

**FEE AND REGULATORY DISCLOSURE**

This Fee and Regulatory Disclosure ("Disclosure") sets forth a summary of certain information in the "Terms of Service Merchant Agreement" between Merchant, PayiQ., and Bank, relating to the Services described in the Agreement. This Disclosure is for your information only and does not provide all the information pertinent to the Agreement. You should thoroughly review the Agreement and contact us with any questions. In the event of any conflict between the terms of the Agreement (including the associated Application) and the terms of this Disclosure, the terms of the Agreement will control. Capitalized terms not otherwise defined in this Disclosure have the meanings set forth in the Agreement.

<b>ISO &amp; Processor</b>	LedgerPay, Inc., d/b/a PayiQ 1431 Greenway Dr, Suite 1000 Irving, TX 75038 Email: Telephone:																																
<b>Bank</b>	The Bancorp Bank, N.A. 6100 S Old Village Place Sioux Falls, SD 57108																																
<b>Term &amp; Termination</b>	<p>The Agreement will become effective on the date Effective Date as specified in the Agreement and will remain in effect for a period of three (3) years and will then automatically renew for successive two (2) year terms unless terminated as set forth in Section 21 of the Agreement.</p> <p>The Agreement may also be terminated in accordance with Section 21 of the Agreement. Such termination and/or suspension of services may be for any breach by Merchant of the Agreement or for any other reason, including, but not limited to those reasons set forth in Section 21. In addition, Merchant acknowledges that the Card Brands have the right to terminate or limit the Agreement. Additional reasons for termination may be set forth elsewhere in the Agreement.</p> <p>PayiQ will be entitled to liquidated damages pursuant to Section 21(E) of the Agreement if PayiQ or Bank terminates the Agreement for cause, or if merchant terminates the Agreement without cause before then end of the then-current term.</p>																																
<b>Summary of Fees &amp; Rates</b>	<p>The fees and rates charged under the Agreement are set forth on the Application. As a summary, the main fees and rates include:</p> <table border="1" data-bbox="289 730 1523 1157"> <thead> <tr> <th colspan="2" style="text-align: center;">Interchange</th> </tr> </thead> <tbody> <tr> <td>Visa/MC/Discover/AMEX/Pin Debit Network, Card Association, Dues and Assessment fees</td> <td></td> </tr> <tr> <th colspan="2" style="text-align: center;">Network/Risk Costs</th> </tr> <tr> <td>BIN Sponsorship</td> <td></td> </tr> <tr> <td>Visa/MC/Discover/AMEX Authorizations (preferred networks)</td> <td></td> </tr> <tr> <td>Visa/MC/Discover/AMEX Authorizations (non-preferred networks)</td> <td></td> </tr> <tr> <td>Visa/MC/Discover EDC/Settlement Transaction (per item)</td> <td></td> </tr> <tr> <td>AVS</td> <td></td> </tr> <tr> <td>AMEX System Processing</td> <td></td> </tr> <tr> <th colspan="2" style="text-align: center;">Monthly/Per Occurrence Items</th> </tr> <tr> <td>Account on file (includes statement, service, next-day funding, and regulatory fee) – monthly</td> <td></td> </tr> <tr> <td>Chargeback/Retrieval/Representation – per occurrence</td> <td></td> </tr> <tr> <td>ACH Return – per occurrence</td> <td></td> </tr> <tr> <td>PCI – monthly</td> <td></td> </tr> <tr> <td>PCI (merchant not validated) – monthly</td> <td></td> </tr> <tr> <td>Early Termination Fee</td> <td></td> </tr> </tbody> </table> <p>The above list may not be complete, and pricing is subject to change from time to time as set forth in the Agreement. The full list of fees and rates can be found in the Application. If you are unsure as to the calculation or applicability of any fee, please contact us and we will explain it in greater detail. The way the most common fees are calculated is as follows:</p> <p>"Interchange Rate" is a percentage of the gross amount of each transaction set by the applicable Card Brand. The Interchange Rate varies based on the type of transaction, method of transaction, and transaction classification.</p> <p>Transaction fees, depending on the specific fee, may be charged on all transactions or only specific types of transactions. Other fees will be charged as set forth for each fee, which may be upon the occurrence of an event (e.g., a Chargeback fee will be charged per each Chargeback) or based on the passage of time (e.g., a monthly fee will be charged each month or portion thereof without proration).</p> <p>The payment due for the purchase or lease of equipment, and the calculation of such payment, will vary based on the type of equipment, the applicable licenses necessary for the equipment, the term of any financing, and Merchant's creditworthiness. The payment amounts, and the calculation for such amounts, will be set forth in a separate purchase or lease agreement.</p> <p>Each Card Brand may assess miscellaneous surcharges to transactions based on the type of transaction, method of transaction, transaction classification, and other metrics set forth in the Rules. You are responsible for reviewing the applicable rules (available on each Card Brand website or upon request from us) regarding applicable surcharges. Any miscellaneous Card Brand surcharges that have been assessed will be shown on your monthly statement. You may also be subject to additional fees from third parties in connection with the services from such third parties. If you are unsure about the nature of any fee displayed on your monthly statement, please contact us and we will explain it in greater detail.</p>	Interchange		Visa/MC/Discover/AMEX/Pin Debit Network, Card Association, Dues and Assessment fees		Network/Risk Costs		BIN Sponsorship		Visa/MC/Discover/AMEX Authorizations (preferred networks)		Visa/MC/Discover/AMEX Authorizations (non-preferred networks)		Visa/MC/Discover EDC/Settlement Transaction (per item)		AVS		AMEX System Processing		Monthly/Per Occurrence Items		Account on file (includes statement, service, next-day funding, and regulatory fee) – monthly		Chargeback/Retrieval/Representation – per occurrence		ACH Return – per occurrence		PCI – monthly		PCI (merchant not validated) – monthly		Early Termination Fee	
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<b>Important Responsibilities of the Parties</b>	<p>Important Bank responsibilities:</p> <ul style="list-style-type: none"> <li>• Bank is the only entity approved to extend acceptance of Visa and Mastercard products directly to you.</li> <li>• Bank is a principal party to the Agreement.</li> <li>• Bank is responsible for providing settlement funds to you.</li> <li>• Bank is responsible for all funds held in reserve that are derived from settlement.</li> <li>• Bank is responsible for educating you on pertinent Visa and Mastercard Rules with which you must comply.</li> </ul> <p>Your important responsibilities:</p> <ul style="list-style-type: none"> <li>• Ensure compliance with cardholder data security storage requirements.</li> <li>• Maintain fraud and disputes below thresholds.</li> <li>• Review and understand the terms of the Agreement.</li> <li>• Comply with the Card Brand Rules.</li> </ul> <p>The responsibilities listed above do not supersede the terms of the Agreement and are provided to ensure you understand important obligations of each party. Bank is the ultimate authority should you as the Merchant have any problems with Card Brand products.</p>																																

## **Terms of Service Merchant Agreement**

This Merchant Agreement (“**Agreement**”), including the Application and all appendices, exhibits, schedules and other documents incorporated constitutes a binding agreement by and between LedgerPay, Inc., d/b/a PayiQ a Delaware corporation (“**PayiQ**”), the person or entity set forth in the Application (“**Merchant**”), and the sponsor bank designated by PayiQ in the Application (“**Bank**”).

Capitalized terms used in this Agreement not otherwise defined herein are defined in Appendix A – Glossary. The Merchant agrees to be bound by the terms and conditions of the Agreement, as updated occasionally in accordance with the terms of this Agreement, as evidenced either by signing the Application or by transmitting a Transaction for processing to PayiQ.

### **1. Services**

Merchant desires to use the Services to authorize, process, and settle Transactions undertaken by any authorized user of a Card in accordance with the Operating Regulations and on the terms and conditions set forth herein.

### **2. Receipt of Services; Exclusivity; Account**

Services relate solely to the facilitation of Transactions between Customers and the Merchant pursuant to this Agreement. Merchant agrees that PayiQ and Bank are the exclusive providers of Services to Merchant for all its locations and Merchant will not enter into any other agreement for Services with another provider during the Term of this Agreement. For the Term of this Agreement and provided that Merchant is not in breach of this Agreement, Merchant will be granted a Merchant Account in connection with its receipt of the Services. The Merchant Account will include a record of Merchant’s Transactions and associated Fees. PayiQ will provide Merchant with credentials for access to the Merchant Account. Merchant may not disclose such credentials or permit any third party to use them other than Third Party Servicers pursuant to a binding written agreement with Merchant. Merchant assumes the risk of sharing such credentials with any Third-Party Servicer and will be liable for any activity conducted in connection with the Merchant Account. PayiQ will not grant any third-party access to the Account except as required to deliver or receive the Services or as otherwise required by law.

### **3. Prohibited Merchants**

Merchant represents and warrants that: (i) it nor any of its principals, managers, directors or Affiliates appear on the U.S. Department of the Treasury, Office of Foreign Assets Control, Specially Designated Nationals List, (ii) neither it, nor any of its principals, managers, directors or Affiliates have been previously terminated for cause by PayiQ or any of its Affiliates or by any other sponsor bank, payment processor or Card Brand, (iii) neither it, nor any of its principals, managers, directors or Affiliates have been convicted of a crime involving fraud or dishonesty, and (iv) Merchant is both domiciled in and a resident of the United States.

### **4. Prohibited Activities**

A. Use of Services. Merchant will not use Services to assist in any illegal activity or any Prohibited Activity. For the avoidance of doubt, Merchant must not submit any Transaction that is illegal, or that Merchant knows or should have known to be illegal, fraudulent, or not authorized by the

Cardholder. Merchant may not use Services in or for the benefit of a country, organization, entity, or person embargoed or blocked by any government, including those on sanctions lists identified by the United States Office of Foreign Asset Control.

**B. Prohibited Conduct.** Merchant may not itself or through any other Person: (i) copy, modify, adapt, translate, reverse engineer, decompile, or disassemble, in any way, any portion of the Services and/or Content made accessible by PayiQ including any information, pictures, videos, text, graphics, software programs used by PayiQ in connection with the Services and Content, or publicly display, reproduce, create derivative works from, perform, distribute, or otherwise use such Services or Content, other than as permitted by PayiQ in writing, (ii) make any use of the Content and/or Services on any other website or networked computer environment for any purpose, or replicate or copy the Content without PayiQ's prior written consent, (iii) interfere with or violate any other services or user's right to privacy or other rights, or harvest or collect personally identifiable information about users of the Services without their express consent, including using any robot, spider, site search or retrieval application, or other manual or automatic device or process to retrieve, index, or data-mine, (iv) defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights of others, (v) transmit or otherwise make available in connection with the Services any virus, worm, trojan horse, time bomb, web bug, spyware, or any other computer code, file, or program that may or is intended to damage or hijack the operation of any hardware, software, or telecommunications equipment, or any other actually or potentially harmful, disruptive, or invasive code or component, (vi) interfere with or disrupt the operation of the Services, or the servers or networks that host the Services or make them available, or violate any requirements, procedures, policies, or regulations of such servers or networks, (vii) sell, license, or exploit for any commercial purposes any use of or access to the Services other than expressly permitted by PayiQ in writing, (viii) forward any data generated from the Services without the prior written consent of PayiQ, (ix) sub-license any or all of the Services to any third party, or (x) transfer or assign the Account password, even temporarily, to a third party.

