

## TERMS AND CONDITIONS

Subject to the requirements of applicable Card Association rules, EVERTEC Group, LLC Merchant Acquiring Solutions ("MAS"), Banco Popular de Puerto Rico ("BPPR") and the entity identified in the Addendum attached hereto ("Merchant") in consideration of the mutual promises and covenants contained in this Merchant Agreement (the "Agreement") agree as follows:

### A. DEFINITIONS

1. "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.
2. "Addendum" means the Merchant Addendum attached hereto setting forth the Cards, Services, Merchant Discount Rate, Authorization Fees and Transaction Fees, among other details specific to the Merchant.
3. "Agreement" means these terms and conditions, any supplementary documents referenced herein, and valid schedules and amendments to the foregoing.
4. "American Express" means American Express Travel Related Services Company, Inc., a New York corporation.
5. "ATH Network" means an interbank network connecting various participating financial institutions in Puerto Rico and the Caribbean such network also serves as a debit card network for Cards issued under ATH brand.
6. "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
7. "Card" means (i) a valid credit card in the form issued under license from a Card Association; (ii) an ATH debit card issued by financial institutions participating in the ATH Network or (iii) any other valid credit or debit card accepted by Merchant by agreement with MAS.
8. "Card Association" means VISA U.S.A., Inc., VISA International, Inc., Mastercard International, Inc., American Express, the Discover Network or any other Card Issuers that provide Cards accepted by Merchant by agreement with MAS.
9. "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.
10. "Card Not Present (CNP)" means a Card processed where the magnetic stripe or Chip was not used to obtain authorization or that an Imprint of the Card is not obtained at the point-of-sale.
11. "Cardholder" (also referred to as "Card Member" in certain Card Association materials) means the person whose name is embossed upon the face of the Card, and therefore, is authorized to use the Card.
12. "Cardholder Information" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number or credit or debit card number, or other bank account number.
13. "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to MAS by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
14. "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
15. "CVV2" means the Card Verification Value 2.
16. "EBT" means Electronic Benefit Transfer program
17. "EMV/Chip" means the open-standard set of specifications for smart card payments and acceptance devices. EMV stands for Europay, Mastercard and Visa, the three organizations that developed the initial specifications.
18. "High CV Merchant" means an OptBlue® Program Merchant with either (i) greater than \$1,000,000 in charge volume (i.e., total chargers on net purchases less Chargebacks, credits and any other amounts owned to American Express by Merchant) in a rolling 12-month period or (ii) greater than \$100,000 in charge volume in any 3 consecutive months.
19. "Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
20. "International Card" means a card issued by a bank or financial institution whose country or territory is different than that of the Merchant.
21. "Mid or Non-Qualified Transaction (NQT)" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for Merchant's standard card industry code.
22. "PIN" means the personal identification number.
23. "Premium Card" means a card that qualifies to receive a higher interchange rate as assigned by the applicable Card Association for Merchant's standard card industry code.

24. "Sales Draft" means the paper form, whether electronically or manually imprinted, evidencing a sale Transaction.
25. "Transaction" means any sale of products or services (or credit, error, return and adjustment for such) from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to MAS for collection.
26. "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

### B. CARD ACCEPTANCE AND TRANSACTIONS

1. **Honoring Cards.** Merchant will honor, only in its establishments in Puerto Rico, United States Virgin Islands (USVI) and the British Virgin Islands (BVI) or others agreed to with MAS, all valid Cards when properly presented by a Cardholder in payment for goods or services, subject to applicable Card Association rules, bylaws, regulations, policies, and guidelines requiring Merchant to elect whether it will honor credit only, debit only, or both debit and credit Cards. Merchant's election is set forth in the Addendum and the stated election can only be changed if approved by MAS pursuant to a writing signed by MAS. Merchant may not, however, be prevented from offering discounts to customers for cash purchases. Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, internet or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.
2. **Merchant Deposit Account.** Prior to accepting any Cards, Merchant shall establish a demand deposit account at BPPR ("Deposit Account"), which shall be subject to the terms and conditions of BPPR's Deposit Account Agreement. Fees, charges and credits due in accordance with this Agreement shall be processed through the Deposit Account; provided, however, that if Merchant requires that fees and charges be debited from a separate demand deposit account, Merchant may indicate such other account on the Addendum (the "Operating Account"). With the exception of the specific instructions with respect to debiting fees and charges, Merchant agrees that all provisions that apply to the Deposit Account will also apply to the Operating Account. Merchant authorizes MAS to request BPPR to debit all amounts Merchant owes MAS hereunder from the Deposit Account or any other demand deposit account at BPPR at times deemed appropriate by MAS, through ACH. Any returned ACH for lack of funds shall be subject to a \$25 fee per returned ACH to be collected by MAS. Merchant waives any claims for loss or damage arising out of any such charges or debits to the Deposit Account. Merchant may not close or change the Deposit Account without the prior approval from MAS, which may be withheld for any reason. Merchant will be solely liable for all fees and costs associated with the Deposit Account and for all overdrafts.
3. **Equipment.** If Merchant uses equipment to process Transactions, then Merchant shall obtain, install, and use only MAS-approved equipment and software programs provided to Merchant by MAS pursuant to a rent agreement as described in Addendum I or pursuant to a sale or lease based on a separate agreement with MAS or a designated third party. Merchant shall also comply with the following additional terms:
  - The equipment shall be suitable for processing Transactions;
  - Merchant shall provide, at Merchant's expense, suitable electric power and telephone and internet services and will pay for any alterations to Merchant's premises required to properly locate Merchant's equipment;
  - If Merchant is using equipment, Merchant acknowledges receipt of a copy of the equipment User's Guide/Manual. Merchant will use and operate the equipment only in accordance with the equipment User's Guide/Manual; and
  - MAS will have no liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of MAS. At no time will MAS's liability exceed the amount of fees collected or reasonably expected to be collected from Merchant for this delay period.
  - MAS or its designated agent will provide technical support to Merchant.
  - The equipment will have default rules to route the Transactions through the ATH Network, but Merchant will control the final routing of all Transactions.
4. **Training.** Merchant shall ensure its employees and representatives are trained:
  - (i) in the use of the equipment and software required for processing Transactions;
  - (ii)

with respect to the Card Association rules, bylaws, regulations, policies, and guidelines, including, without limitation, the data security standards and Chargeback and dispute resolution rules; and (iii) with respect to the responsibilities of Merchant under this Agreement.

