PAR PAYMENT SERVICES
TERMS AND CONDITIONS

These PAR Payment Services Terms and Conditions ("Terms" or "Agreement") govern your use of credit and debit card payment processing services ("Services," as further described herein) facilitated by PAR Payment Services LLC ("PAR Payment Services," "PPS," or "we"). These Terms apply to any individual, entity, or organization, and if a parent company, may apply to each of such parent company's individual locations identified in Schedule 2 ("Additional Merchant Locations"), as applicable ("Merchant" or "you") applying for or accessing the Services and become effective upon your signature below ("Effective Date").

THESE TERMS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND US. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, DO NOT USE THE SERVICES.

THESE TERMS CONTAIN PROVISIONS THAT GOVERN HOW DISPUTES BETWEEN YOU AND US ARE RESOLVED, WHICH INCLUDE AN AGREEMENT TO SUBMIT ANY DISPUTE RELATED TO THE SERVICES OR THESE TERMS TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEEDING IN COURT. THESE TERMS ALSO INCLUDE A JURY TRIAL WAIVER AND A CLASS ACTION WAIVER, WHICH MEANS YOU AGREE NOT TO HAVE A TRIAL BY JURY AND NOT TO PROCEED WITH ANY DISPUTE AS PART OF A CLASS ACTION. PLEASE SEE SECTION 12.8 OF THESE TERMS OF SERVICE FOR FURTHER INFORMATION.

1.0 Services; Processing Partners.

1.1 As used in these Terms, "Services" means the payment processing services offered by PPS that allows Merchant to accept credit cards and debit cards for goods or services sold by Merchant to its customers ("Customers"), and such other services as are necessary or supplemental to such payment processing services. PPS has engaged a processor of card transactions ("Processor") that provides support for the Services and a bank that is a member of the Visa, Mastercard, and/or Discover networks ("Card Networks," which may also include American Express). As of the date of these Terms, the Processor is Worldpay, Inc., a subsidiary of Fidelity National Information Services, Inc., and its sponsor bank that is a member of the Card Networks is Fifth Third Bank, an Ohio state bank. The Processor and its sponsor bank are referred to collectively in these Terms as the "Acquirer." PPS is entering into these Terms with you on behalf of and as an agent for the Acquirer. You can contact the Acquirer via email at getinfo@fisglobal.com or at the following address: Fidelity National Information Services (FIS), 323 Riverside Drive, Jacksonville, FL 32202. The Processor and/or member bank may be changed at any time with or without notice to you. You understand and agree that PPS may share any of Merchant's Confidential Information or other information with the Acquirer and that such disclosure will not be considered a breach of these Terms or any other contractual agreement between you and us.

1.2 You acknowledge and agree that the provision of Services by PPS is conditioned on PPS's relationship with the Acquirer and PPS's registration as a payment facilitator with the Card Networks, as applicable. The Acquirer or any Card Network may terminate its relationship with PPS, decline to renew PPS's registration, or de-register PPS as a payment facilitator at any time and for any reason, and you have no recourse against PPS in case any such event occurs that affects your ability to receive the Services and/or accept payments from your Customers.

2.0 Merchant Application, Identification, and Underwriting.

2.1 You must apply to receive a merchant processing account ("Account") with PPS to use the Services by supplying required contact information and other information about you and/or your business or entity through the application provided by PPS ("Application"). By signing this agreement, you agree and certify that (a) the information you provide in the Application will be complete and accurate; (b) Merchant is in a business seeking to receive services for business purposes only, and (c) that the person signing the Application will be a principal of the Merchant who is duly authorized to execute and submit the Application.

