Relationship Conversion. You acknowledge that You may be converted from accepting American Express Cards to a direct relationship with American Express if and when Your sales volumes exceed the eligibility thresholds for accepting American Express Cards. If this occurs, You will be bound by the American Express then current Card Acceptance Agreement, and American Express will set pricing and other fees payable by You.
- e) Assignment. You shall not assign to any third party any payments due to You for accepting American Express Cards, and all indebtedness arising from sales will be for bona fide sales of goods and services at Your business locations and free of liens, claims encumbrances other than ordinary sales taxes; provided, however that You may sell or assign future receivables to the Bank and/or its affiliates and/or any other cash advance funding source that partners with the Bank and/or its affiliates, without consent of American Express. Bank and its affiliates prohibit You from selling or assigning any future sales receivables to any third party.
- f) Third Party Beneficiary Rights. American Express shall have third-party beneficiary rights, but not obligations to the terms of this Agreement applicable to accepting American Express Cards to enforce such terms against You.
- g) Termination of Accepting American Express.
- i) You may opt-out of accepting American Express Cards at any time without affecting Your rights to accept any other Card Brands.
 - ii) The Bank shall have the right to terminate Your participation in accepting American Express Cards immediately upon written notice to You i) if You breach any of the provisions of the Operating Regulations, or any terms of this Agreement applicable to accepting American Express Cards, ii) for cause or fraudulent or other activity, or (iii) upon a request by American Express.
 - iii) If Your participation in accepting American Express Cards is terminated pursuant to this paragraph, You shall immediately remove all American Express branding and marks from Your website and any other place they are displayed.
- h) Refund Policies. Your refund policies for sales using an American Express Card must be at least as favorable as the refund policy for any other Card Brands, and the refund policy must be disclosed at the time of purchase to Cardholders in compliance with the Laws. You may not bill or attempt to collect from any Cardholder for any sale using an American Express Card unless a chargeback has been exercised, You have fully paid for such chargeback, and You otherwise have the right to do so.
- i) Payment for Goods and Services. You must accept American Express Cards as payments for goods and services (other than goods and services prohibited by this Agreement or the Operating Regulations) sold or for charitable contributions made at all of Your business locations and websites, except as expressly

permitted by state statute. You shall be jointly and severally liable for the obligations of Your business locations and websites under this Agreement.

- j) **Arbitration Requirements.** In the event that You are unable to resolve a Claim against American Express, or a Claim against the Bank and/or its affiliates, this section explains how Claims may be resolved through arbitration. You or American Express may elect to resolve any claim by individual, binding arbitration. Claims will be decided by a neutral arbitrator.
- i) If arbitration is chosen by any party, neither You nor Bank and/or its affiliates nor American Express will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, You, Bank and/or its affiliates, and American Express will not have the right to participate in a representative capacity or as a member of any class pertaining or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Any other rights You, Bank and/or its affiliates and American Express would have in court may also not be available in arbitration.
 - ii) **Initiation of Arbitration.** Claims shall be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to the arbitration provisions and the selected organization's rules in effect when the Claim is filed. You, and Bank and/or its affiliates shall contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that You attend shall take place in New York, New York unless all parties agree to an alternate venue.
 - iii) **Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated. The arbitrator's authority will be limited to Claims between You, Bank and/or its affiliates, and American Express. Claims may not be joined or consolidated unless all parties to this Agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by You, Bank and/or its affiliates, and American Express and cannot be used in any other case except to enforce the award as between You, Bank and/or its affiliates, and American Express. This prohibition is intended to preclude You from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these Limitations on Arbitration is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.
 - iv) **Previously Filed Claims/No Waiver.** You, Bank and/or its affiliates, and American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the claim. You, Bank and/or its affiliates, and American Express may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Operating Regulations, or any similar provisions of any prior Card Acceptance Agreement, that was filed against American Express prior to the effective date of the this Agreement.
 - v) **Arbitrator's Authority.** The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter this Agreement or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.