**5. Advertising.** Merchant will prominently display the promotional materials provided by MAS in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to MAS's direction. Merchant may not use any of the Marks on any advertisement unless Merchant receives MAS's prior written approval, which may be withheld for any reason. Merchant acknowledges and agrees that: (i) the Card Associations, MAS and BPPR own all of their respective trademarks and service marks and Merchant acquires no rights in the Marks; (ii) it will not contest the ownership of such Marks; (iii) it will not imply in any way or manner that it is a member of any Card Association; and (iv) MAS, BPPR and each Card Association may immediately and upon one (1) business day prior written notice prohibit Merchant from performing any further activity relating to the use of the Marks. Merchant may not state or infer, directly or indirectly, that any other Card Association's materials should be destroyed, are invalid, or should be replaced. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately cease use and return any inventory to MAS upon termination thereof. Merchant may not use any promotional materials or Marks associated with the Card Associations in any way which suggests or implies that either endorses any goods or services other than Card payment services.

**6. Card Acceptance.** When accepting a Card, Merchant will follow the steps provided by MAS for accepting Cards and will: (a) determine in good faith and to the best of Merchant's ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; and (f) offer the Sales Draft to MAS for purchase according to MAS's procedures and the terms of this Agreement.

**7. Provisions Applicable to American Express Cards.**

(a) American Express OptBlue Program. Merchant hereby agrees to comply with the requirements, acknowledgments and authorizations specific to Merchant's acceptance of American Express Cards under the American Express OptBlue® Program (the "OptBlue Program") set forth in this Section 7. The OptBlue Program is a program under which MAS may enable "small merchants" (for purposes of this Agreement, defined as merchants that process American Express Card transactions where the gross annual sales amount of such American Express Card transactions are less than One Million U.S. Dollars) to accept American Express Cards.

(b) Acceptance. Merchant hereby agrees to accept American Express Cards only in accordance with the terms of this Agreement and the American Express Merchant Operating Guide, as may be amended from time to time, which is located and available for Merchant free of charge at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

(c) Authorization. Merchant hereby authorizes MAS to submit Transactions to, and receive settlement from, American Express.

(d) Disclosure of Transaction Data and Merchant Data. Merchant understands and agrees that MAS will disclose Transaction data and Merchant data to American Express, and American Express may use such information to perform its responsibilities in connection with the OptBlue Program, perform analytics and create reports, to communicate with Merchant in the manner permitted above and for any other lawful purposes.

(e) High CV Merchants. If Merchant has elected to accept American Express Cards, Merchant acknowledges that it may be converted from the OptBlue Program with MAS to a direct American Express Card acceptance relationship with American Express if and when it becomes a High CV Merchant pursuant to OptBlue Program eligibility requirements. Upon such conversion, (i) Merchant will be bound by American Express' then-current card acceptance agreement; and (ii) American Express will set pricing and other fees payable by Merchant for American Express Card acceptance.

(f) No Assignment of Payments. Merchant will not assign to any third party any payments due by Merchant under this Agreement. All indebtedness arising from charges will be for bona fide sales of goods or services (or both) at Merchant's

establishments and free of liens, claims and encumbrances other than ordinary sales taxes. For the avoidance of doubt, the prohibition on assigning payments due by Merchant does not apply to MAS, its Affiliates or a partner of MAS or its Affiliates.

(g) Third Party Beneficiary Rights. American Express is a direct and intended third-party beneficiary of this Agreement, and may enforce any terms of this Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against Merchant.

(h) American Express Opt-Out. Merchant may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept other Cards pursuant to this Agreement.

(i) Refund Policies. Merchant hereby acknowledges that its refund policies for purchases with American Express Cards must be at least as favorable as its refund policy for purchases made on Cards of other Card Associations. Merchant agrees to disclose to Cardholders of American Express Cards the refund policy at the time of purchase and in accordance with applicable law.

(j) Collection for Cardholders. Merchant may not collect or attempt to collect a charge from any Cardholder of American Express Cards for any purchase or payment on an American Express Card unless: (i) the charge has been charged back to the Merchant; (ii) Merchant has accepted and/or paid the charge (i.e., no Chargeback reversal has been processed); and (iii) Merchant has a right to collect or attempt to collect funds to recover unpaid amounts lawfully owed to Merchant by such Cardholder American Express Cards.

**8. Authorization.** Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from MAS's designated authorization center, which shall authorize or decline the Transaction. Merchant agrees it shall be subject to an additional voice or audio response unit fee for this type of Authorization procedure. If the Transaction is authorized, Merchant will legibly obtain an imprint of the card, signature of the Cardholder and print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from MAS's authorization center unless Merchant intends to submit to MAS a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant acknowledges that if the card is an EMV/Chip card and the card was not processed reading the Chip there is not a guarantee that the Transaction will not be subject to dispute or Chargeback. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. MAS may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization or approval code has been recorded on the Sales Draft; (b) if MAS determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if MAS has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by MAS, including Address Verification System processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement. The Transactions under these circumstances must be completed within 30 days.

**9. Retention and Retrieval of Cards.** Merchant will use its best efforts to reasonably and in a peaceful manner recover and retain a Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given by MAS: (i) electronically through the equipment; (ii) by the authorization center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant's obligations under this section does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold MAS, and all MAS employees, officers, directors, agents, and representatives harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.