2.2 Merchant understands and agrees that submission of an Application does not entitle you to any services and does not create any binding obligations on PPS. PPS or Acquirer may decline your Application for any reason, in its sole discretion. You must be at least eighteen (18) years of age, or the age of majority in your state of residence, to apply for an Account and use the Services. You must be a citizen of the United States, a legal permanent resident of the United States, or a United States business or nonprofit organization having a physical presence in the United States and authorized to conduct business in the state(s) in which you operate in order to receive an Account. Your Account must be linked to a verified United States bank account. You are responsible for maintaining the security and confidentiality of any passwords or other credentials of your Account access and for any use of or action taken under them. If any administrative account ID or password is stolen or otherwise compromised, you shall immediately change the password and inform PPS of the compromise. You are solely responsible for the accuracy and completeness of the data and all activity in your account. PPS may change the authorization method for access to your account if it determines in its sole discretion that there are circumstances justifying such changes. PPS is not responsible for loss of any data in transmission or improper transmission by you. As between the parties, you are responsible for obtaining and maintaining all computer hardware, software, communications and equipment needed to access and use the Services, and for paying all associated third-party access charges.

2.3 BY SIGNING BELOW, MERCHANT AUTHORIZES PPS OR AN AGENT ACTING ON ITS BEHALF TO PROCURE INFORMATION AND REPORTS FROM FEDERAL, STATE, AND PRIVATE ENTITIES WHICH MAINTAIN RECORDS CONCERNING YOUR PAST ACTIVITIES RELATING TO YOUR DRIVING, CREDIT, CIVIL, EDUCATION, EMPLOYMENT AND OTHER EXPERIENCES. THIS INFORMATION AND ANY REPORTS MAY BE OBTAINED FROM OR COMPILED WITH INFORMATION FROM CREDIT BUREAUS, COURT RECORD REPOSITORIES, MILITARY RECORDS, DEPARTMENT OF MOTOR VEHICLES, PAST OR PRESENT EMPLOYERS AND EDUCATIONAL INSTITUTIONS, GOVERNMENTAL OCCUPATIONAL LICENSING OR REGISTRATION ENTITIES, BUSINESS OR PERSONAL REFERENCES, ANY PUBLIC DOMAIN, INSURANCE COMPANY, AND ANY OTHER SOURCE REQUIRED TO VERIFY INFORMATION THAT MERCHANT HAS VOLUNTARILY SUPPLIED FOR THE PURPOSE OF VERIFYING ITS FINANCIAL STANDING AND CREDIT WORTHINESS OR THAT IS OTHERWISE REQUIRED BY PPS TO PERFOM A CREDIT INVESTIGATION. DEPENDING ON MERCHANT'S CIRCUMSTANCES, MERCHANT UNDERSTANDS THAT IT IS POSSIBLE THAT ITS CREDIT SCORE MAY BE IMPACTED IF PPS ACCESSES MERCHANT'S CREDIT REPORT.

2.4 Merchant authorizes PPS, directly or through affiliates or contractors, to perform a review of Merchant's principals, finances, activities, and operations that PPS deems necessary and appropriate (i) prior to providing Services and, (ii) periodically, as determined by PPS, as long as Merchant receives Services under these Terms. Merchant agrees to provide PPS or such affiliates or contractors with such information as PPS may reasonably require in connection with such review and authorizes PPS to retrieve information from PPS's service providers, including credit bureaus and information bureaus. Merchant agrees and acknowledges that such information may include personally identifiable information of Merchant's principals and employees. In addition, Merchant authorizes PPS to share such information with the Acquirer and its respective affiliates and service providers as

necessary to provide the Services. Without limiting the foregoing, Merchant agrees to cooperate with PPS to obtain any additional authorizations from Merchant's principals and beneficial owners as may be required for PPS to obtain credit reports about such principals and beneficial owners. If we cannot verify that information you provide is complete and accurate, your identity cannot be validated, or your credit worthiness is deemed unsatisfactory, we may deny use of our Services or close your Account.

2.5 To help the government fight the funding of terrorism and money laundering activities, applicable law may require the Acquirer, PPS, or the Card Networks to obtain, verify, and record information that identifies each person who receives access to the Services. Accordingly, Merchant shall, when requested, provide to the Acquirer, PPS, or the Card Networks, as relevant, documentary and other evidence of Merchant's identity or the identities of its beneficial owners and principals, so that Acquirer, PPS, or the Card Networks may comply with any applicable law or regulation or the operating rules, policies, and procedures of the Card Networks ("Card Network Operating Rules"). Without limiting the foregoing, PPS must obtain from you the identifying information of the beneficial owners of 25% or more of Merchant and at least one individual with significant control over Merchant.