- vi) Split Proceedings for Equitable Relief. You, Bank and/or its affiliates, and American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.
- vii) Small Claims. American Express shall not elect to use arbitration under this section for any Claim You properly file in a small Claims court so long as the Claim seeks individual relief only and is pending only in that court.
- viii) Governing Law/Arbitration Procedures/Entry of Judgment. The arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor Claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, Your American Express may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this Agreement shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, inter alia, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider de novo any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where Your headquarters or Your assets are located.
- ix) Confidentiality. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation, mediation, or arbitration.
- x) Costs of Arbitration Proceedings. You will be responsible for paying Your share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees You would have incurred if You had brought a Claim in court. American Express will be responsible for any additional arbitration fees. At Your written request, American Express will consider in good faith making a temporary advance of Your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.
- xi) Additional Arbitration Awards. If the arbitrator rules in Your favor against American Express for an amount greater than any final settlement offer American Express made before any arbitration award, the arbitrator's award will include: (1) any money to which You are entitled

as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by You.

- xii) Definitions. For purposes of the Arbitration provisions in the Merchant Agreements and this section only, Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against Bank and/or its affiliates, or any other entity that American Express product or network or regarding an American Express policy or procedure.
- k) Other Provisions of American Express. Except as permitted by the Laws, You shall not:
 - i) Indicate or imply that You prefer any other Card Brands over American Express;
 - ii) Try to dissuade Cardholders from using American Express;
 - iii) Criticize or mischaracterize American Express or any of its services or programs;
 - iv) Try to persuade or prompt Cardholders to use any other Card Brands;
 - v) Impose any restrictions, conditions, disadvantages or fees when American Express cards are accepted that are not imposed equally on all other Card Brands, except for electronic funds transfer, or cash and check;
 - vi) Suggest or require Cardholders to waive their right to dispute any sale;
 - vii) Engage in activities that harm American Express business, brand or marks;
 - viii) Promote any other Card Brand (other than Your own private label card that You issue for use solely at Your business locations and websites more actively than You promote American Express;
 - ix) Convert the currency of the original sale to another currency when requesting authorization or submitting sales.
- l) Discounts. You may offer a discount or in-kind incentives from Your regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that You i) clearly and conspicuously disclose the terms of the discount or in-kind incentive to Your customers, ii) the discount or in-kind incentives are offered to all prospective customers and iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly provided by applicable state statute, Card Brands. The offering of a discount will not constitute a violation of this section.
- m) Payment Methods. When payment methods are communicated to customers, or when customers ask what payments are accepted, You must indicate Your acceptance of the American Express Cards and display American Express Brands as prominently as other Card Brands.
- n) Endorsement by American Express. You shall not indicate in any way that American Express endorses Your goods or services. You shall only use the American Express marks as permitted by this Agreement and shall cease using American Express marks upon the termination of this Agreement. For additional guidelines, contact the Bank and/or its affiliates.
- o) Confidential Information. Any and all information regarding American Express Card users is confidential and is the sole property of American Express or its affiliates. You must not disclose Cardholder information, nor use, nor store it, other than to facilitate sales at Your business locations and websites in accordance with this Agreement.
- p) Third Party Enlistment. You must ensure that any third parties You enlist to facilitate the sales processing for American Express Cards comply with the American Express Technical Specifications. The American Express Technical Specifications has the meaning set forth in the American Express Operating Regulations. Failure to adhere to the American Express Technical Specifications may impact Your ability

to process sales. You may be assessed a non-compliance fee if You fail to comply with the American Express Technical Specifications.

16. Security Interest; Reserve Account.

a) Security Interest.

- i) This Agreement constitutes a security agreement under the Uniform Commercial Code. You grant to the Bank a security interest in and lien upon: (A) all funds at any time in the reserve account or Operating Account, regardless of the source of such funds, and (B) all funds underlying present and future Transactions; and (C) any amount which may be due to You under this Agreement, including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other security to the Bank, upon request, to secure its obligations under this Agreement. These security interests and liens will secure all of Your obligations under this Agreement and any other agreements now existing or later entered into between You and the Bank including Your obligation to pay any amounts due and owing to the Bank. The Bank may execute this security interest, without notice or demand of any kind, by making an immediate withdrawal or by restricting Your access to the Secured Assets.
- ii) Upon request of the Bank, You will execute one (1) or more control agreements or other documents to evidence or perfect the Bank's security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, the Bank will have all rights afforded under the Uniform Commercial Code, any other applicable Law and in equity. You will obtain from the Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and the Bank is not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, You agree not to contest or object to any motion for relief from the automatic stay filed by the Bank. You authorize and appoint the Bank as Your attorney in fact to sign Your name to any control agreement used for the perfection of any security interest or lien granted hereunder.