**10. Multiple Transaction Records; Partial Consideration.** Merchant may not prepare more than one Sales Draft for a single sale or for a single item. Merchant will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for

purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants and Transactions (taxes, gasoline, parking and traffic fines, insurance premiums, hospice and food and beverages are acceptable Transactions).

**11. Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders.** Unless Merchant has been approved by MAS to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If MAS determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card Imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom held as provided in Section D. Unless approved by MAS, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder Information, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. For each approved PO, Merchant must reaffirm all annual billings at least once each year or upon request by MAS. Merchant shall not deliver goods or perform services covered by a PO after receiving notification from the Cardholder that the preauthorization is canceled or from MAS that the Card covering the preauthorization is not to be honored. Merchant agrees its receipt of an Authorization will not relieve Merchant of liability for Chargeback on any Transaction for which Merchant did not obtain an Imprint or the Cardholder's signature (imprint does not defend for EMV/Chip Cards).

**12. Lodging and Vehicle Rental Transactions.** Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. An additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges (Define). Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

**13. Returns and Adjustments; Credit Vouchers.** Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant will disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. Any change in Merchant's return or cancellation policy must be submitted in writing to MAS not less than 14 days prior to the change. MAS may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which MAS has not been notified as required herein. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a Credit Voucher, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall immediately pay MAS the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Paragraph. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Credit Vouchers should be issued to the same card used for the Sale Draft.

**14. Cash Payments.** Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.

**15. Duplicate Transactions.** Merchant may not deposit duplicate Transactions. MAS may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.

**16. Deposit of Fraudulent Transactions.** Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, MAS may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to the Card Associations under the terms of this Agreement. Merchant's employees and agents' actions are chargeable to Merchant under this Agreement.

**17. Collection of Pre-existing Debt.** Merchant may not prepare and present to MAS for purchase any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

**18. Data Security/Personal Cardholder Information.** Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant, in good faith, has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than MAS or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.

(a) **Safeguards.** Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant or MAS in accordance with applicable federal and state laws, rules, regulations and guidance.

(b) **Compliance with Card Association Rules.** Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Association bylaws, operating regulations and rules, including those provisions related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI DSS"), Discover Information Security Compliance ("DISC"), Mastercard's Site Data Protection Program ("SDP"), American Express' Data Security Requirements ("DSR") and VISA's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced. Merchant will cause all of its employees, agents, and subcontractors agents to comply with PCI, SDP, DISC, DSR and CISP requirements at all times. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software. **Merchant will report, in writing, any non-compliance and any violation of security or privacy obligations or a breach in data security resulting in the potential for unauthorized access to Cardholder personal information immediately to MAS. If (i) Merchant informs, or (ii) MAS, BPPR or a member of the Card Associations, informs Merchant, of an alleged breach in data security resulting in the potential for unauthorized access to Cardholder personal information, Merchant shall, as soon as possible, engage a PCI forensic investigator service provider, from the list designated by the Card Associations, for emergency incident response services and PCI forensic investigator services, among others, payable by Merchant.**

(c) **Annual Certification.** Merchant will provide an annual certification to MAS if requested by MAS (in a form acceptable to MAS) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Association requirements such as PCI, SDP, DISC, DSR and CISP. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.

(d) **PCI Questionnaire.** To further ensure Merchant compliance with PCI standards, MAS facilitates Merchant with access to a PCI Portal managed by a third party provider, through which Merchant will complete and submit an annual self-assessment questionnaire ("SAQ"). The SAQ is an annual requirement under this Agreement and serves as a validation tool for Merchants who are not required to complete on-site assessments for PCI DSS compliance. A link to the PCI Portal is found at [www.popularmerchant.com](http://www.popularmerchant.com), under the PCI section. Merchant must complete and submit its SAQ within 30 days from the effectiveness of this Agreement. Merchant shall also update its SAQ periodically or at least once a year, should Merchant change the manner in which it handles Cardholder Information. The SAQ will entail an automatic monthly fee set forth in the Addendum. Upon MAS' receipt of Merchant's completed SAQ, this monthly fee will be waived prospectively and eliminated from the Merchant Statement within the following 30 days. Merchant's unlimited access to, and use of, the PCI Portal is subject to a monthly fee, in addition to the waivable SAQ fee mentioned above, as further stated in the Addendum. Completion of the SAQ does not imply, guarantee, ensure or replace Merchant's compliance with applicable PCI DSS dispositions.

(e) **Information Use Limitations.** Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without MAS's prior written consent, which such consent may be withheld for any reason. Merchant shall not use Cardholder Information or any other confidential or proprietary information for its own use or for any other purpose. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or as may be required by legal process or applicable federal and state laws, rules, regulations and guidance and have entered into a written agreement with Merchant containing Merchant's and such individuals' or entities' agreement to the foregoing data security provisions including compliance with Card Association rules, regulations or bylaws.

(f) **Response to Unauthorized Access.** Merchant will notify MAS within 24 hours after it knows, or has reason to know, of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that MAS, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable MAS and the issuing bank(s) or the Card Associations to investigate the incident and provide assistance and cooperation to: (i) file suspicious activity reports (as applicable); (ii) notify their regulators (as applicable); and (iii) notify the affected Cardholder (as required). Unless the unauthorized access was due to MAS's acts or omissions, Merchant will bear the cost of notifying the affected Cardholder.

(g) **Miscellaneous.** Merchant may not make a claim against MAS or hold MAS liable for the acts or omissions of other merchants, service providers, Card Associations, financial institutions or others that do not have a written contractual relationship with MAS or over which MAS has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Card Association rules.