## **5. Application and Change in Business**

**A. Application.** On sign-up and throughout the Term of this Agreement, Merchant will supply, through the Application and by such other means required by PayiQ, information concerning the Merchant, its Guarantor (if applicable) and principals. Merchant will immediately notify PayiQ of any changes in such information. Merchant must provide PayiQ with the current address of each location, all "doing business as" ("DBA") names used by Merchant, and a complete description of the Products provided by Merchant. Merchant may not use the Services in connection with any goods or services other than the Products. Merchant cannot change the nature of the Product provided without PayiQ's prior written consent. Merchant represents that all information supplied to PayiQ in connection with its application, in any other request for services, or in response to any inquiry by PayiQ, is truthful, complete, accurate, and not misleading.

**B. Ownership.** Merchant authorizes PayiQ and/or Bank to research the background of Merchant and its beneficial owners (including any person that owns or controls 25% or more of the company's equity or voting rights, any other person that exercises managerial control over the company), including but not limited to credit or background checks, banking relationships, and financial history.

Merchant will and it will require all such owners and manager to execute the authorization forms provided by PayiQ in connection with such credit or background checks.

C. Change in Ownership or Business. Merchant must provide PayiQ and Bank with thirty (30) days' prior written notice of Merchant's intent to change its business form or entity in any manner (e.g., a change from a limited liability company to a corporation), of Merchant's intent to sell or otherwise transfer 25% or more of its stock, assets, or voting power to another entity or person, and/or of any change in Merchant's business or operations which would cause any information provided by Merchant to PayiQ to be incorrect, incomplete, or misleading, or which would have a material effect on Merchant or its business operations. Merchant authorizes PayiQ and Bank to share any information relating to Merchant and its owners, principals, directors or managers with Processor and Card Brands as they deem necessary or as required by the Card Brands or Operating Regulations. In the event of a change of business or change of ownership, PayiQ and Bank reserve the right to terminate this Agreement upon notice to Merchant (which would be subject to liquidated damages for early termination as set forth in Section 21(E)), require an additional reserve, or impose other conditions on Merchant or its proposed assignee/new control person or entity in their sole discretion, including but not limited to requiring cash collateral, letters of credit, guarantors, additional underwriting, or any condition required by the Operating Regulations or the Card Brands.

D. Ownership Verification. Federal regulations enacted pursuant to the USA Patriot Act and other Applicable Law requires financial institutions to verify the identity of every person who seeks to open an account with a financial institution. Merchant will provide documentary verification as requested by PayiQ or Bank from time to time in a manner acceptable to PayiQ or Bank. PayiQ and Bank reserve the right to verify Merchant's identity through other non-documentary methods in their sole discretion. PayiQ and Bank may retain a copy of any document it obtains to verify Merchant's identity.

E. Limited Acceptance. Merchant will elect on the Application whether to accept all types of Cards ("**Full Acceptance**") or not accept all types of Cards ("**Limited Acceptance**") from Customers for payment. For all Cards issued by U.S. issuers, Merchant must honor all cards without discrimination within the Card types accepted in accordance with this Agreement. Merchant must maintain a policy that does not discriminate among Customers seeking to make purchase with a Card verse a non-Card payment method. If Merchant elects Limited Acceptance on the Application, Merchants acknowledges and agrees that it elects to accept only certain Visa/Mastercard card types as indicated on the Application or via later notification to PayiQ in writing pursuant to the procedure described below. Merchant further acknowledges and agrees that PayiQ has no obligation other than those expressly provided under the Operating Regulations and Applicable Law as they may relate to Limited Acceptance and that neither PayiQ, Processor nor Bank is obligated to police card types at the point of sale. As a Limited Acceptance Merchant, Merchant will be solely responsible for the implementation of its decision for Limited Acceptance. Merchant will be solely responsible for policing, at the point of sale, the card type(s) of transactions it submits for processing. Should Merchant submit a transaction for processing for a card type it has indicated it does not wish to accept, PayiQ, Processor and Bank may process that transaction, and Merchant will pay the applicable fees, charges, and assessments associated with that transaction. The Application or applicable fee schedule distinguishes any card acceptance-related fees and pricing methodology associated with each limited acceptance category. A Full Acceptance Merchant will accept

all valid Cards unless Merchant provides thirty (30) days written notice to PayiQ requesting limited acceptance and stating Merchant's election of Card types. Limited acceptance is not applicable to non-US issued Cards and is in all instances subject to the Operating Regulations. Merchant will prominently display Card signage approved by PayiQ in its place(s) of business and the type of signage displayed will be in accordance with the Cards accepted by Merchant.

## **6. Customers**

Merchant is solely responsible for its Product and all customer service issues related to the Product including pricing, order fulfillment, order cancellation by Merchant or the Customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with Merchant personnel, policies, or processes. Merchant must ensure that the Cardholder understands that Merchant is responsible for the Transaction, including delivery of the Products or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution. Merchant will post its customer service telephone number along with clear terms and conditions with respect to the Product on its website and at the point-of-sale. Merchant agrees that Merchant, and not PayiQ, will be responsible for resolving any issues, problems, or disputes with Customers and Cardholders. Merchant must not require any Customer to waive its right to dispute a Transaction. Each Transaction submitted or processed under this Agreement will represent a payment by a Customer to Merchant for a bona fide sale of Merchant's Products. PayiQ and Bank make no representation or guarantee with respect to Customer funds availability, that a Transaction will be authorized or processed, or that a Transaction will not later result in a chargeback, return or reversal. If Merchant is a non-profit organization, it will retain sole and exclusive responsibility for classifying itself and its Transactions, issuing any required reports and receipts, and making any required tax or other filings. If Merchant offers any loyalty program to Customers, Merchant is solely responsible for any and all offerings made available to Customers in connection with such loyalty program and is solely responsible for ensuring the accuracy and legality of the offers and content for such loyalty program provided to Customers.

## **7. Third Party Servicers**

Merchant must notify PayiQ and Bank of its intention to use any Third-Party Servicer. PayiQ and Bank are not liable for Third Party Servicers or their services even if the Site contains links to them or the services provided by such Third-Party Servicer are integrated with the Services. The inclusion of any link or integration to a Third-Party Servicer does not imply an approval, endorsement, or recommendation by PayiQ or Bank. Merchant agrees that it accesses any such website at Merchant's own risk and Merchant assumes responsibility for any failure by any Third-Party Servicer to comply with the Operating Regulations, and Merchant shall be solely responsible for demonstrating compliance by its agents and Third-Party Servicers. Merchant expressly authorizes PayiQ and Bank or their agents and representatives to provide and receive such information from any and all third parties directly, including without limitation information for credit background checks, banking relationships, and financial history, without further consent or authorization on the part of Merchant.

## **8. Financial Information**

Upon written or verbal notice at any time, Merchant agrees to provide PayiQ and Bank its recent and/or historical financial statements and other requested financial information. From time to time, PayiQ and/or Bank may request financial information concerning Merchant, its owners, Guarantors (if any) and

principals, and Merchant agrees to furnish the information in a timely manner. Further, Merchant agrees to provide PayiQ and with advanced written notice of any adverse change in Merchant's financial condition including: any planned or anticipated liquidation; any significant change in the nature of Merchant's business; and any material judgment, writ, warrant of attachment, levy or adverse decision against Merchant affecting its financial condition. PayiQ and Bank may share such information as required or necessary with governmental authorities (including their applicable regulators or law enforcement) and the Card Brands.

## **9. Fees**

Merchant will timely pay all fees, expenses and all other amounts set forth in this Agreement including, but not limited to, fees set forth in the Application. In addition, Merchant is liable for all expenses including without limitation attorneys' fees and amounts attributable to time spent by PayiQ and Bank staff in responding to legal process from third parties related to a claim against or investigation of Merchant. PayiQ may change or add fees and/or charges upon thirty (30) days' prior notice to Merchant in accordance with PayiQ's standard operating procedure or such shorter time period if the Card Brands or Bank do not provide PayiQ with thirty (30) days' prior notice. Merchant's continued processing under this Agreement after the 30-day new fee or modified fees or charges goes into effect constitutes Merchant's acceptance to the same. Merchant acknowledges and agrees that this Section will not be intended or construed to permit Merchant to terminate the Agreement as a result of a change or increase in fees from third parties and/or in pass through fees as referenced in this Agreement or the Application. Notwithstanding any other provision of this Agreement, Merchant is responsible for all Liability Assessments and other charges imposed or assessed to Merchant, PayiQ, and/or Bank in connection with this Agreement, Merchant's violation of the Operating Regulations, Merchant's conduct or any Transactions submitted by Merchant or through Merchant's Account. Merchant acknowledges and agrees that Liability Assessments are deemed direct damages under this Agreement.

## **10. Transaction Processing; Operating Regulations and Compliance**

Merchant must comply with the Operating Regulations, all of which are expressly incorporated herein by reference and made a part of this Agreement as if they were set forth in full herein. Merchant is bound by and must comply with all Applicable Law. PayiQ reserves the right to monitor Merchant's use of the Services and its Customers to determine compliance with this Agreement and the Operating Regulations. As a condition to receive the Services, Merchant agrees to fully comply with all the terms and obligations in the Merchant Processing Policies. PayiQ and Bank reserve the right, at their sole discretion and without prior consent of Merchant, to make reasonable changes to the Services and Merchant Processing Policies and to implement risk management controls they deem necessary to manage risk. Merchant will comply with all such changes. Merchant will not submit Transactions under this Agreement unless they are submitted in the correct manner, including the Merchant being in possession of Transaction receipts and not submitting Transactions until they are complete, (i.e., the goods or services are shipped/provided) and the Transaction is in the correct currency and within the correct time limit, as applicable. Merchant may set a minimum Card Transaction amount to accept that provides access to a credit account, under the following conditions: (i) the minimum Card Transaction amount does not differentiate between card issuers, (ii) the minimum Card Transaction amount does not differentiate between Card Brands, and (iii) the minimum Card Transaction amount does not exceed \$10.00 (or any higher amount established by the Federal Reserve by regulation or the Card Brands). Merchant may only set a maximum Card Transaction

amount under the following conditions: (a) the Customer (i) is a department, agency, or instrumentality of the U.S. Government, or (ii) is a corporation owned or controlled by the U.S. Government, or (iii) is a Customer whose primary business is reflected by one of the following MCCs: (x) MCC 8220 – Colleges, Universities, Professional Schools, Junior Colleges, (y) MCC8244 – Schools, Business and Secretarial, or (z) MCC 8249 – Schools, Trade and Vocational, and (b) the maximum Card Transaction amount does not differentiate between card issuers, and (c) the maximum Card Transaction amount does not differentiate between Card Brands. For U.S. Transactions, Merchant will be permitted to use any terminal processing services of any Card Brand to deliver Visa transactions captured at the point of transaction directly to Visa for clearing and settlement. In the event of any inconsistency or conflict between any provision of this Agreement and the Operating Regulations, the Operating Regulations will govern. The Operating Regulations are incorporated by reference herein and are deemed to have the same force and effect as if set forth in full.