- b) Reserve Account. In addition to any other legal rights or remedies available to it, the Bank reserves the right and You expressly authorize the Bank to establish a reserve account, in its sole discretion and immediately upon written notice to You for the purpose of providing security and a source of funds to pay the Bank any and all amounts that may be owed by You or anticipated to be owned by You. The amount of the reserve account shall be set based on Your processing history and the potential risk of loss to the Bank as may be determined from time to time. The Bank may fund the reserve account by any of the following means: (i) requiring You to deposit with the Bank funds or other security acceptable to the Bank, which deposit You will deliver to the Bank not later than three (3) days after written request for such deposit; (ii) the Bank may debit the Operating Account; or (iii) the Bank may deposit into the reserve account funds it would otherwise be obligated to pay You. The Bank shall have sole control over the reserve account and the reserve account shall be established and maintained in an amount the Bank, in its sole discretion, deems necessary. The reserve account may be maintained for nine (9) months after the termination date or such longer period as the Bank's liability shall continue under applicable Law or the Operating Regulations. Upon the expiration of such period, the Bank shall promptly pay the remaining balance in the reserve account to You.

17. Term/Termination. The initial term of this Agreement shall be for three (3) years (the "Initial Term") beginning upon the date of written acceptance by the Bank (the "Effective Date") and shall automatically renew for successive one year terms (each a "Renewal Term," and together with the Initial Term, the "Term") unless terminated as set forth herein. This Agreement may be terminated by any party to this Agreement upon written notice to the other party of such party's intent not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current Initial Term or Renewal Term. This Agreement may be voluntarily terminated by the Bank at any time by providing written notice to You which will become effective on the date specified in such notice, provided such date is not less than fifteen (15) days after the date the termination notice is received. Notwithstanding the foregoing, this Agreement may be immediately terminated by the Bank as a result of fraud on Your part, excessive chargeback history, suspicious activity, or breach of this Agreement or any other agreement with the Bank. This Agreement shall automatically terminate if any petition shall be filed by or against You under any bankruptcy or insolvency law. The Bank may selectively terminate one or more business locations of You without terminating the entire Agreement. All obligations incurred by You or existing under this Agreement as of the effective date of termination shall survive such termination.

In the event of termination, unless otherwise agreed by the parties, You shall promptly return all leased equipment to the Bank or the Bank's designee. Should this Agreement be terminated by You for any reason prior to the completion of the Initial Term, an early termination fee of five hundred dollars (\$500.00) shall be charged to You. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Your early termination.

18. Limitation of Liability.

- a) The Bank shall not be liable for failure to provide services if such failure is due to any cause or condition beyond its reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, mass shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, or other similar causes beyond the Bank's control and the Bank shall have no liability for losses, expenses or damages, ordinary, special or consequential resulting directly or indirectly from such causes. If the Bank's failure to provide the services under this Agreement is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Bank and the subcontractor, the Bank shall not be liable unless the supplies or services under this Agreement to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Bank to fulfill its obligations hereunder and at a cost substantially the same as the Bank was obligated to pay such subcontractor.
- b) The Bank shall use reasonable commercial efforts at all times to provide prompt and efficient services. The Bank shall use due care in processing all work submitted to it by You and agrees that it will, at its expense, correct any errors to the extent such errors are due to malfunction of the Bank's computers, operating systems or programs, or errors by the Bank's employees or agents. Correction shall be limited to rerunning of the job or jobs and/or recreating of data or program files. The Bank shall not be responsible in any manner for errors or failures of or errors in proprietary systems and programs other than those of the Bank and its subcontractors, nor shall the Bank be liable for errors or failures of Your software or operational systems. The warranties in this Section 17 are exclusive and are in lieu of all other warranties and You hereby waive all other warranties, express, implied or statutory including, without limitation, any warranty of merchantability or fitness for use for a particular purpose.
- c) Due to the nature of the services being performed by the Bank, it is agreed that in no event will the Bank be liable for any claim, loss liability, correction, cost, damage or expense caused by the Bank's performance or failure to perform hereunder which is not reported by You within the lesser of ninety (90) days of Your knowledge of the Bank's performance or failure to perform giving rise to such claim or one (1) year of the Bank's performance or failure to perform giving rise to such claim.
- d) You acknowledge that fees for the services provided to You by the Bank are very small in relation to the funds advanced to You for Transactions and consequently the Bank's willingness to provide these services is based on the liability limitations contained in this Agreement. Therefore, in addition to greater limitations on the Bank's liability that may be provided elsewhere, any liability of the Bank under this Agreement, whether to You or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (i) the fees paid by You to the Bank during the last three (3) months, exclusive of fees and variable costs incurred by the Bank to process Transactions, such as interchange costs, assessments, and fees imposed by a third party or, (ii) **[fifty thousand dollars (\$50,000)]**. In no event will the parties, or their agents, officers, directors, or employees be liable to any other party to this Agreement for indirect, exemplary, punitive, special, or consequential damages.
- e) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGE.