**19. EMV/Chip Card Compliance.** Merchant must upgrade any Point of Sale Electronic Terminal provided as part of this Agreement (the "Equipment"). Upon request from Merchant, such upgrade, which will be offered and performed by MAS, will allow for EMV/Chip card transactions to be accepted at said terminals. In the event the transaction is performed with an EMV certified Chip Card and the Equipment has not been upgraded due to Merchant's negligence, Merchant will be liable for payment of any transactions submitted for chargeback, by the applicable EMV/Chip card issuer(s), due to lost, stolen and never received-issue fraud claims

**20. Compliance with Card Association Rules.** Merchant will comply with and conduct its Card activities in accordance with all applicable Card Association rules, regulations, bylaws, guidelines, and policies. Failure to comply with such rules, regulations, bylaws, guidelines, and policies may result in Merchant being terminated for cause and listed on various Card Association and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file ("MATCH"). Merchant will pay all Card Association fines, fees, penalties, dispute arbitration fees, and all other assessments or indebtedness levied by Card Associations to MAS which are attributable, at MAS's discretion, to Merchant's Transaction processing or business.

**21. Merchant Change of Address.** During the term of this Agreement and for twelve (12) months after it is terminated for any reason Merchant shall provide prior written notice to MAS if Merchant intends to operate its business from any location that is different, or in addition to, the Location Address or Corporate Address stated in the Addendum.

**22. Merchant's Business.** Merchant will notify MAS immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including, without limitation, a change that would require a reclassification of Merchant's business Category Codes pursuant to the Card Association rules and regulations or the selling any products or services not related to its business as stated in the Addendum; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; or (f) changes its return policies or to another fulfillment house different from those identified in Addendum. Merchant will notify MAS promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for MAS's exercise of all its rights and remedies provided by this Agreement. If any change listed above or in the Addendum occurs, MAS may immediately terminate this Agreement.

**23. Merchant's Warranties.** Merchant represents and covenants that: (a) all information contained in the Addendum or any other documents delivered to MAS in connection therewith is true, accurate, and complete and properly reflects Merchant's business, past and present financial condition and principal partners, owners or officers; (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to MAS for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with MAS's procedures for accepting Cards, and the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; and (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by MAS.

**24. Prohibited Transactions.** Merchant shall not do any of the following with respect to any Transaction:

- Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- Accept Cardholder payments for previous Card charges incurred at Merchant location;
- Request or use an account number of any purpose other than as payment for Merchant's goods or services;
- Require a Cardholder 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;
- Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- Establish a minimum or maximum dollar Transaction amount;
- Obtain multiple Authorizations for amounts less than the total sale amount;
- Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- Extend credit for or defer the time of payment of the total cash price in any Transaction;
- Honor a Card except in a Transaction where a total cash price is due and payable;

- Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Addendum to which this Agreement is related;
- Submit any transaction receipt for a transaction that was previously charged back to MAS and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system);
- Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) the defense of any crime other than a traffic violation; (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
- Initiate a Transaction credit without a balance in the Deposit Account equal to the credit;
- Use the equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
- Use the equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- Disclose any information obtained through the equipment to any person except for necessary disclosures to affected Cardholders, MAS and/or Card Issuer;
- Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- Disburse funds in the form of travelers checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- Disburse funds in the form of cash unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers checks, Cards, or foreign currency, or (iii) Merchant is participating in the Card Association cash back service;
- Accept a Card to collect or refinance an existing debt;
- Issue a Transaction credit with respect to goods or services acquired in a cash transaction which are subsequently returned;
- Make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits will be issued to the same Card account number as the sale without exception; or
- Enter into a Transaction that represents collection of a dishonored check.

**25. Prohibition of Furnishing Account Information.** Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card Transaction to any third party.

**26. Customer Complaints.** Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to MAS, MAS may terminate this Agreement. MAS reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice: (a) Cardholder's name; (b) Card account number; (c) the date and time the Cardholder asserted the claim or defense; (d) the nature of the claim or defense; and (e) the action that Merchant took in an attempt to resolve the dispute. Upon request, Merchant shall furnish MAS with this information in writing within 5 days;

**27. EBT Customer Complaints.** Notwithstanding any provision herein to the contrary, we hereby notify that EBT cardholder claims ("EBT Claims") filed against Merchants must be answered by the Merchant in question within three (3) business days ("EBT Claims Response Term"). Merchant understands that if an EBT Claim is filed and said EBT Claim is not answered by the Merchant within the EBT Claims Response Term established herein, MAS will debit from the Merchant's account any

and all amounts credited to the cardholder's account with regards to the EBT Claim.

## C. PRESENTMENT, PAYMENT, CHARGEBACK

**1. Acceptance.** MAS will accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to MAS or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection thereof and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Association. MAS will only provisionally credit the value of collected Sales Drafts to Merchant's Deposit Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch deposits and items for which MAS did not receive final payment.

**2. Endorsement.** By presenting Sales Drafts to MAS for collection and payment, Merchant agrees all its right, title and interest in each Sales Draft completed in conformity with MAS's acceptance procedures and constitutes an endorsement are hereby assigned and transferred to MAS. If necessary, MAS may supply such endorsement on Merchant's behalf.

**3. Reconciliation of Transactions.** (a) Transactions will be settled on a daily basis. MAS shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Deposit Account equal to the reconciled summary of the Transactions since the previous credit. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied or refused; (ii) all refunds processed on account of Cardholders during the time period; (iii) the fees and charges, including Chargebacks, Merchant owes MAS hereunder; (iv) all taxes, penalties, charges and other items incurred by MAS that are reimbursable pursuant to this Agreement; and (v) all applicable rates, fees and charges described on the Addendum; (b) At least once per month, MAS shall provide Merchant with a statement (the "Merchant Statement"). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement. MAS shall not have any responsibility or liability for Transaction-related errors or omissions that are brought to its attention after the stated thirty-day period. (c) Any credits to the Deposit Account are provisional only and subject to revocation by MAS until such time that the Transaction is final and no longer subject to Chargeback by the Card Issuer or Cardholder. MAS may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Card Issuer or MAS receives adequate supporting documentation from Merchant to authenticate the Transaction and mitigate a Chargeback.