#### **11. Settlement; Payout; and Authorizations**

A. Funding Account. Merchant must establish and designate in its application a depository account at a U.S. financial institution of Merchant's choice prior to processing any Transactions. Such depository account will be used in connection with this Agreement for deposits from processed Transactions and debits for all amounts due to PayiQ or Bank whether under this Agreement or otherwise ("**Funding Account**"). The Funding Account must be owned by Merchant and the name/title of the Funding Account must match Merchant's legal entity name or registered DBA name. Merchant must provide PayiQ and Bank with complete and accurate information regarding the Funding Account including the name and address of the financial institution, routing number and account number. Merchant must ensure that all such information provided on its application with respect to the Funding Account is accurate and correct. In the event Merchant desires to change the Funding Account or change the financial instruction where the Funding Account is held, Merchant must give PayiQ thirty (30) days' prior written notice of such change. PayiQ will use commercially reasonable efforts to affect such change with Bank; however, such change will not be effective until the date on which PayiQ and Bank make such change on their systems. In no event will PayiQ or Bank have any liability for any amounts directed to a Funding Account that has been designated by any purported representative of Merchant at any time during the Term of this Agreement, regardless of any change of Funding Account.

B. Payouts. Payouts due to Merchant in connection with Transactions are not insured by PayiQ, Processor, Bank, the Card Brands or any third party. Bank will control and disburse all Payouts to Merchant and all settlement activity and other handling of Settled Funds will be performed by Bank, not PayiQ or Processor. If Bank cannot effectuate the Payout into Funding Account due to inaccurate or obsolete bank account information entered by the Merchant, or for any other reason, Bank may escheat them as provided below. Neither Bank, PayiQ, Processor nor the Customer will have any liability to Merchant for funds so escheated. You acknowledge and agree that your settlement funds may be pooled with other funds in an account held at Bank prior to being settled to you. PayiQ will not take possession of the Settled Funds at any time, however, if PayiQ (or Processor) is deemed to be engaged in the receipt, acceptance or transmission of Settled Funds, Merchant agrees that it has irrevocably authorized PayiQ as its non-fiduciary agent for the limited purpose of receiving and disbursing such Settled Funds on its behalf. Subject to the terms of this Agreement, any such funds received by PayiQ will be deemed payment to the Merchant at the time received by PayiQ. Merchant may not seek recourse against the Customer (including

Cardholders) or the Customer's financial source in the event PayiQ does not disburse such funds to Merchant in accordance with this Agreement. In such event, Merchant's recourse is solely against PayiQ. Merchant will not withhold any Products from the Customer for PayiQ's failure to disburse the any portion of the Settled Funds to Merchant.

C. Timing of Payout. Subject to and conditional upon Bank's successful receipt of the Settled Funds from the Card Brands, Payouts will generally be initiated to the Funding Account on a daily basis, provided however, that the Payout may be limited or delayed based on Merchant's perceived risk and history with PayiQ as determined by the sole and absolute discretion of PayiQ or Bank. Merchant's Payout may be held, suspended, or canceled to prevent unlawful activity, fraud, or for risk or security concerns. Bank may, in its sole discretion, effect a credit to the Funding Account in connection with any Transaction prior to the point in time Bank receives the Settled Funds. In such case, Bank or PayiQ may, if necessary or appropriate, reduce any credit made to the Funding Account by, and/or Bank may require that Merchant pay to Bank an amount equal to: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Customers during said time period; (iii) the amounts, fees and charges, including (but not limited to) Chargebacks, Merchant owes Bank or PayiQ; (iv) all taxes, penalties, charges, fees and other items incurred by Bank or PayiQ that are reimbursable pursuant to this Agreement; (v) all applicable rates, fees and charges described in the Application; (vi) any amount previously credited to the Funding Account that Bank or PayiQ determines, in good faith, was incorrectly so credited; and (vii) any amount Bank or PayiQ determines, in their sole discretion, represents unacceptable risk.

D. Authorization. Merchant authorizes PayiQ to instruct Bank to deposit the Payout (namely, the Transaction amounts minus Fees, tax withholdings, and any other amounts due to PayiQ or Bank) to the Funding Account. Merchant authorizes PayiQ and Bank to collect amounts due from Merchant (including for adjustments for any Transactions credited or debited in error) by: (i) debiting the Funding Account; (ii) debiting any payment card or other payment method on file with PayiQ; or (iii) withholding the amount from Payouts. Unless otherwise agreed in writing by PayiQ, the Payout will be made via ACH to the Funding Account. Merchant acknowledges and agrees that the Settled Funds may be held in a depository account (including a pooled account) held at Bank for the benefit of Merchant (or PayiQ's Merchants generally) before Payouts are made to the Funding Account. PayiQ or Bank may debit the Funding Account or any other Merchant bank account(s) for any reason permitted in this Agreement. Merchant is liable to PayiQ for all negative balances and expenses associated with, and any direct or indirect losses incurred from, unauthorized Transactions, force posted Transactions, fraud, and PayiQ or Bank's efforts at recovery under Applicable Law. If required by PayiQ, Bank, or any financial institution where the Funding Account is maintained, Merchant will sign any documents required to authorize the deposits and withdrawals to and from the Funding Account (and any other payment card, payment method, or account on file with PayiQ), including without limitation, ACH debit and credit transactions. Merchant's authorization will remain in full force and effect for the duration of this Agreement and for two hundred seventy (270) days after the termination of this Agreement ("**Trailing Period**") for trailing liabilities. Merchant must always maintain the Funding Account with sufficient cleared funds to meet its obligations under this Agreement throughout the Term of this Agreement and the Trailing Period.



E. Origination of Entries. The parties acknowledge and agree that in certain circumstances, Merchant may function as an Originator as defined under the Nacha Operating Rules (“Nacha Rules”) and may instruct PayiQ to submit ACH instructions to Bank in Bank’s capacity as the ODFI (as defined in the Nacha Rules) to move funds into the Funding Account or other such account directed by Merchant. In such circumstances, Merchant specifically acknowledges and agrees to the following: (1) Merchant authorizes Bank and/or PayiQ to initiate Entries (as defined in the Nacha Rules) on behalf of Merchant to Receivers’ (as defined in the Nacha Rules) accounts; (2) Merchant is bound to the terms of the Nacha Rules as they may be amended from time to time; (3) Merchant will not originate Entries that violate the laws of the United States, including but not limited to the terms of the Electronic Funds Transfer Act and Uniform Commercial Code Article 4A, or any other applicable law; (4) Merchant will abide by any restrictions on the type of Entries permitted by PayiQ or Bank, including but not limited to the specific Standard Entry Class (as defined in the Nacha Rules) codes allowed by the Bank and/or PayiQ; (5) Bank and PayiQ reserve the right to terminate or suspend this Agreement for Merchant’s breach of the Nacha Rules in a manner that allows Bank and PayiQ to comply with the Nacha Rules; and (6) Bank and PayiQ reserve the right to audit Merchant’s compliance with the Nacha Rules and this Agreement. Merchant agrees that it will not exceed the return rates set forth in the Nacha Rules and will maintain and provide any return information requested by Bank or PayiQ in a format agreeable to Bank or PayiQ, as applicable, within five (5) banking days of a request. Merchant agrees it will comply with any additional requirements imposed by Bank or PayiQ with respect to Merchant’s origination of ACH Entries, including but not limited to rules applicable to particular Standard Entry Class codes or any limits on the dollar amount or number of ACH Entries permitted (daily, weekly, monthly, etc.).

## **12. Merchant Transaction Disclosure and Privacy Policy**

Merchant must not: (i) Require a Customer to complete a postcard or similar device that includes the Cardholder’s account number, card expiration date, signature, or any other card account data in plain view when mailed, (ii) Add any tax to Transactions, unless Applicable Law expressly requires that Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the Transaction amount and not collected separately, (iii) Assess a surcharge to Transactions, except as expressly permitted by, and in full compliance with the Operating Regulations, (iv) Request or use a Card account number for any purpose other than as payment for Products, (v) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Customer to make a cash purchase of Products from Merchant, (vi) Disburse funds in the form of cash, unless the Merchant is dispensing funds in the form of travelers cheque, TravelMoney cards, or foreign currency. In this case, the Transaction amount is limited to the value of the travelers cheques, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant, (vii) disburse funds of cash unless Merchant is participating in full compliance with a program supported by a Card Brand for such cash disbursement, (viii) Enter into interchange or otherwise originate any Transaction for a Transaction that was previously charged back to the Bank and subsequently returned to the Merchant, irrespective of Customer approval. Merchant may pursue payment from the Customer outside the Services, (ix) Accept a card issued by a U.S. issuer to collect or refinance an existing debt, unless expressly authorized by, and in compliance with, Operating Regulations, (x) Accept a card to collect or refinance an existing debt that has been deemed uncollectable by the Merchant providing the associated goods or services, (xi) Enter into interchange a Transaction that represents collection of a dishonored check, or that represents the collection of a previous card charge, (xii) Request or use a Card account number or process transactions for any reason other than for the

services and goods set forth on the Merchant Application and sold directly by Merchant, in accordance with all Operating Regulations, or change any aspect of what goods or services it sells or how they are sold without prior written consent of PayiQ and Bank, (xiii) Request a Card Verification Value2 (“**CVV2**”) for a card present transaction nor retain or store any portion of the magnetic stripe data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Operating Regulations, (xiv) Submit a transaction that does not result from a bona fide transaction between the Customer and the Merchant, or (xv) submit, process, or deposit transactions on behalf of any other person or entity. Merchant will post a privacy policy and terms of use (including return policies) that complies with the Operating Regulations and Applicable Law to its website and will comply with its terms.

### **13. Reserves; Security Interest**

A. Reserve Account. When required by Bank or PayiQ in their sole and absolute discretion, Merchant will be required to fund a Reserve to protect Bank and PayiQ from actual or potential liabilities arising out of or in connection with this Agreement. The Reserve will be in an amount determined by PayiQ in its sole and absolute discretion to cover anticipated Chargebacks, Liability Assessments, unshipped Product and/or unfulfilled services, reversals, returns, or other amounts owing by Merchant under this Agreement, or credit-risk based on Merchant processing history. The amount of funds held in the Reserve may be raised, reduced, or removed at any time by Bank or PayiQ upon notice to Merchant. Where the Reserve is not adequately funded, Merchant will pay all amounts requested by PayiQ for the Reserve within one (1) business day of a request for such amounts and Bank and PayiQ may build the Reserve by off-sets from Payouts or by debiting any bank account of the Merchant (including the Funding Account) by ACH. All reserve funds will be maintained in an account owned by Bank and held at Bank and will remain in such account (unless withdrawn by PayiQ or Bank in accordance with this Agreement) until each of the following has occurred: (i) this Agreement has been terminated, and (ii) Merchant has paid in full all amounts owing or that could ever be owed under this Agreement, including, without limitation, all outstanding/uncollected amounts and potential chargebacks and Liability Assessments. In no event will Merchant be entitled to a return of any sums remaining in the reserve account before the end of the Trailing Period. Merchant will not be entitled to any interest on the funds held in Reserve.