3.0 Fees and Payment.

3.1 **Fees**. In exchange for receiving the Services, Merchant agrees to pay the fees, including applicable transaction and chargeback fees, as listed in Schedule 1, and incorporated herein by this reference ("Fees"). We reserve the right to change our fees with at least thirty (30) days advance notice. By continuing to use the Services, you consent to the change in Fees. To withdraw your consent, you must close your Account and provide us with written notice prior to the effective date of such change in Fees. If you do not accept the change in Fees and withdraw your consent prior to the expiration of the Initial Term of this Agreement or any Renewal Term, you will be deemed to have terminated these Terms for convenience under Section 8.2 below; provided however, the Early Termination Fee in Section 8.2 will not apply.

3.2 **Designated Account**. Merchant will set up and maintain a deposit account ("Designated Account") for the Acquirer to deposit the proceeds of a sales transaction between you and a Customer related to your sale of goods and/or services ("Transactions") and to offset or ACH debit any amounts owed to PPS or Acquirer. Merchant will not change the Designated Account with obtaining written consent from PPS. Merchant's failure to maintain the Designated Account with sufficient funds to satisfy all obligations to PPS or Acquirer contemplated by these Terms may result in immediate suspension of Merchant's access to the Services and/or termination of this Agreement. Notwithstanding the foregoing, if the Fees and other amounts owed under these Terms or an ACH debit for such amounts causes the balance in the Designated Account to be less than zero dollar ($0), PPS or Acquirer, as applicable, may (i) charge an overdraft fee; (ii) require that Merchant make a wire transfer to the Designated Account within one (1) banking business day of notice; (iii) collect under any guaranty, or (iv) take any other action authorized by law.

3.3 **Other Amounts Owed**. Merchant will be liable to PPS for any fees, charges, or other amounts incurred by PPS in connection with these Terms, including but not limited to: (i) chargebacks, reversals, invalidated payments, or refunds; (ii) amounts incurred attributable to unauthorized use of or access to Customer data or other information in Merchant's systems; (iii) fraudulent use of Merchant's terminal identification numbers; (iv) fines and penalties imposed by a Card Network or a regulatory or law enforcement agency; (v) non-sufficient funds fees; and (vi) ACH debits that overdraw the Designated Account or Reserve Account (defined in Section 3.7 of these Terms) or are otherwise dishonored.

3.4 **Payment**. Subject to the terms of this Agreement, PPS shall instruct Acquirer to send to Merchant's Designated Account all amounts due to Merchant from Merchant's Transactions, minus any amounts owed to PPS or Acquirer under this Agreement.

3.5 **ACH Authorization**. Merchant authorizes PPS and Acquirer to initiate ACH credits and debits to the Designated Account and the Reserve Account (defined in Section 3.7 of these Terms). This authorization will remain in effect after termination of this Agreement and until all amounts owed to PPS and Acquirer are paid in full. In the event Merchant changes the Designated Account in accordance with Section 3.2 of these Terms, this authorization will apply to the new account. If you revoke your authorization, you must notify us in writing and allow at least thirty (30) days from our receipt of notification for your revocation to become effective. Without limiting any provision of this Section 3.5, in the event that setoff against payments made to Merchant are not sufficient to cover the Fees and other amounts due under these Terms, Merchant agrees that PPS or Acquirer may initiate an ACH debit to the Designated Account for such amounts.

3.6 **Taxes**. Merchant shall pay, indemnify, and hold PPS harmless from (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on PPS's income, and (ii) all government permit fees, customs fees, and similar fees which PPS may incur with respect to these Terms. Such taxes, fees, and duties paid by Merchant shall not be considered a part of, a deduction from, or an offset against, payments due to PPS hereunder. PPS will not determine whether taxes apply, or calculate, report or remit any taxes to any taxing authority arising from your use of the Services. Notwithstanding the foregoing, PPS or Acquirer may have tax reporting responsibilities in connection with the Service. PPS or Acquirer may report to the Internal Revenue Service on Form 1099-K as required by law (using your name, address, tax identification number), the total dollar amount of the payments you received in a calendar year.