19. Indemnity. You will be liable for and indemnify, defend, and hold harmless the Bank and its employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of this Agreement, including any and all fines, fees, penalties, charges or other assessments by the Card Brands or any card issuers, and for all reasonable attorneys' fees and other costs and expenses paid or incurred by the Bank in the enforcement of this Agreement, including those resulting from any Transaction processed under this Agreement or any breach by You of this Agreement and those related to any bankruptcy or insolvency proceeding. Specifically, and not by way of limitation, You agree, at your expense and the Bank's request, to indemnify, defend and hold harmless Bank and its affiliates, and their respective officers, directors, employees, agents, representatives, successors and permitted assigns from and against any losses, damages, liabilities or expenses including reasonable attorney's fees and other costs and expenses paid or incurred by the Bank arising out of or in connection with:

a) Any claim or action you may have arising out of or in connection with Your or your customers' participation in the Program, except when due to our negligence or willful misconduct;

b) Any claim or action from You, Your affiliates or your customers in connection with the Program, including liability arising from fraudulent transactions or data incidents at You, Your affiliates, or your customers' locations.

20. Notice. All notices from You to the Bank under this Agreement must be given by first class, registered or certified mail, return receipt requested, postage prepaid, common courier and additionally may be given by electronic mail (e-mail) or fax, as follows:

Merchant Operations Department
Fulton Financial Corporation
One Penn Square, Third Floor
Lancaster, PA 17602
[E-MAIL: merchantcsfb@fult.com](mailto:merchantcsfb@fult.com)
FAX: 717-519-0381

You consent to receiving electronically rather than in paper form all written notices, disclosures and other documents (each a "Document") which are to be provided by the Bank to You under this Agreement. If notices are sent in this manner, the Bank will notify You a Document is available at the Bank's web site with a link to that specific page of the web site containing the Document. You agree such notification may be sent to You at the e-mail address provided as part of the Merchant Application. You understand and acknowledge access to the Internet and e-mail are required for You to access a Document electronically, and You confirm that You have such access. At any time and without giving You advance notice, the Bank may elect not to send a Document electronically, in which case a paper copy of the Document will be sent to You or such Document shall otherwise be provided as provided for herein. Any party may change the address to which notices to that party are to be directed by notice to the other party as provided herein.

21. Compliance with Laws and Operating Regulations. You will comply with all applicable local, states and federal statutes, regulations, ordinances, rules and other binding law, as the same may be enacted or amended from time to time ("Laws") as well as all rules and operating regulations and bylaws of the Card Brands and other payment networks, as the same may be enacted or amended from time to time ("Operating Regulations"). You are solely responsible for determining and following the Laws and Operating Regulations applicable to You and Your business. Except as set forth in the Operating Regulations, the Bank has no responsibility for notifying You of any changes in the Laws or Operating Regulations.

22. Severability, No Waiver. If any provision contained in this Agreement is for any reason held to be invalid or unenforceable, no other provision shall be effected thereby, and this Agreement shall be construed as if the invalid or unenforceable provision had never been a part of it. In the event of a conflict between this Agreement and the Operating Regulations, the Operating Regulations shall control. Any failure of the Bank to insist upon strict performance of any of the covenants or conditions of this Agreement, or to exercise any option therein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants or conditions, and the same shall be and remain in full force and effect.

23. Amendments to Agreement. Unless otherwise provided for in this Agreement, the Bank may amend this Agreement at any time by providing You with fifteen (15) days prior notice. The amendment will become effective unless the Bank receives a written notice objecting to the amendment of this Agreement before the effective date of the amendment. The Bank may amend this Agreement upon less than fifteen (15) days prior notice if the Bank reasonably determines immediate modification is required by Law, the Operating Regulations or any adverse change in Your financial condition. Amendments submitted by You will bind the Bank only if in writing and approved and signed by the Bank's authorized officer.