B. Security Interest. Merchant grants PayiQ and Bank a security interest in and lien on any and all funds held in any Reserve and the Funding Account and the right to future Payouts (“**Secured Assets**”), and also authorizes PayiQ and Bank to make any withdrawals or debits from the Reserve or Funding Account or set off from future Payouts, without prior notice to Merchant, to collect amounts that Merchant owes PayiQ or Bank under this Agreement, including without limitation, for any reversals of deposits, chargebacks or transfers. Merchant will execute any additional documentation required for PayiQ to perfect PayiQ's security interest in any funds in the Reserve and Funding Account and the future Payouts. Merchant may not grant a security interest in the Secured Assets to any other party any may not otherwise encumber or diminish the value of the Secured Assets. Merchant hereby authorizes PayiQ to prepare all documents or to take other actions reasonably necessary to perfect its security interest or lien in the Reserve or Funding Account or any substitute account therefor. Merchant acknowledges that PayiQ or Bank may file a Uniform Commercial Code, UCC-1 Financing Statement or any other financing statement or document against the Secured Assets, and Merchant agrees to execute such financing statements or other documents to evidence PayiQ's security interest. The security interest and lien granted herein survives the termination of this Agreement until all amounts due are determined and paid

in full; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. Merchant irrevocably assigns to PayiQ all rights and legal interests to any interest or other earnings that accrue or are attributable to the Reserve and Funding Account. Merchant may not take any action to encumber the Secured Assets.

#### **14. Security and Data Incidents**

A. Security Requirements. The Card Brands have implemented standards and programs to protect Customer Data and Merchant agrees to comply with all such programs, including but not limited to Visa's Cardholder Information Security Program (CISP), Mastercard's Site Data Protection Program (SDP), PCI-DSS, or other security program as required by each Card Brand (collectively, "**Security Requirements**") and have the ability to demonstrate such compliance. Merchant will not request, use, disclose, sell, purchase, provide, or exchange any Cardholder name, address, account number or other information to any third party other than to PayiQ, Processor, and Bank or a Card Brand for the purpose of completing a sales Transaction unless specifically permitted by the Security Requirements and/or other Operating Regulations, or in response to a valid government demand. Merchant must notify PayiQ of any service provider or other third party that will have access to Cardholder data. Merchant will be solely responsible for the security, quality, accuracy, and adequacy of all transactions and information supplied under this Agreement and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Merchant warrants to PayiQ that it has implemented and will maintain secure systems for storing and processing information and for transmitting information to PayiQ. Merchant will ensure that it at all times complies with all Security Requirements and adopts procedures sufficient to prevent unauthorized access or disclosure of PayiQ's confidential information, Customer Data (including but not limited to account details and Card numbers), Transaction information, any credentials issued to Merchant, or any personally identifiable information. In addition to Merchant fully complying with Security Requirements, Merchant will, at Merchant's sole expense, within thirty (30) days of the first day of the Initial Term and on an annual basis thereafter (or more frequently if required by PayiQ), obtain from an independent third party acceptable to PayiQ a certification of PCI compliance and submit a copy of such certification to PayiQ. PayiQ's acceptance of such PCI certification does not constitute a representation or warranty that Merchant is PCI compliant, nor does it relieve Merchant of any of its obligations or liabilities related to PCI compliance or data security under this Agreement, Applicable Law, or otherwise. Neither PayiQ nor Bank will have any liability whatsoever for the security or availability of any communications used in connection with the Services provided under this Agreement. Merchant acknowledges that PayiQ is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including, without limitation, any Merchant Supplier. Merchant will notify PayiQ immediately if Merchant becomes aware of or suspects a Data Incident (including at a Merchant Supplier) and comply with all Applicable Laws regarding the Data Incident at Merchant's sole cost and expense. Merchant agrees to fully cooperate with PayiQ and any Card Brand with respect to any investigation and/or additional requirements related to any actual or suspected Data Incident. Merchant will preserve and provide to PayiQ or its designated agents or representatives copies of all records in connection with any Data Incident and will fully cooperate with any forensic investigators or other third parties engaged in connection with the identification and remediation of such Data Incident.

B. Additional Requirements. Merchant will use only PCI DSS compliant Merchant Suppliers in connection with the storage, processing, or transmission of Customer Data and will be exclusively liable for any security breaches of its systems or the systems of its Merchant Suppliers or any other PCI DSS violations or violations of other Applicable Laws or the Operating Regulations. Merchant has exclusive responsibility for security of Customer Data and other information on Merchant systems or those under its control, including those of its Merchant Suppliers. Merchant is aware of and will comply with and will require all Merchant Suppliers to comply with all Operating Regulations in connection with Merchant collection, security, and dissemination of any personal, financial, or transaction information. Merchant bears all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of any Merchant Supplier for a particular purpose and for determining the extent of such Merchant Supplier's compliance with the Operating Regulations. Without limitation, Merchant will maintain policies and procedures to reduce the risk of loss from Transactions that may pose significant fraud, regulatory, or legal risk, or may cause reputational damage to PayiQ or any third party. Merchant will maintain adequate security in accordance with industry standards to prevent a breach of Customer Data. Merchant expressly consents for PayiQ, Processor, Bank and all third parties that assist in the delivery of the Services to collect, use, store and disclose PayiQ information, including that provided in the Application, information concerning Customers, Transactions and the business of the Merchant in order to supply the Services, generate reports, to reduce fraud, provide customer support, create and share aggregated data concerning the Services and assess the risk associated with the Merchant. Card Brands will have the right to use Merchant's name, address, and internet addresses and Merchant authorizes PayiQ to provide any Card Brand with any of Merchant's information requested by the Card Brand. Merchant expressly agrees that neither PayiQ, Processor or Bank will be liable to Merchant or any third party for any actions or inactions of any Merchant Supplier used by Merchant, even if PayiQ, Processor, or Bank introduced or recommended such Merchant Supplier.

## **15. Taxes**

Our fees are exclusive of any applicable taxes, except as expressly stated to the contrary. Merchant has the exclusive responsibility to calculate, charge, collect and remit state and other taxes applicable to Product sales. Merchant is responsible to report its income and pay its own taxes to any applicable taxing authority. If excise, sales or use taxes are imposed on Transactions, Merchant is responsible for the collection and payment of such amounts. PayiQ may send documents to Merchant and the Internal Revenue Service or other tax authority for Transactions processed using the Services. PayiQ may have tax reporting responsibilities in connection with the Services such as an Internal Revenue Service report on Form 1099-K. Merchant acknowledges that PayiQ will report the total amount of payments received by Merchant in connection with the Services each calendar year as required by the taxing authorities.

## **16. Refunds and Returns**

Merchant agrees to process returns of and provide refunds and adjustments for Products in accordance with this Agreement and the Operating Regulations. The Operating Regulations require that Merchant will: (i) maintain a fair return, cancellation, or adjustment policy, (ii) disclose Merchant return or cancellation policy to Customers at the time of purchase, (iii) not give cash refunds to a Customer in connection with a payment card sale, unless required by law, and (iv) not accept cash or any other item of value for preparing a payment card sale refund. Merchant's refund policies must be the same for all

payment methods and should specifically include a requirement for prompt payment of refunds in order to limit chargeback risk.

### **17. Chargeback Liability**

The amount of a Card Transaction may be charged back to Merchant for a variety of reasons under the Operating Regulations. Merchant is and will be responsible and liable for all Card Transactions, chargebacks, reversals, disputes, and refunds in connection with Transactions, and Merchant hereby guarantees such Card Transactions, chargebacks, reversals, disputes, and refunds with respect to all Transactions in accordance with this Agreement. Merchant will immediately pay PayiQ the amount of all chargeback and related Fees, fines, or Liability Assessments assessed by the Bank, Processor, the Card Brands or any other third party. If Merchant does not have sufficient funds in its bank account(s) (including the Funding Account) to pay such amounts, PayiQ can instruct Bank to offset the amounts from other Payouts due to Merchant under this Agreement, debit the amount by ACH from the Merchant's bank account(s) (including the Funding Account) or require Merchant to make immediate payment thereof. If PayiQ or the Bank determines that Merchant is incurring an excessive number of chargebacks, returns or reversals, PayiQ or the Bank may establish controls or conditions governing Merchant's Account, including without limitation, by: (i) assessing additional Fees, (ii) creating a Reserve in an amount reasonably determined by PayiQ, (iii) delaying payment, and (iv) terminating this Agreement or suspending the Services or closing the Account. Merchant will assist in the investigation of any and all chargebacks and other actual or potential Transaction disputes and will timely provide such information to PayiQ and/ or Bank as they may request.

### **18. Recoupment of Funds Owing to PayiQ**

If amounts are owed by Merchant to PayiQ under this Agreement, PayiQ has the right to immediately, without prior consent or notice, offset or debit such amounts from funds: (i) deposited by Merchant, (ii) due to Merchant under this Agreement, (iii) held in the Reserve, or (iv) available in Merchant bank account(s) (including the Funding Account), or other payment instrument registered with the Bank. Merchant's failure to pay in full amounts that Merchant owes PayiQ on demand will be a material breach of this Agreement. Merchant will be liable for PayiQ's costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and interest at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by Applicable Law. Merchant hereby expressly agrees that all communication in relation to delinquent Accounts will be made as permitted under this Agreement. Such communication may be made by PayiQ or by anyone on its behalf, including, but not limited to a third-party collection agent.

### **19. Escheatment**

It is Merchant's responsibility to provide PayiQ with updated Funding Account information and contact information for the Merchant. If there is no activity in an Account for the time period set forth in the applicable unclaimed property laws, and Merchant has a credit, PayiQ may notify Merchant by sending an email to Merchant's registered email address. PayiQ may also attempt to notify Merchant by U.S. mail, if required by law. PayiQ will give Merchant the option of keeping the Account open, withdrawing the funds, or requesting a check. If Merchant does not respond to PayiQ notice within the time period specified in the notice, PayiQ may close the Account and PayiQ will escheat Merchant funds in accordance with Applicable Law.

## 20. Recordkeeping, Credit Investigation, and Audit

Merchant will have exclusive responsibility for: (i) compiling and retaining permanent records of all Transactions and other data, and (ii) reconciling all Transaction information that is associated with Merchant's Account. If Merchant believes that there is an error associated with Merchant's Account, Merchant must notify PayiQ in writing within sixty (60) days after the suspected error occurred. Merchant's failure to notify PayiQ within such time period will result in PayiQ not being responsible for investigating or effecting any requested adjustments as a result of any error.

Merchant authorizes PayiQ, Bank, or their respective agents to engage in any investigation of Merchant's finances, activities, and operations that PayiQ reasonably determines necessary to underwrite Merchant and confirm Merchant's eligibility for and use of the Services. Merchant agrees to cooperate in any such investigation and to provide PayiQ or its respective agents with any information required to complete such an investigation. Merchant authorizes PayiQ, Bank, or their respective agents to make any background, identity verification, or credit inquiry that PayiQ deems necessary and authorizes any consumer reporting agency to compile information to answer such inquiries and furnish that information to PayiQ, Bank, or their respective agents. If applicable, Merchant agrees to assist PayiQ, Bank, or their respective agents obtain any necessary authorizations for any background, credit, or other check or report on Merchant's owners, officers, guarantors, directors, or other principals. PayiQ or Bank may terminate this Agreement or suspend or delay the provision of Services if the information received in any investigation is unsatisfactory in their sole discretion.