**4. Prohibited Payments.** MAS may receive payment of any Sales Draft presented by Merchant and paid by MAS unless and until there is a Chargeback. Unless specifically authorized in writing by MAS, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for MAS and promptly deliver in kind to MAS any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.

**5. Chargebacks.** Merchant will accept for Chargeback any sale involving the following:

- The Cardholder disputes the validity of the sale according to prevailing Card Association rules;
- A Card Issuer or MAS determines that Merchant has in any way failed to comply with Card Association rules or MAS's procedures in accepting a Card and presenting the resulting Sales Draft to MAS for purchase;
- No specific prior Authorization for the Transaction was obtained from the authorization center;
- The Authorization approval number does not appear in the electronic transmittal that is maintained by MAS;
- The Transaction was submitted to MAS 30 days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
- The Transaction was based on a preauthorization form and the Card on which the Authorization was based has been canceled;
- The Card giving rise to the Transaction was canceled;
- The Card expired prior to the date of the Transaction;
- The date of the Transaction was prior to the validation date of the Card;
- MAS or Card Issuer has received a complaint from or on behalf of a Cardholder

stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;

- The Cardholder makes a written complaint to MAS or Credit Issuer that the Cardholder did not make or authorize the Transaction;
- A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
- The Transaction was made at or by a merchant other than Merchant named in this Agreement;
- The Transaction otherwise violates the terms of this Agreement or any other Card Association or Card Issuer bylaw, rule, regulation, policy or guideline;
- A Transaction is charged back by an Issuer; or
- Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

If any of the above events occurs, MAS shall not be obligated to accept a Transaction for credit to the Deposit Account. If MAS has credited the Deposit Account or Reserve Account for such a Transaction, MAS may return the Transaction to Merchant, and Merchant shall pay MAS the amount of the Transaction in addition to the current published fees for each Chargeback as listed on the Addendum. Merchant agrees that MAS, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Deposit Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property MAS holds for or on behalf of Merchant. If a Merchant disagrees with MAS's decision to charge back a Transaction, Merchant must so notify MAS in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued. Without limiting the generality of any other provision of this Agreement, if MAS takes legal action against a Merchant for any Chargebacks or any amounts due MAS, Merchant shall pay the costs and attorneys' fees incurred by MAS, whether a suit is commenced or not. MAS may charge Merchant a monthly fee as determined by MAS for its administrative work and other costs in the event Merchant has fifteen (15) or more Chargebacks over a period of one month during a minimum of one year, starting from the day following the month in which Merchant has exceeded the limit.

**6. Merchant Reserve Account.** MAS may require Merchant to fund a reserve account for all future indebtedness of Merchant to MAS that may arise out of or relate to the obligations of Merchant under this Agreement ("Merchant Reserve Account"), including, but not limited to, Chargebacks and fees. Specific examples include, but are not limited to: (a) Merchant engages in any charge processing that creates an overcharge to a Cardholder by duplicating charges; (b) any activity designed by Merchant to circumvent a "call center" message when attempting to process a transaction; (c) any equipment cancellation fees; (d) Merchant breaches this Agreement, violates any representation, covenant or warranty herein, violates any applicable Card Association rule or applicable law; (e) the Addendum is in any way inaccurate or becomes inaccurate subsequent to MAS's approval thereof; (f) Merchant changes its type of business stated in the Addendum without MAS's prior written approval, which may be withheld for any reason; (g) fraud or Merchant processes an unauthorized charge, or other action that violates MAS's applicable risk management standards or is likely to cause a loss; (h) Merchant has Chargebacks exceeding 1% of the total number of transactions completed by Merchant in any 30 calendar day period or shorter time period based on Merchant's processing history; (i) excessive numbers of requests from consumers or issuing banks to retrieve documentation; (j) Merchant's financial stability is in question or Merchant ceases doing business; (k) Merchant terminates this Agreement or (l) and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Merchant shall have no right or ability to access, withdraw or transfer funds from the Merchant Reserve Account. Furthermore, Merchant authorizes MAS to monitor from time to time the Merchant Reserve Account to determine its adequacy and MAS may require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to MAS into the Reserve Account, the additional amounts of which shall be in MAS's sole discretion. Further, MAS may fund the Merchant Reserve Account by deduction from payments due Merchant. The initial amount of the Merchant Reserve Account is provided for in the Addendum. The Merchant Reserve Account will be maintained for a minimum of 180 days after the later of the termination date of this Agreement or the date on which the last Chargeback is received or until such later time as MAS determines that the release of the funds to Merchant is prudent, in the best interest of MAS, and commercially reasonable, and that Merchant's account with MAS is fully resolved. Upon expiration of this 180-day period, any balance remaining in the Merchant Reserve Account may be released to Merchant. MAS will inform Merchant in writing of any charges debited to the Merchant Reserve Account during this 180-day

period. If, however, the Merchant Reserve Account is insufficient to cover Merchant's indebtedness to MAS, then MAS shall submit a written demand for payment to Merchant, which Merchant shall remit the entire payment within 3 business days. Any dispute with regard to the Merchant Reserve Account shall be between MAS and Merchant and each waives any claims against BPPR for loss or damage arising out of any charges or debits to the Merchant Reserve Account.

**7. Fee Collection.** Under no circumstances will Merchant remit any fees directly to MAS, or any third party working on behalf of MAS, unless the direct remittance is expressly authorized by this Agreement.