24. Exclusivity. You agree that during the Term, You will not enter into an agreement with any other entity that provides processing services similar to those provided by the Bank and that the Bank shall be Your exclusive provider of all processing services as set forth in this Agreement.

25. Construction of Agreement, Effective Date. This Agreement becomes effective on the Effective Date. This Agreement (including the Merchant Application and all attachments, exhibits, addenda and other documents incorporated by reference into this Agreement) is the complete and final agreement between You and the Bank with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, stipulations or agreements. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and permitted assigns and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any attachments or exhibits to this Agreement, including but not limited to the Bank's Pricing Schedule, are hereby incorporated by

reference as though fully set forth herein. The relationship of the Bank and You is that of independent contractors. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation. No provisions of this Agreement are intended, nor will they be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any other party. The heading to the sections hereof have been inserted for convenience only and shall not modify or restrict any provisions hereof or be used to construe any such provisions. Unless the context clearly other indicated or provided, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns shall include the plural and vice versa.

26. Assignment. This Agreement may be assigned by the Bank without Your consent. You may not assign this Agreement, directly, indirectly or by operation of law, without the prior written consent of the Bank. If You, nevertheless, assign this Agreement without the Bank's consent, this Agreement will be binding on the assignee as well as You. You acknowledge and understand that the Bank may use the services of third party service providers in connection with the performance of its obligations under this Agreement.

27. Confidentiality.

- a) **Customer and Transaction Information.** You agree to protect the confidentiality of customer, Cardholder and Transaction information in accordance with all applicable Laws and Operating Regulations. You will not disclose customer, Cardholder or Transaction information to any third party, except as required or permitted by the Laws or Operating Regulations. You must maintain customer, Cardholder and Transaction information for such time periods and in such a manner as required by the Laws and the Operating Regulations. You must take all steps reasonably necessary to ensure that customer, Cardholder and Transaction information is not disclosed or otherwise misused. You agree to immediately notify the Bank if You know or suspect that any customer, Cardholder or Transaction information has been accessed by unauthorized persons or has been used for any purpose not permitted by this Agreement, the Laws or the Operating Regulations.
- b) **Bank Confidential Information.** You agree to protect all information or other items proprietary to the Bank that You obtain knowledge of or access to as a result of the Bank's provision of the services pursuant to this Agreement (collectively, "Bank Confidential Information") from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion You use to protect similar confidential information of Your own, but in no event less than reasonable care. Furthermore, You shall not use, reproduce, distribute, disclose, or otherwise disseminate Bank Confidential Information, except in connection with the performance of Your obligations under this Agreement. The Bank Confidential Information described in the previous sentence, shall include, but not be limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information. The obligations of non-disclosure provided hereunder shall continue during the Term and, (i) with respect to Bank Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and, (ii) with respect to Bank Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the Bank Confidential Information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter

28. Continuing Guaranty.

- a) As a primary inducement to the Bank to enter into this Agreement, and to approve the Merchant Application of You, the Guarantor(s), individually and severally, who signed on the Guarantor signature line(s) on the Merchant Application, agree to be bound by all terms and provisions of this Agreement to the same extent and in the same manner as You, and unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by You of each and all of Your duties and obligations to the Bank under this Agreement, as such agreement now exists or is amended from time to time.
- b) Guarantor(s) understands that the Bank, without notice to Guarantor(s), may from time to time renew or extend this Agreement, modify rates, limits, charges and fees, or modify the amount or type of services provided to You all of which may increase the Guarantor's obligations under this Guaranty. Guarantor(s)

further understands that the Bank may proceed directly against Guarantor(s) without first exhausting the Bank's remedies against You, any other person or entity responsible to the Bank or any security held by the Bank. This Guaranty is a continuing guaranty and will not be discharged or affected by the release or discharge of You or the death of the Guarantor(s). This Guaranty will bind all heirs, administrators, and representatives of the Guarantor(s) and may be enforced by or for the benefit of any successor of the Bank. To the fullest extent permissible under applicable law, Guarantor(s) waives any and all rights of subrogation, reimbursement or indemnity derived from You, all other rights and defenses available to You, and all other rights and defenses available to Guarantor(s).

29. Payment Service Provider. If You wish to be a "Payment Service Provider," as that term is defined in Schedule 1 (the Payment Service Provider Processing Agreement), You must execute and comply with Schedule 1, which shall be incorporated into this Agreement by reference as though fully set forth herein.