PayiQ, Bank, or any Card Brand may also audit Merchant's compliance with the terms of this Agreement from time to time. Merchant agrees to cooperate with any such audit. Merchant must provide all information requested by PayiQ or the Card Brand necessary to complete the audit within the time period set forth in such request. Upon PayiQ's, Bank's, or the Card Brand's request, Merchant must provide all of its books and records, including financial statements for Merchant and personal financial statements for all guarantors. Merchant authorizes PayiQ, Bank, or the Card Brands, as applicable, to make on-site visits to any and all of the Merchant's locations with regard to all information necessary or pertinent to the Services. Merchant authorizes PayiQ and the Card Brands to share any information they collect or receive from or about Merchant with Processor and Bank. The cost of the audit will be at PayiQ's sole expense unless the audit is: (a) required under the Operating Regulations or Applicable Law, (b) required or requested by a Card Brand, Bank, or regulatory agency, or (c) the result of PayiQ's reasonable belief that Merchant is acting in violation of this Agreement or the Operating Regulations; in all such cases, the audit will be at Merchant's sole expense.

## 21. Term and Termination; Liquidated Damages

A. Term. This Agreement becomes effective on the Effective Date. The initial term of the Agreement is three (3) years commencing on the Effective Date ("**Initial Term**"). Except as hereafter provided, unless any party gives written notice to the other parties at least ninety (90) days prior to the expiration of any term of its intent not to renew, or the Agreement is terminated as otherwise permitted under this Agreement, the Agreement will automatically renew for additional successive two (2) year terms (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

B. Automatic Termination. Notwithstanding anything to the contrary contained in this Agreement, a Card Brand may immediately terminate (or cause PayiQ or Bank to immediately terminate),

limit the terms of, or enforce this Agreement at any time and PayiQ's or Bank's termination of this Agreement in accordance with such instruction will be without penalty or liability under this Agreement. PayiQ or Bank will immediately terminate this Agreement if any Card Brand de-registers PayiQ. If Bank ceases to be a member of any of the Card Brands for any reason, or if Bank no longer has a license to use a Card Brand's Marks, then Bank will cease processing with respect to that Card Brand's transactions.

C. Termination. PayiQ or Bank may also immediately terminate this Agreement if: (i) Merchant breaches this Agreement, (ii) Merchant has chargebacks or disputes in excess of the Card Brand monitoring guidelines or other risk parameters in PayiQ's sole discretion, (iii) Merchant appears on the Association Terminated Merchant File or similar list, (iv) any commission of any fraudulent or illegal activity by Merchant or its owners, officers or directors, (v) any action by Merchant that is reasonably anticipated by PayiQ or Bank to be injurious to PayiQ, Bank, Processor or the Card Brands, (vi) if the Federal Trade Commission (FTC) or any other governmental or regulatory agency initiates an investigation, action or proceeding against Merchant or its owners, officers or directors, (vii) Bank requires PayiQ to terminate this Agreement, (viii) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Merchant, or Merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due, (ix) Merchant fails to pay or reimburse the fees, expenses charges, or other amounts due under Agreement when they become due, (x) Merchant violates the Operating Regulations or Applicable Law, (xi) PayiQ reasonably believes that there has been a material deterioration in Merchant's financial condition, (xii) Merchant is no longer in good standing with any Card Brand, (xiii) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than 25% of either the legal or beneficial ownership of Merchant without PayiQ's prior written consent; (xiv) Merchant ceases to be in compliance with PayiQ's underwriting or risk guidelines for any reason, including without limitation due to any change in Merchant's business or operations or any change to PayiQ's underwriting guidelines, or (xv) Merchant is otherwise in default of any terms or conditions of this Agreement whether by reason of its own action or inaction or that of another, and fails to cure such default within thirty (30) days of PayiQ's notice of default if such default is capable of being cured. In addition to, and not in limitation of the foregoing, PayiQ may refuse to provide the Services in the event it has not been paid for the Services as provided herein.

D. Effect of Termination. On any termination of this Agreement, Merchant will immediately cease using the Services and the Account. PayiQ will have the right to delete all Account information on any termination hereof, but it also has the right to retain copies in its ordinary course. PayiQ and Bank will not have any liability to Merchant resulting from a termination of this Agreement. Upon termination of this Agreement, any pending Transactions will be cancelled. Any funds that the Bank is holding in custody for Merchant at the time of closure (other than in the Reserve), less any applicable Fees and other liabilities of Merchant, will be paid out to Merchant according to Merchant's payment schedule. Bank may also withhold such funds pending investigation of Merchant's Transactions or potential liabilities under this Agreement. The funds in the Reserve will be returned, if any amount is due to Merchant in accordance with Section 13. Upon termination for any reason, Merchant will remain liable for any and all Fees or costs accrued prior to or following termination, and any other amounts owed by Merchant to PayiQ, Bank, or

Card Brands. All obligations of Merchant incurred or existing under this Agreement as of the date of termination will survive such termination.

E. Early Termination; Liquidated Damages. If prior to the date on which the then-current Term of this Agreement is scheduled to expire, either this Agreement is terminated by PayiQ or Bank for cause as specifically permitted by this Agreement, or Merchant for any reason discontinues receiving the Services from PayiQ (except as may be specifically permitted by this Agreement), Merchant will be liable to PayiQ for liquidated damages in an amount equal to the average monthly revenue less interchange and Card Brand pass through fees payable to PayiQ under this Agreement for the three (3) calendar months in which such revenue was the highest during the preceding twelve (12) calendar months, or such shorter period if this Agreement has not been in effect for twelve (12) months, multiplied by the number of months remaining during the then-current Term of this Agreement. Merchant recognizes and agrees that the liquidated damages are fair and reasonable because it is not possible to establish the actual increase in volume and activity by Merchant during the Term of this Agreement. Merchant must also reimburse PayiQ for any damage, loss or expense incurred by PayiQ as a result of a breach by Merchant, including without limitation any damages set forth in any addendum, schedule, or exhibit hereto; any fees, fines, or assessments (including Liability Assessments) levied by any third party; and all past due, unpaid and/or future invoices for services rendered by PayiQ in connection with this Agreement. All such amounts will be due and payable by Merchant immediately upon demand. PayiQ will also have the option to require Merchant to reacquire all outstanding sales transactions acquired by PayiQ under this Agreement.

F. Deconversion. Upon termination of this Agreement, Merchant may request assistance from PayiQ with moving to a new payments' provider, provided however, in no event is PayiQ obligated to provide deconversion services to Merchant. In the event PayiQ agrees to provide any such services to Merchant, Merchant agrees to pay PayiQ for its then-current fees associated with such deconversion services.

## **22. Marks; Intellectual Property**

Merchant may use the trademarks and service marks of PayiQ, and the Card Brands ("**Marks**") as provided by the Operating Regulations and subject to the sole discretion and approval of PayiQ. Upon termination of this Agreement, Merchant agrees that it will no longer use the Marks or anything similar to the Marks. PayiQ reserves all rights not expressly granted to Merchant in this Agreement. PayiQ owns the title, copyright and other worldwide intellectual property rights in the Services and all copies of the Services. This Agreement does not grant Merchant any rights to PayiQ's intellectual property, trademarks, or service marks, nor may Merchant remove, obscure, or alter any of PayiQ's trademarks or service marks included in the Services. All comments and suggestions concerning the Services provided to PayiQ will be the property of PayiQ and Merchant will not have any rights therein. Merchant acknowledges that (i) it will not acquire any right, title, or interest in or to the Marks of any Card Brand, (ii) the Card Brands are the sole and exclusive owners of their Marks, (iii) Merchant will not contest the ownership of any Card Brand's Marks, and (iv) that any Card Brand may prohibit Merchant from using their Marks (and in such case, Merchant will immediately comply with such prohibition). Merchant will not assign to any third party any of the rights to use the Marks of any Card Brand.



### **23. Indemnification**

To the maximum extent permitted by Applicable Law, Merchant will indemnify, defend, and hold harmless PayiQ, Bank, and their directors, officers, employees, affiliates, agents, principals, successors, and assigns (each an “**Indemnitee**” and collectively, “**Indemnitees**”) 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 any Indemnitee resulting from, arising out of, or in any way connected with: (i) the Services in this Agreement, (ii) Merchant’s processing activities, (iii) the business of Merchant or its Customers, (iv) any sales Transaction acquired by PayiQ or Bank, (v) Merchant’s negligence, willful misconduct, breach of this Agreement or any noncompliance with any Applicable Law, the Operating Regulations, or any other rules or regulations promulgated by or in conjunction with the Card Brands, (vi) any issue, problems, or disputes between Merchant and any Customer, Cardholder, Merchant Supplier or Third Party Servicer, (vii) any information provided by Merchant on which PayiQ relied in determining to grant, extend, or continue Services that was inaccurate, misrepresented or fraudulent, (viii) any Data Incident, any infiltration, hack, breach, or violation of the processing system of Merchant, Merchant Supplier or any other third party processor or system, (ix) Merchant’s failure, or PayiQ’s failure at Merchant’s direction, to accurately report, collect or remit taxes, (x) Merchant’s failure to obtain consent and/or authorization from Customers related to their Transactions, (xi) use of its Account and the access credentials to the Account, or (xii) by reason of any breach or nonperformance of any provision of this Agreement on the part of the Merchant, or its employees, agents, or customers. The indemnification obligations under this Agreement survive termination of this Agreement.

### **24. Merchant Representations**

Merchant represents to PayiQ and Bank that: (i) Merchant is eligible to register and use the Services and has the authority and capacity to enter into and perform under this Agreement, (ii) the name identified by Merchant when Merchant registered is Merchant name or business name under which Merchant sells the Products, (iii) each Transaction submitted or originated by Merchant will represent a bona fide sale by Merchant, (iv) any Transactions submitted by Merchant will accurately describe the Product sold and delivered to a Customer, (v) Merchant will fulfill all of Merchant’s obligations to each Customer for which Merchant submits a Transaction and will resolve any consumer dispute or complaint directly with the Customer, (vi) Merchant and all Transactions initiated by Merchant will comply with all Applicable Laws, regulations, and the Operating Regulations, including the ownership and use of Card Brand Marks, (vii) except in the ordinary course of business, no Transaction submitted by Merchant through the Services will represent a sale to any principal, partner, proprietor, or owner of Merchant entity, (viii) Merchant will not use the Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Services, and (ix) Merchant is responsible and liable to PayiQ and Bank for the acts and omissions of Merchant’s officers, directors, employees, agents, and other representatives in connection with the Services.

### **25. Warranty Disclaimer; Limitation of Liability**

THE SERVICES ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS. USE OF THE SERVICES IS AT MERCHANT’S OWN RISK. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, PAYIQ AND BANK DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND

NON-INFRINGEMENT. MERCHANT ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND MERCHANT ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.