#### **D. TERMINATION AND EFFECT OF TERMINATION**

**1. Term.** This Agreement will be effective once MAS accepts it and, unless otherwise terminated, will continue for three years with automatic one-year renewals thereafter until Merchant provides written notice of non-renewal given not less than 90 days prior the end of the then-current term. Prior to termination and regardless of the circumstances for termination, Merchant grants MAS a right of first refusal in connection with any proposal made to Merchant by any other merchant services provider to provide a product or service that is the same or substantially similar to any product or service offered by MAS and which proposal Merchant wishes to accept. Merchant shall promptly notify MAS, in writing, of any such proposal and if Merchant's fails to provide such notice, MAS shall have the option to charge merchant for liquidated damages as defined in Paragraph 4 of this Section of this Agreement. The notice from Merchant shall reasonably and sufficiently describe both the price and the non-price terms of the products and services to be offered pursuant to the proposal. Within 30 days from the date MAS received written notice from Merchant, MAS may elect to exercise its right of first refusal by offering the same or substantially similar product or service on the same or more favorable price and non-price terms as that of the other merchant services provider and so notifying Merchant in writing. In the event MAS fails to exercise its right of first refusal with respect to any such proposal, Merchant may accept that proposal, provided, however, that MAS's failure to exercise its right of first refusal in any one instance shall not preclude or otherwise void or affect MAS's right of first refusal with respect to any other proposal. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and MAS incurred while this Agreement was in effect.

#### **2. Termination.**

(a) Without Cause. MAS may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant. Also, MAS may immediately terminate this Agreement if BPPR or MAS becomes de-registered by a Card Association.

(b) For Cause. MAS may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if MAS reasonably determines that any of the following conditions exists:

- Merchant has violated any provision of this Agreement, including, without limitation Merchant's failure to remit monies to MAS;
- Merchant fails to provide financial statements suitable to MAS on request;
- There is a material adverse change in Merchant's financial condition;
- If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief;
- Any information which Merchant provided to MAS, including Addendum information, was false, incomplete or misleading when received in MAS's sole discretion;
- At any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total transactions exceeding Card Association requirements or 1%, or Chargebacks exceed 3% of any monthly dollar amount of total transactions;
- An overdraft in the Deposit Account exists for more than 3 days;
- Merchant or any of Merchant's principals, owners, officers, directors, agents, or employees has been involved in processing transactions arising from fraudulent, dishonest or otherwise unauthorized transactions
- Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable law;
- Merchant has failed to timely pay MAS any amount due;
- Merchant has failed to promptly perform or discharge any obligation under its Deposit Account or the Reserve Account;
- Any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given;
- Merchant has defaulted on any agreement it has with MAS;
- BPPR or MAS is served with legal process seeking to attach or garnish any of Merchant's funds or property in BPPR or MAS's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service;
- Any Card Association rules are amended in any way so that the continued existence

of this Agreement would cause MAS to be in breach of those rules;

- Any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way;
- If any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to MAS or any Card Association;
- Termination is necessary to prevent loss to MAS or Card Issuers;
- Merchant's type of business indicated on the Addendum or as conducted by Merchant could endanger MAS's safety or soundness;
- Merchant appears on any Card Association's security reporting; or
- MAS's security for repayment becomes impaired.

(c) **Location Termination.** MAS may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.

**3. Effect of Bankruptcy.** Any account or security held by MAS will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and MAS will be excused from performance hereunder. Further, to the extent that Merchant becomes a debtor under any chapter of Title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by MAS for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of MAS's rights or claims under this Agreement.

**4. Effect of Termination.** In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction. If this Agreement is terminated, regardless of cause, MAS may withhold and discontinue the disbursement for all Cards and other Merchant Transactions in the process of being collected and deposited. If Merchant is terminated for cause, Merchant acknowledges that MAS may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by the Card Associations. **Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring listing on the MATCH file and Merchant understands and agrees that Merchant cannot request MAS to remove Merchant from MATCH once Merchant has been reported.** Merchant waives and will hold harmless MAS from any claims that Merchant may raise as a result of MAS's MATCH file reporting. Merchant will also immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, Merchant will return all MAS property, forms, or equipment. All obligations for Transactions prior to termination (including payment for Chargebacks and MAS's expenses relating to Chargebacks) survive termination. MAS is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request provide MAS with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. **Upon termination, any amounts due to MAS will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by MAS. The parties agree that if this Agreement is terminated before completion of the initial term of this Agreement or before the expiration of any renewal term for any reason other than a material uncured breach by MAS, Merchant will pay MAS damages in an amount equal to the greater of (i) the average monthly processing fees charged to Merchant for the previous 12 months (or such shorter time if the merchant has processed for less than 12 months) multiplied by the number of months remaining under the agreement, or (ii) \$295 per location ("Early Termination Fee").** Merchant acknowledges and agrees that the Early Termination Fee described herein is not a penalty but rather is a reasonable computation of the financial harm caused by the early termination of this Agreement by the Merchant based on MAS's implementation and administrative expenses incurred related to Merchant's processing.

## E. MISCELLANEOUS

**1. Account Monitoring.** Merchant acknowledges that MAS will monitor Merchant's processing activity, business condition, financial condition, and daily deposit activity to detect unacceptable trends and trends in Chargeback and negative Cardholder inquiries. MAS may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. MAS will make good faith efforts to notify Merchant promptly following

suspension. MAS is not liable to Merchant for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

**2. Forms.** Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by MAS, and Merchant may not use such forms other than in connection with Card Transactions. Further, Merchant must implement any new policy, procedure or form issued by MAS or replace a current policy, procedure or form with a modified version issued by MAS pursuant to MAS's instructions.