WITHOUT LIMITING THE FOREGOING, NEITHER PAYIQ NOR BANK IS LIABLE FOR LOST PROFITS, LOST BUSINESS, OR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (WHETHER OR NOT ARISING OUT OF CIRCUMSTANCES KNOWN OR FORESEEABLE BY PAYIQ) SUFFERED BY MERCHANT, ITS CUSTOMERS (INCLUDING CARDHOLDERS) OR ANY THIRD PARTY IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER. IN NO EVENT IS PAYIQ OR BANK LIABLE FOR ANY DAMAGES OR LOSSES (INCLUDING LIABILITY ASSESSMENTS) THAT ARE WHOLLY OR PARTIALLY CAUSED BY THE MERCHANT, OR ITS EMPLOYEES, AGENTS, OR MERCHANT SUPPLIERS. IN ADDITION, IN NO EVENT IS PAYIQ OR BANK LIABLE FOR ANY DAMAGES OR LOSSES THAT ARE WHOLLY OR PARTIALLY CAUSED BY PAYIQ, BANK OR THEIR EMPLOYEES, AGENTS OR MERCHANT SUPPLIERS OR THAT SHOULD HAVE BEEN REPORTED TO PAYIQ PURSUANT TO THIS AGREEMENT, OR THAT FIRST OCCURRED, WHETHER OR NOT DISCOVERED BY MERCHANT, MORE THAN THIRTY (30) DAYS PRIOR TO PAYIQ'S RECEIPT OF WRITTEN NOTICE FROM MERCHANT.

IN NO EVENT WILL PAYIQ'S OR BANK'S LIABILITY RELATED TO OR ARISING OUT OF THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) ACTUAL MONETARY DAMAGES INCURRED BY MERCHANT OR (B) FEES PAID TO AND RETAINED BY PAYIQ FOR THE PARTICULAR SERVICES IN QUESTION FOR THE THREE (3) CALENDAR MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH PAYIQ RECEIVED A WRITTEN NOTICE FROM MERCHANT DETAILING PAYIQ'S ALLEGED MATERIAL NONPERFORMANCE UNDER THIS AGREEMENT. NEITHER PAYIQ NOR BANK WILL BE DEEMED TO BE IN DEFAULT UNDER THIS AGREEMENT OR LIABLE FOR ANY DELAY OR LOSS IN THE PERFORMANCE, FAILURE TO PERFORM, OR INTERRUPTION OF ANY SERVICES RESULTING, DIRECTLY OR INDIRECTLY, FROM A FORCE MAJEURE EVENT.

ANY RESTRICTION ON PAYIQ'S LIABILITY UNDER THIS AGREEMENT WILL APPLY IN THE SAME MANNER TO PROCESSOR AND BANK. IN THE EVENT MERCHANT HAS ANY CLAIM AGAINST BANK ARISING IN CONNECTION WITH THE SERVICES, RIGHTS, AND/OR OBLIGATIONS DEFINED THIS AGREEMENT, MERCHANT WILL PROCEED AGAINST PAYIQ (SUBJECT TO THE LIMITATIONS AND RESTRICTIONS HEREIN), AND NOT AGAINST BANK, UNLESS OTHERWISE SPECIFICALLY SET FORTH IN THE OPERATING REGULATIONS. THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

## **26. Confidentiality**

Unless otherwise required by law, Merchant will, and will cause its Affiliates to, hold in strict confidence all PayiQ, Bank, and Processor Confidential Information, and neither Merchant nor any of its Affiliates will use such Confidential Information for any purpose other than for the performance of Merchant's duties and obligations under this Agreement. Merchant 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.

If Merchant breaches, or threatens to breach, any of the provisions of this section, in addition to any other rights PayiQ may have, including a claim for damages, PayiQ will have the right to have the provisions of this section specifically enforced, and Merchant's breach or threatened breach enjoined, by any court of competent jurisdiction, without presentment of a bond (such requirement being expressly waived by Merchant), it being agreed that any breach or threatened breach of this section would cause irreparable

harm to PayiQ in that money damages would not provide an adequate remedy. This Section survives termination of this Agreement.

### **27. Choice of Law; Jurisdiction; Venue; Waiver of Trial by Jury**

This Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Delaware without regard to conflicts of law provisions. The parties consent and submit to service of process, personal jurisdiction, and venue in the State of Delaware, and select such courts as the exclusive forum with respect to any action or proceeding arising out of or in any way relating to this Agreement, and/or pertaining in any way to the relationship between Merchant, Bank and PayiQ. **THE PARTIES WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED UNDER THIS AGREEMENT.**

### **28. Limitation on Time to Initiate a Dispute**

UNLESS OTHERWISE REQUIRED BY LAW, NO CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF FORM, WILL BE BROUGHT BY MERCHANT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE. ANY CLAIMS NOT BROUGHT BY MERCHANT WITHIN SUCH TIME PERIOD SHALL BE FOREVER WAIVED AND BARRED.

### **29. Modification or Amendment of Agreement**

Except as provided in this Agreement, this Agreement including any addendum or schedule or exhibit hereto may only be modified or amended by an instrument in writing signed by Merchant, PayiQ, and Bank. Notwithstanding the foregoing, PayiQ or Bank may modify this Agreement (including Fees) upon thirty (30) days prior written notice to Merchant (including electronically via email, a notice posted to the Account, or online through one of PayiQ's standard communication channels). In addition, Merchant agrees that PayiQ or Bank may amend this Agreement immediately upon notice to Merchant in accordance with PayiQ's or Bank's standard operating procedures if such amendment is required: (i) in order to comply with Applicable Law, Operating Regulations, or other Card Brand requirements, (ii) by Bank, (iii) by PayiQ's Third Party Servicer; (iv) to implemented changes applied by PayiQ to all of its merchant agreements; or (v) to pass through charges from third parties, including but not limited to Processor, Bank, Card Brands, or Third Party Servicers. Merchant's continued use of the Services after the effective date of any such amendment or modification shall constitute Merchant's acceptance of and agreement to such modifications. Any changes, additions, stipulations, or deletions, including lining out, by Merchant, except where indicated by a space to be filled in on the Application (e.g., the space for Merchant's name and address), will not be deemed to be agreed to or binding upon PayiQ unless agreed to in writing in the form of an amendment signed by the parties.

### **30. Independent Contractors**

The relationships of the parties to this Agreement will be solely that of independent contractors, and nothing contained in this Agreement will be construed otherwise (except to the extent expressly provided herein if PayiQ must be appointed as a limited purpose agent for purpose of payment collection). Nothing in this Agreement or in the business or dealings between the parties will be construed to make them joint ventures or partners with each other. Neither party will do anything to suggest to third parties that the relationship between the parties is anything other than that of independent contractors. Merchant is responsible for ensuring compliance of its employees, agents, contractors, third party providers, and

affiliates with the terms of this Agreement. Further, Merchant expressly acknowledges and agrees that it is assuming the risk of its employees, agents, contractors, third party providers, and affiliates compliance with all provisions of the Operating Regulations, regardless of whether Merchant and/or its employees, contractors, third party providers, and affiliates have possession of those provisions. Both Mastercard and Visa make excerpts of their respective Operating Regulations available on their websites.

### **31. Guaranty**

If an individual executes this Agreement on behalf of Merchant as a guarantor following a request by PayiQ, then such individual personally guarantees performance by the Merchant under this Agreement, will be deemed to be a Guarantor for all purposes, and will be joint and severally liable with Merchant for all liabilities of the Merchant under this Agreement. This is a guaranty of payment and not of collection, and PayiQ may seek recourse or receive payment from Guarantor prior to: (i) taking steps to collect amounts owed from Merchant; (ii) taking steps to enforce, accept, or perfect PayiQ's interest in any collateral (including but not limited to amounts in the Reserve or Funding Account), or (iii) in any other respect exercise any diligence in collecting or attempting to collect the amount by any means. Guarantor's liability must be absolute and unconditional and must not be discharged for any reason other than the final and full payment to PayiQ of all amounts due under this Agreement. Guarantor jointly and severally agrees to pay all of PayiQ's costs incurred in enforcement of or collection under this guaranty, including without limitation reasonable attorney's fees and expenses. This guaranty is freely and voluntarily given, and Guarantor recognizes that PayiQ would not enter into this Agreement without such guaranty if so requested by PayiQ. Guarantor understands and agrees that this guaranty is subject to the exclusive choice of law and venue requirements as those set forth in this Agreement and agree not to bring any action in any other venue. Guarantor waives, to the fullest extent possible under law, the defense of forum non conveniens. Guarantor agrees that notice may be provided to by personal delivery or sending notification to Merchant in accordance with the notice provisions of this Agreement. If any portion of this guaranty is determined to be invalid, illegal, or unenforceable, such provision will remain enforceable to the fullest extent permitted by law and the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This personal guaranty will survive termination of this Agreement.

### **32. Assignment**

The Merchant may not assign or otherwise transfer any of its rights or obligations under this Agreement (including by operation of law or through a change of control, merger, or reorganization) without PayiQ's and Bank's prior written consent, and any assignment without such prior written consent will be null and void. PayiQ and Bank may assign any of their rights or obligations under this Agreement to a third party upon providing notice (which may include electronic notice) to Merchant.

### **33. Whole Agreement; No Waiver; Severability**

No failure, delay of forbearance of either party in exercising any power or right under this Agreement will in any way restrict or diminish such party's rights and powers under this Agreement, or operate as a waiver of any breach or nonperformance by either party of any terms of conditions hereof. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and the unenforceable provision will be enforced to the maximum extent permissible under law. Nothing in this Agreement will

be construed or be deemed to create any rights or remedies in or for the benefit of any third party. All schedules attached to this Agreement are hereby made a part of this Agreement for all purposes. This Agreement represents the entire understanding between the parties hereto with respect to the matters contained herein and supersedes all prior oral or written agreements, understandings, or communications between them with regard to such subject matter. The Agreement may be executed in two (2) or more counterparts, each of which are deemed an original, but all of which together constitute one and the same instrument. Each party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies. If an entity is set forth on the Application, or if the person accepting this Agreement is different than the person listed on the Application, the person accepting this Agreement represents and warrants that they have all requisite authority and approval to legally bind the person or entity set forth on the Application. By signing this Agreement, electronically or otherwise, the signor and Merchant represent and warrant to PayiQ and Bank that all information provided on or in connection with the Application is true, complete, and not misleading.

#### **34. Third Party Materials.**

Merchant acknowledges that the Services or other offerings provided by PayiQ may utilize or include certain materials, components, or tools supplied by third parties ("**Third Party Materials**"). Third Party Materials are proprietary and are owned and controlled by their respective owners. Merchant's use of Third-Party Materials may be subject to and governed by the applicable third party's terms of use or service agreements, and Merchant agrees to abide by such terms or agreements with respect to such Third-Party Materials.

#### **35. Data**

Merchant acknowledges that PayiQ will receive and handle Data in connection with PayiQ's performance under this Agreement, whether received directly from Merchant or through the Merchant's use of the Services. Merchant further acknowledges, agrees, and consents to PayiQ's right to receive, access, process, transmit, store, and create derivative works of the Data: (i) as reasonably required for PayiQ to perform its respective obligations under this Agreement (including sharing such Data with Processor, Bank, third party providers, or Card Brands, as the case may be), (ii) to monitor and report fraud or other unlawful or suspicious activities by Cardholders, Customers, or any third party, (iii) to develop and improve PayiQ's products and services and to provide ancillary services, (iv) as required to comply with court order, government investigation, industry self-regulatory guidelines, or other legal requirements and operations of Applicable Law, and (v) in furtherance of its other business operations and commercial purposes. Furthermore, Merchant permits PayiQ to share Data with the Card Brands, Processor, and 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. Separate from and in addition to any other representation or warranty herein contained, Merchant represents and warrants that: (a) it possesses all necessary rights, authorizations, licenses, and consents to provide Data to PayiQ (and for PayiQ to subsequently use and access such Data) as set forth herein, including without limitation such authorizations and consents required under Applicable Laws and regulations governing data privacy, information security, and consumer protection, and (b) the Data does not infringe, misappropriate, or otherwise violate the personal or proprietary rights of any third party.

### **36. Force Majeure**

Notwithstanding any other provision of this Agreement, parties will be liable for any failure, inability to perform, or delay in performance under this Agreement, if such failure, inability, or delay be due to acts of God, war, civil commotion, governmental action, fire, explosion, strikes, other industrial disturbances, equipment malfunction that is beyond its reasonable control, or any other cause that is beyond its reasonable control (each a “**Force Majeure Event**”). The party experiencing the Force Majeure Event must provide immediate written notice to the other party. This Section does not apply to excuse a party’s failure to make payments when due or failure to comply with Applicable Law. Such party’s performance will be excused for only so long as such party continues to use commercially reasonable efforts to mitigate the effect and duration of such Force Majeure Event. The parties will promptly resume performance under this Agreement after the Force Majeure Event has passed; however, if a delay continues for sixty (60) days or more, the party not experiencing the Force Majeure Event may terminate this Agreement without penalty upon written notice to the other parties.

### **37. Financial Condition Change**

Merchant shall notify PayiQ and Bank within five (5) days upon in event of bankruptcy, receivership, insolvency, or similar condition or action initiated by or against Merchant or any of its principals (“**Financial Condition Change.**”) Merchant will include PayiQ and Bank as creditors in Merchant’s bankruptcy proceedings if Merchant has funds due to them for any reason including fees, chargebacks, or ACH rejects. In event of a Financial Condition Change, or if Merchant is aware of future or imminent Financial Condition Change, Merchant will cease all Card acceptance at once and will no longer accept and submit Card Transactions until Bank has given Merchant permission to do so after receiving notice of the Financial Condition Change. In the event of a Financial Condition Change, Merchant will not sell, transfer, or disclose any Cardholder information, inclusive of Card account numbers or personal information to agent, vendors, or any other parties. The parties acknowledge that this Agreement constitutes an extension of financial accommodations by Bank or PayiQ to Merchant within the meaning of Section 365 of the Bankruptcy Code. The right of Merchant to receive any amounts due from Bank or PayiQ under this Agreement is expressly subject and subordinate to chargebacks, disputes, returns, recoupment, lien, set-off and security interest rights of Bank or PayiQ regardless of whether they are liquidated, unliquidated, fixed, contingent, matured, or un-matured.

### **38. Compliance with Laws**

Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates, and licenses to provide the Products it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission. Each party further agrees to comply with the Operating Regulations and all applicable state or federal laws, rules, or regulations. In the event of any inconsistency or conflict between any provision of this Agreement and the Operating Regulations, the Operating Regulations will govern. Should any of the Operating Regulations not be publicly available or otherwise made available to Merchant, such unavailability will not alter or limit Merchant’s obligation to comply with the Operating Regulations. Notwithstanding PayiQ’s assistance in understanding the Operating Regulations, Merchant expressly acknowledges and agrees that it is assuming the risk of Merchant’s compliance with all provisions of the Operating Regulations, regardless of whether Merchant has possession of those provisions.

### **39. American Express**

If Merchant has been accepted to participate in the American Express OptBlue Program to accept American Express Cards, Merchant is also bound by the terms in the attached Schedule 1 – American Express Acceptance and Brand Requirements.

### **40. Bank**

PayiQ, Processor, and Bank may jointly or individually assert or exercise any rights or remedies provided to any of them under this Agreement. PayiQ, Processor, and Bank reserve the right to allocate the duties and obligations assigned under this Agreement to PayiQ between themselves, as they deem appropriate in their sole discretion. Bank has certain obligations to Merchant pursuant to the Operating Regulations. In the event of any conflict between this Agreement and the Operating Regulations on the subject of Bank's obligations, the Operating Regulations control. The Bank may be changed, and its rights and obligations assigned to another party designated by PayiQ at any time without notice to Merchant. Bank, the Card Brands, and those third parties to which Bank has delegated certain rights and obligations under this Agreement, including but not limited to Processor, are third party beneficiaries under this Agreement and may, at their sole discretion, directly enforce this Agreement against Merchant.

### **41. Survival**

Any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement will survive and remain in effect in accordance with its terms upon the termination of this Agreement. For greater certainty but without limitation, the indemnification, limitation of liability, disclaimer of representations and warranties, dispute handling, the applicability of the Operating Regulations, intellectual property, PayiQ's right to hold and maintain any amounts in Reserve, PayiQ's rights to set off against any amounts owed to Merchant, confidentiality clauses, and those other clauses which specifically indicate they survive, will survive termination of this Agreement. All terms in this Agreement remain in effect with respect to any Transactions or activity occurring on or prior to the date of termination of this Agreement and with respect to any fees, fines, assessments, liabilities, charges, chargebacks, proceeds, or anything else which may result therefrom.

## APPENDIX A - GLOSSARY

"**Account**" means a unique and private user account provided by PayiQ to Merchant in connection with the Services which is accessible through PayiQ's website and in all instances subject to the terms and conditions of the Agreement.

"**ACH**" means the Automated Clearing House.

"**ACH Transaction**" means any ACH transaction originated by or on behalf of Merchant, conducted pursuant to the Nacha Rules and utilizing Services.

"**Affiliate**" means, with respect to any party, any corporation, company, partnership, or other entity which is directly or indirectly controlled by such party or is directly or indirectly controlled by a person or entity that is the same as that which controls the party. For the purposes of this definition, control means ownership of half or more of the voting interests in an entity.

"**American Express**" means American Express Travel Related Services Company Inc. and any successor or assigns.

"**Applicable Law**" means all applicable state and federal laws, rules and regulations which govern or otherwise affect the activities of the respective parties of this Agreement as may be enacted or amended and in effect from time to time.

"**Application**" means a form completed by the Merchant in relation to procuring the Services which forms a part of this Agreement and constitutes representations by the Merchant.

"**Bank**" means a member of one or more Card Brands that acquires Transaction funds through Card Brands. The financial institution serving as Bank in connection with this Agreement as of the Effective Date is identified in the attached Disclosure page.

"**Card**" means Mastercard, Visa, Discover and American Express cards, account numbers assigned to a Cardholder, or other forms of payment accepted by PayiQ, for which pricing is set forth in this Agreement or on the Merchant Application.

"**Card Brand**" means Visa, Mastercard, Discover, or American Express, as the same are defined herein.

"**Card Transaction**" means any transaction conducted with a Card (excluding ACH Transactions) that is submitted by or on behalf of Merchant for processing pursuant to this Agreement.

"**Cardholder**" means any person authorized to use a Card or the accounts established in connection with a Card.

"**Confidential Information**" means all non-public, proprietary data or information of a party which is valuable to the operation of such party's business and is treated by such party as confidential including, but not limited to non-public financial information, 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.

"**Content**" means any material and/or data obtained by Merchant from or through the Services.

"**Customer**" means a client or customer of Merchant.



**"Customer Data"** means information associated with a Card, such as Cardholder information, account number, expiration date, track-2 data, and CVV2; information associated with a Customer's bank account(s), including, without limitation, account numbers and bank routing numbers; and other information associated with a Customer's Transactions.

**"Data"** means the data and information provided to PayiQ in connection with this Agreement and the Services (including without limitation Transaction information) which PayiQ, Processor and/or Bank uses in connection with its performance of its respective obligations under this Agreement.

**"Data Incident"** means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of a Card, Data or Customer Data or Merchant credentials, 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 Merchant credentials or Card or Customer Data resides, passes through, and/or could have been compromised.

**"Discover"** means Discover Financial Services, Inc. and any successor or assigns.

**"Effective Date"** means with respect to Merchant, the earlier of the date that Merchant signs the Application or submits a live Transaction for processing and with respect to Bank and PayiQ, the earlier of the date that Merchant is issued a Merchant ID Number (MID) from Bank or the date that Merchant submits its first live Transaction for processing.

**"Fees"** means the fees for which Merchant is liable in exchange for the Services. Fees are set out in the Application. Fees may be amended in accordance with this Agreement. Fees may also change, with or without prior notice, if Card Brands or other third parties impose additional fees on PayiQ for the supply of the Services or on amendments to applicable law that require PayiQ to amend the Fees.

**"Guarantor"** means any Person guaranteeing the PayiQ obligations, either as indicated on the Application or otherwise.

**"Liability Assessments"** means any and all fines, charges, penalties, assessments, late submission charges and all other costs, expenses and indebtedness levied by a Card Brand, Bank, Processor, card issuer, Nacha, other regulatory authority or other third party that are assessed against, likely to be assessed against, charged to, likely to be charged to, incurred by (directly or indirectly) or otherwise paid by, PayiQ or Bank to the extent attributable to, arising out of, or related to Merchant's (i) Transactions or business, or (ii) breach or alleged breach of any provision in this Agreement.

**"Mastercard"** means Mastercard International Incorporated and any successor or assigns.

**"Merchant"** means the Person accepting the Agreement and receiving Services.

**"Merchant Processing Policies"** means the policies, guidelines, and standards established by PayiQ and Bank that relate to Merchant's use of the Services as they may be modified by PayiQ or Bank from time to time.

**"Merchant Supplier"** means a third party used by Merchant in connection with the Services received under this Agreement, including but not limited to, software providers (including gateway providers), equipment providers, and/or third-party processors.

**“Nacha”** means the National Automated Clearinghouse Association.

**“Nacha Rules”** means the operating rules and guidelines promulgated by Nacha and governing ACH Transactions or the related activities of parties involved in ACH Transactions, as amended or modified from time to time.

**“Operating Regulations”** means the by-laws, bulletins, operating regulations and/or all other rules, guidelines, policies and procedures of the Card Brands, the Nacha Rules, and all other applicable rules, regulations and requirements of PayiQ, Bank, Processor, or organizations, associations, or networks which govern or affect any services provided under this Agreement or Merchant’s activity (including Merchant Processing Policies), and Applicable Law, as any or all of the foregoing may be amended and in effect from time to time.

**“Payout”** the deposit of Settled Funds net of amounts due under this Agreement and to PayiQ or Bank into the Funding Account.

**“PCI DSS”** means the Payment Card Industry Data Security Standards, as they may be amended or modified from time to time.

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators, or other legal representatives of an individual in such capacity.

**"Processor"** means the entity designated by PayiQ that provides authorization, clearing and settlement reporting processing services in connection with this Agreement. The entity that is acting as the Processor as of the commencement of this Agreement is identified in the attached Disclosure page and may change in PayiQ’s sole discretion upon notice to Merchant from time to time.

**"Product"** means any product or service offered for sale or sold by Merchant to a Customer.

**"Prohibited Activity"** means any activity deemed to be prohibited by the Card Brands, PayiQ or the Bank.

**“Reserve”** means a reserve account owned by Bank established and maintained at Bank to protect Bank or PayiQ from actual or potential liabilities under the Agreement.