**3. Indemnification.** Merchant will defend, indemnify and hold MAS and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees (whether an attorney is an employee of MAS or MAS's affiliate or not) and costs ("Damages"), asserted against or incurred by MAS, either directly or indirectly, arising out of, relating to or resulting from: (a) Merchant's failure to comply with this Agreement; (b) any Sale paid for by MAS as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages or losses that MAS may incur as a result of Merchant's breach of this Agreement; (c) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (d) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant; (e) the inaction or omission of Merchant; (f) the negligence, gross negligence or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (g) any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service provided by Merchant; (h) the fraud or dishonesty of Merchant or Merchant's owners, principals, employees, agents, successors, or assigns; (i) any violation of applicable federal and state laws, rules, regulations and guidance and Card Association rules by Merchant; (j) the theft of or damage or destruction to any equipment or the failure to comply with the equipment's user guide or manual; and (k) all third party claims arising from the foregoing or any services provided hereunder. Notwithstanding the preceding, Merchant is not liable to MAS if Damages are caused by, related to or arise out any breach of MAS's material obligations hereunder when caused by MAS's gross negligence or willful misconduct. Merchant will promptly reimburse MAS for any assessments, fines, fees or penalties imposed by the Card Associations in connection with this Agreement, including, without limitation, the data security provisions, and authorizes MAS to deduct any such sums directly from the Deposit Account or from amounts to be cleared and settled with Merchant.

**4. Records and Request for Copies.** In addition to any records Merchant routinely furnishes to MAS under this Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for at least two (2) years after the date Merchant presents the Transaction to MAS. Immediately after Merchant receives the request by MAS, Merchant will provide to MAS either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that MAS reasonably requests to meet MAS's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

**5. Compliance with Law.** Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer, and that it is in compliance with the Telephone Disclosure and Dispute Resolution Act and the regulations of the Federal Trade Commission and the Federal Communications Commission. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act and the Federal Equal Credit Opportunity Act, as amended.

**6. Fees and Charges.** For each Transaction, MAS will charge Merchant as follows: (a) actual Card Association interchange and assessments and/or (b) an amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction ("Merchant Discount Rate (MDR)"); (c) a specified amount per Transaction ("Transaction Fee"); and (d) a specified amount per Authorization ("Authorization Fee"). The MDR, Authorization Fees and Transaction Fees are set forth on the Addendum. The Merchant Discount Fees are based on sales, not net sales. Different MDRs apply to qualified, Mid-Qualified and Non-Qualified Transactions. The MDR, as shown on the Addendum, is the lowest rate that applies to qualified transactions. Additional fees, which are caused by the conditions of (i) the Cards (e.g., commercial Cards, business Cards, premium Cards, reward Cards and

international Cards) and (ii) Transactions processed [e.g., CNP or electronic transactions (when Merchant fails to settle the deposit of the authorized Transactions within 48 hours of obtaining such authorization.)], apply to NQT. With respect to American Express Card Transactions, a \$0.10 per transaction fee will also apply in addition to the NQT fees described above. Cards and Transactions may qualify for one or more of the abovementioned conditions and, accordingly, NQT fees shall apply per condition. The minimum NQT fee per condition is 0.65% of sales or, if higher, as set forth in the Addendum. Higher NQT fees may also be charged on Transactions where the MDR is lower than the actual Card Association interchange and assessment fees. NQT fees are included in the interchange fee section of the Merchant Statement. Merchant agrees that MAS will deduct or cause BPPR to deduct Merchant Discount Fees from the Deposit Account or Reserve Account on a daily basis unless a monthly basis is specified on the Addendum. Merchant also agrees to pay MAS the amount of any fees, charges or penalties assessed against MAS or by any Card Association or Card Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such entities. Merchant shall pay MAS for any other services provided to Merchant by MAS and for all other fees shown on the Addendum, including, but not limited to monthly minimum fees, Chargeback fees and customer service fees. MAS may change fees, including adding fees for additional services utilized by Merchant, upon 30 days written notice to Merchant. Merchant shall pay MAS all fees specified on the Addendum, as amended by MAS from time to time. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, MAS may set off any amounts due to MAS under this Agreement against any property or account of Merchant in the possession or control of MAS.

**7. Taxes.** Each party shall report its income and pay its own taxes to any applicable jurisdiction. If MAS is required to pay any taxes, interests, fines or penalties owed by Merchant, the amount paid shall become immediately due and payable by Merchant to MAS. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. MAS shall be entitled to recover of any of the taxes paid by it on behalf of Merchant from Merchant immediately after payment.

**8. Security Interest.** As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to MAS a security interest in all existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to MAS for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) the Deposit Account and the Reserve Account; (d) deposits, regardless of source, to Merchant's Reserve Account; (e) all deposits and all other property and funds deposited by Merchant or withheld by MAS, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. Merchant will execute and deliver to MAS such documents, in form satisfactory to MAS, as MAS may reasonably request in order to perfect MAS's security interest in the Deposit Account and Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by MAS to be necessary or desirable. MAS is authorized to file financing statements relating to the Deposit Account and the Reserve Account without Merchant's signature where authorized by law. Merchant appoints MAS as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to MAS. If MAS reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by MAS (whether because this Agreement has been terminated or for any other reason), MAS may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under applicable laws, including the Uniform Commercial Code, or in equity. In addition to the collateral pledged above, MAS may require Merchant to furnish such other and different security as MAS deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. MAS may fully or partially prohibit withdrawal by Merchant of funds from Merchant's Deposit Account or from Merchant's deposit accounts in financial institutions other than BPPR, pending MAS's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to MAS. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain MAS's written consent before it grants a lien or security interest in that pledged collateral to any other person.

**9. Modifications to Agreement.** MAS reserves the right to amend or modify this

Agreement, from time to time, by providing written notice to Merchant with not less than 30 days before the effective date of such modification or shorter as provided herein. Amendments required as a result of changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as MAS may specify if necessary to comply with the applicable rule, regulation, law or decision. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement or was sent by mail, fax or e-mail.