**"Services"** means the transaction processing services provided by PayiQ, Processor and Bank to Merchant pursuant to this Agreement.

**“Settled Funds”** means the settlement funds received by Bank from Card Brands in connection with Merchant’s processed Transactions.

**"Site"** means <https://www.pay-iq.com/>

**"Third Party Servicer"** means a third party that provides a product or service that Merchant wishes to procure which product or service may or may not be compatible or integrated with the Services.

**"Transaction"** means an ACH Transaction or a Card Transaction originated by or on behalf of Merchant conducted utilizing any of the Services.

**"Visa"** means Visa U.S.A., Inc., Visa International, and any successor or assigns.

SCHEDULE 1  
AMERICAN EXPRESS ACCEPTANCE AND BRAND REQUIREMENTS

This American Express Acceptance and Brand Requirements Schedule (“**Schedule**”) adds the American Express Card Acceptance Services to the Agreement. Bank is not a party to this Schedule and is not liable to Company in any way with respect to such Schedule. For purposes of this Schedule, the words “we,” “our,” and “us” refers to PayiQ and its successors and assigns and the words “you” and “your” refer to Merchant and its permitted successors and assigns.

The parties agree as follows:

**1 Definitions.**

**American Express Brand** means the Marks of American Express and its affiliates.

**American Express Card** means, for purposes of this Schedule, a credit or charge card issued by and bearing the Mark of American Express.

**Amex Transaction Data** means all information required by American Express evidencing one or more transactions, including information obtained at the point of sale, information obtained or generated during authorization and submission, and any chargeback.

**Cardholder** means the person whose name is embossed on an American Express Card and any authorized user of such American Express Card, including the person that has entered into an agreement establishing an American Express Card account with an Issuer. Some Networks may refer to Cardholder(s) as Card Member(s).

**Charge or Charges** means a payment or purchase made on an American Express Card.

**Effective Date** means the latest date in the signature blocks of the Agreement.

**Establishments** means any or all of your (or your affiliates’) locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future. References to “locations” elsewhere in the Agreement include this definition but only for purposes of this Schedule and American Express Card Transactions.

**Transaction** as used in this Schedule means a Charge or Credit completed by the means of an American Express Card.

**2 Service.**

The acquiring services (including authorization, processing, and settlement) that you receive for your American Express Card Transactions (Amex Card Acceptance Services) are provided by PayiQ and not by Bank. The parties acknowledge and agree that Bank is not a party to this Schedule insofar as it applies to the Amex Card Acceptance Services, and Bank is not liable to you in any way with respect to such Amex Card Acceptance Services. You authorize LedgerPay to submit Transactions and instruct settlement from American Express on your behalf.

**3 Compliance with American Express Rules and the American Express Operating Guide.**

**3.1 You agree that your acceptance of American Express Cards will comply with the policies and procedures set forth in this Schedule, the American Express OptBlue Program**

**Operating Regulations (OptBlue Regulations), and the American Express Merchant Operating Guide (Amex Guide) which sets forth the rules for American Express Card Transactions (Amex Rules), as may be amended by American Express and which are incorporated into this Schedule by reference. The then-current version of the Amex Rules is available to you at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide). You must comply with the American Express Data Security Requirements (DSR) and Payment Card Industry Data Security Standard (PCI-DSS) each as described in the Amex Guide. Any capitalized terms not otherwise defined in this Schedule or the Agreement have the meaning given to them in the Amex Guide or OptBlue Regulations. If a merchant shall identify a potential data incident, the merchant is required to notify PayiQ pursuant to the terms stated in section 14A of this agreement. Furthermore, merchants are required to comply with data privacy protection laws and related regulations pursuant to section 12 of this agreement.**

- 3.2 You agree to assume financial liability for all settlement activity, including Chargebacks and Credits, as defined in the Amex Guide. You are also liable for all other acts, omissions, and Cardholder customer service-related issues. You may not transfer such financial liability by asking or requiring Cardholders to waive their dispute rights.**
- 3.3** You must meet the following criteria: (a) your Total Annual American Express volume is less than \$1,000,000; (b) your business is not of a merchant category type prohibited by American Express; and (c) you are not a franchisee of any franchise excluded by American Express from eligibility for the OptBlue Program.
- 3.4** After initial qualification, you must continue to meet American Express's criteria for the OptBlue Program. Currently, these criteria are: (a) the total volume of American Express Card Transactions (Charge Volume) in any rolling 12-month period for all your Establishments is not more than \$1,000,000, and (b) the total monthly volume of American Express Card Transactions for all your Establishments for any 3 consecutive months does not exceed \$100,000 per month. If you have multiple Establishments under one tax identification number, the Charge Volume from all Establishments will be aggregated together whether determining whether you meet the criteria for the OptBlue Program. You may be converted from the Program to a direct American Express Card acceptance relationship with American Express if and when you become a High CV Merchant. Upon the conversion to a direct American Express Card acceptance relationship, (i) you will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance. In such event, we may continue to provide authorization and processing services, to you for your American Express Card Transactions. If you are converted to a direct American Express Card acceptance relationship, such conversion will not be deemed a Default Event or otherwise a breach under the Agreement.

#### **4 Term; Termination.**

- 4.1** The Amex Card Acceptance Services provided under this schedule shall be coterminous with the Agreement.
- 4.2** In addition to the termination rights set forth in the Agreement, American Express has the right to modify this Schedule with respect to American Express Card Transactions or to

terminate your acceptance of American Express Card Transactions and to require PayiQ to investigate your activities with respect to American Express Card Transactions.

**4.3** PayiQ has the right to terminate this Schedule immediately (including the Agreement) for cause or fraudulent or other activity, or upon American Express' request.

**4.4** Upon termination of the Agreement or your participation in the Amex Card Acceptance Services, you shall remove American Express Brand Marks from wherever such Marks may be displayed, including your website.

## **5 Rates/Fees.**

Your rates and fees for American Express transactions are set forth in the Application.

## **6 American Express Transaction Data.**

You authorize PayiQ to collect and disclose to American Express your Transaction Data, Merchant Data (including information provided to us on your application), and other information about you to American Express. You authorize American Express to use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program Agreement, and important transactional or relationship communications from American Express. American Express may use the information obtained in the Application at the time of setup to screen and/or monitor you in connection with American Express Card marketing and administrative purposes. You agree that Transaction Data and customer information will be submitted for processing promptly, accurately, and completely. Such information must comply with American Express' Technical Specifications.

## **7 Disclosure and Use of Data Collected Under Agreement.**

We may disclose to American Express all data and information you provide and that we collect as part of performing any Amex Service or any other Service related to your American Express Card Transactions (**Collected Data**). American Express may use and share Collected Data (a) to screen and/or monitor you in connection with Card marketing and administrative purposes, (b) to perform its responsibilities in connection with your acceptance of American Express Cards, (c) to promote the American Express Network, (d) to perform analytics and create reports, and (e) for any other business purpose, including marketing, as permitted by applicable Law. American Express uses reasonable administrative, technical, and physical security measures to protect your information, consistent with the sensitivity of the information.

## **8 Additional Limitation of Liability.**

In addition to the limitation of liability set forth in the Agreement, and notwithstanding anything in the Agreement to the contrary, PayiQ and its affiliates' cumulative liability, in the aggregate for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever related to the Amex Card Acceptance Services, and regardless of the form of action or legal theory, shall not exceed the amount of fees received and retained by PayiQ pursuant to this Schedule in the immediately preceding 12 months. This limitation of liability will not apply the obligation to remit

your proceeds for your American Express transactions.

**9 Consent for American Express to Contact You by Phone, e-Mail, Text, or Fax.**

American Express may call you or send you communications or materials via email, text, fax, or other electronic means about American Express services and resources available to you. You consent to receive auto-dialed, automated, or pre-recorded calls or communications (including text messages) at the telephone number(s) you have provided. If you provide a fax number, you consent to receive fax communications from American Express. You acknowledge that by giving these consents, the calls made to you, or the communications sent to you by American Express may be subject to charges or fees by your telecommunications or other applicable service Provider, and you agree that any charges or fees are your responsibility to pay. You also acknowledge that these consents are not a condition of receiving Amex Card Acceptance Services.

**10 Opt-Out.**

You may opt out of receiving marketing-related communications and materials from American Express by checking the box below.

- By checking this box, you opt out of receiving future commercial marketing communications from American Express.

Note that you may continue to receive marketing communications while American Express updates its records to reflect your choice. Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express.

**11 No Assignment of Payments.**

You agree not to assign to any third party any payments due to you under the Agreement as the result of American Express Card Transactions, and all indebtedness arising from Charges will be for bona fide sales of goods and/or services at your Establishments free of liens, claims, and encumbrances (other than ordinary sales taxes). You may, however, sell and assign future Transaction receivables to PayiQ, its Affiliates or to any other funding source that partner with PayiQ.

**12 Third Party Beneficiary Rights.**

American Express is a direct and intended third party beneficiary of the Agreement (including this Schedule) and may enforce any terms of the Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against you.

**13 Your Right to Opt Out of American Express Card Acceptance.**

You may opt out of accepting American Express Cards at any time without affecting your right to

accept any other payment type PayiQ supports, and such election will not be deemed a Default Event or otherwise a breach of the Agreement.

**14 Collections from American Express Cardholders.**

You may not bill or collect from any American Express Cardholder for any purchase or payment on the American Express Card unless Chargeback has been exercised, you have fully paid for the Charge, and you otherwise have the right to do so.

**15 Refund Policies.**

Your refund policies for purchases on American Express Cards must be at least as favorable as its refund policy for purchases on any Other Payment Products, and the refund policy be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law. You must not bill or collect from any Cardmember for any purchase or payment on an American Express Card unless Chargeback has been exercised, you have fully paid for such Charge, and it you otherwise have the right to do so.

**16 American Express Excessive Disputes.**

You may be subject to various fees and assessments as set forth in the Schedule of Fees or in the American Express Program Pricing Guide, including fees for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance with American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing the non-compliance.

**17 American Express Right to Modify or Terminate Agreement.**

American Express and PayiQ has the right to modify the Agreement with respect to American Express Card Transactions or to terminate your acceptance of American Express Card Transactions and to require us to investigate your activities with respect to American Express Card Transactions. Upon termination for any reason, you must immediately remove American Express licensed marks from your website and wherever else they are displayed upon termination or upon your termination from the Amex Card Acceptance Services.

**18 Indemnification.**

You acknowledge and agree that your obligations under the Agreement to indemnify and hold us harmless from and against certain losses, liabilities, damages, and expenses obligations identified in the Agreement, hereby also apply to American Express. We acknowledge and agree that our obligations under the Agreement to indemnify and hold you harmless from and against certain losses, liabilities, damages, and expenses obligations identified in the Agreement also apply to our provision of the Amex Card Acceptance Services.

**19 Disclaimer of Warranties.**

In addition to the disclaimers set forth in the agreement, PayiQ makes no representations, warranties, or covenants, express or implied with regard to the American Express card acceptance

including the uninterrupted or error-free operation of the American Express card acceptance or non-infringement.