**10. Warranty Disclaimer.** MERCHANT ACKNOWLEDGES THAT MAS HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SOFTWARE, SYSTEMS, AND EQUIPMENT UTILIZED FOR THIS EQUIPMENT AND MAS EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES. FURTHER MERCHANT ACKNOWLEDGES THAT MAS HAS NO LIABILITY WITH RESPECT TO ANY SOFTWARE, SYSTEMS, OR EQUIPMENT. MAS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM MAS'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, MAS'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

**11. Limitation of Liability.** MAS SHALL NOT BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY MAS PURSUANT TO THIS AGREEMENT. Merchant hereby expressly waives all claims against MAS for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to MAS of the occurrence that gave rise to the alleged liability within 15 days after Merchant knew or should have known of the occurrence. In addition, MAS shall not be liable to Merchant or Merchant's customers or any other person for any of the following: (a) any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so; (b) any loss caused by a Transaction downgrade resulting from defective or faulty equipment (regardless if owned by MAS or Merchant); (c) the unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by MAS or any other person for any reason; or (d) interruption or termination of any Services caused by any reason. If MAS is liable to Merchant for any reason, MAS's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges.

**12. Limitation on Damages.** In no case shall Merchant be entitled to recover damages from MAS that exceed the fees retained by MAS pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.

**13. Legal or Regulatory Proceeding.** Merchant shall promptly notify MAS of any legal or regulatory proceeding or any threat of a legal or regulatory proceeding of which it becomes aware with respect to any matters that are the subject of this Agreement.

**14. Waiver.** MAS's failure to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.

**15. Written Notices.** Unless MAS includes a notice to Merchant in the Merchant Statement, all written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via fax and the sender obtains a fax confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows: (a) If to MAS: EVERTEC Group, LLC Merchant Acquiring Solutions, Hwy. 176, Km. 1.3, Ave. Ana G. Méndez, San Juan, PR 00926 Attn: Merchant Product Manager, fax: (787) 766-4783; (b) If to Merchant: At the fax number, e-mail or address provided as the billing address and to the contact listed on the Addendum.

**16. Choice of Law; Jurisdiction.** Puerto Rico law governs this Agreement. Any claim or cause of action arising out of this Agreement against MAS must be initiated and maintained exclusively in the state courts located in San Juan, Puerto Rico.

**17. Entire Agreement; Assignment.** This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein. This Agreement may not be assigned, directly or by operation of law,

without MAS's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and permitted assigns.

**18. Severability.** If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

**19. Credit and Financial Inquiries; Additional Locations; Inspections.** MAS may, at any time, perform reasonable procedural or financial reviews and inquiries of Merchant, which MAS considers necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such reviews and inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. Merchant authorizes parties contacted by MAS to release the credit information requested by MAS, and Merchant agrees to provide MAS a separate authorization for release of credit information, if requested. Merchant will provide any financial statements, income tax and business tax returns and other financial information as MAS may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant shall provide all information requested by MAS to complete MAS's audit and Merchant warrants all information provided shall be true, complete and accurate. Merchant may accept Cards only at locations approved by MAS. Additional locations may be added, subject to MAS's approval, which shall be in MAS's sole discretion. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit MAS, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this Paragraph may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. MAS, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with federal and state laws, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing, and data security provisions, including Card Association compliance, emergency incident response services and PCI forensic investigator services, among others, as provided by a third party designated by MAS for data and systems security incidents and payable by Merchant. Merchant will make available its records maintained and produced under this Agreement and Merchant's facilities, upon notice during normal business hours, for examination so MAS may determine if Merchant maintains sufficient experienced personnel, facilities, and systems to perform Merchant's obligations under this Agreement and determine if Merchant will perform in a professional manner that does not discredit MAS or Card Associations. Nothing in this Paragraph may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit or examination.

**20. Exclusivity.** Merchant shall submit, on an annual basis, no less than 100% of Merchant's total Transactions to MAS unless MAS gives its prior written consent for Merchant to process a designated type of transaction with a third party ("Transaction Exception"). Merchant understands and agrees MAS's consent to a Transaction Exception shall not constitute MAS's consent for another type of transaction to be processed by a third party servicer. If Merchant fails to submit to MAS 100% of the total number of Transactions (excluding all Transaction Exceptions, if any) Merchant will pay MAS damages in an amount equal to the greater of (i) the average monthly processing fees charged to Merchant for the previous 12 months (or such shorter time if the merchant has processed for less than 12 months) multiplied by the number of months remaining under the Agreement, or (ii) \$295 ("Non-Exclusivity Fee") whichever is greater. Merchant acknowledges and agrees that the Non-Exclusivity Fee described herein is not a penalty but rather is a reasonable computation of the financial harm caused by Merchant's failure to submit all Transactions to MAS as required by this Agreement as represented by Merchant and upon which MAS's fees and services have been based.

**21. Marketing of Non-Bankcard Services.** From time to time, MAS may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. If such offers are made, Merchant may decline the offers or be deemed to have accepted the offers and be liable for payment therefor.

**22. Force Majeure.** The parties will be released from liability hereunder if they fail to

perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation, or priority, or any other similar cause beyond either party's reasonable control.

**23. Confidentiality.** Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to MAS, and Card Issuers.

**24. Cooperation.** In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.

**25. No Third Party Beneficiary.** No other person or entity may be deemed to be a third party beneficiary of this Agreement.

**26. Conflicts.** If any inconsistency exists between the terms of this Agreement and any Card Association rule, bylaw, regulation, policy, or guideline, such rule, bylaw, regulation, policy, or guideline will control.

**27. Survival.** Provisions that survive termination or expiration of this Agreement include Sections B.17, B.19, B.20 C.6, D.4 and E.20, and any other provisions that by their nature are intended to survive.

\_\_\_\_\_  
Merchant Authorized First Name and Last

\_\_\_\_\_  
Signature