3.7 **Reserve Account**. In their respective sole discretions, PPS or Acquirer may require Merchant to establish and maintain a deposit account, held at Acquirer's sponsor bank, as security for Merchant's current and future obligations under these Terms (the "Reserve Account"). PPS or Acquirer shall determine the amount of funds to be held in the Reserve Account, and Merchant agrees to deposit that amount in the Reserve Account. Merchant also agrees that PPS or Acquirer (i) may initiate ACH debits to the Designated Account; or (ii) withhold amounts that would otherwise be paid to the Designated Account on Merchant's behalf, for the purpose of establishing, maintaining, or increasing the Reserve Account. PPS or Acquirer may, without notice to Merchant, apply deposits in the Reserve Account against any amounts owed by Merchant under these Terms. By executing these Terms, Merchant grants to PPS and Acquirer a security interest in the funds held in the Reserve Account. Funds held in the Reserve Account shall remain in the Reserve Account until twelve (12) months (or for such longer period of time as is consistent with PPS's or Acquirer's liability for Transactions in accordance with the Card Network Operating Rules) following the later of termination of these Terms or Merchant's last submission of Transactions for processing, provided, however, that Merchant shall remain liable for any liabilities under these Terms occurring beyond such twelve-month or longer period. Acquirer's sponsor bank shall have sole control of the Reserve Account and Merchant agrees not to use funds in the Reserve Account for another purpose or withdraw such funds without Acquirer's written consent.

4.0 **Settlement and Chargebacks**.

4.1 **Designated Account**. Upon receipt of sales data for card Transactions, Acquirer will facilitate the funds transfer between the Card Networks and Merchant. After Acquirer receives credit for the Transaction, subject to Section 4.4 of this Agreement, Acquirer will fund Merchant for each Transaction directly to the Designated Account. PPS is not a bank, money transmitter, or money services business and does not at any point hold, own, control, or transmit funds for settlement. Merchant agrees that the deposit of funds to the Designated Account shall discharge PPS and Acquirer of any settlement obligation to Merchant. Notwithstanding anything to the

contrary in these Terms, Merchant acknowledges that PPS or Acquirer may retain and use Transaction data during and after the term of this Agreement without restriction and may share such data with third parties, including, but not limited to third party service providers. Merchant further acknowledges that PPS or Acquirer may aggregate the Transaction data and that PPS or Acquirer (as applicable) shall be the sole owner of such aggregated data.

4.2 Adjustments. All Transaction data and deposits are subject to final checking by PPS or Acquirer and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to its Designated Account are provisional and subject to chargebacks and adjustments: (i) in accordance with the Card Network Operating Rules; (ii) for any of your obligations to PPS or Acquirer; and (iii) in any other situation constituting suspected fraud or a breach of these Terms, whether or not a Transaction is charged back by the card issuer.

4.3 Responsibility for Losses. You are fully liable for all losses of any kind, including but not limited to (a) Transactions returned or charged back for whatever reason; (b) credit and fraud losses; (c) Card Network losses that we may incur in connection with your Transactions; and (d) any fines, fees, assessments, or other costs or liability we may incur as a result of your violation of Laws (as defined in Section 5.3 of this Agreement), Rules (as defined in Section 5.1 of this Agreement), or this Agreement. You will pay on demand the value of all chargebacks. You furthermore authorize PPS or Acquirer to offset from incoming Transactions and to debit the Designated Account, the Reserve Account or any other account held at Acquirer's sponsor bank the amount of all chargebacks. You must fully cooperate in complying with the Card Network Operating Rules regarding chargebacks.

4.4 Delayed Settlement. Acquirer may delay, within its reasonable discretion, settlement for Transactions that require investigation of suspicious or fraudulent activity or funds for Transactions for which Acquirer has not received funding from the applicable Card Network. Additionally, Acquirer may delay funding if the Designated Account has a negative balance until the underlying issue causing the negative balance is resolved to Acquirer's discretion. Should PPS need to investigate or resolve any pending dispute related to your Account, Acquirer may defer payout or restrict access to your funds for the entire time it takes us to do so. Acquirer may also defer payout or restrict access to your funds as required by law or court order, if or otherwise requested by law enforcement or a government entity. If PPS or Acquirer suspects future chargebacks or disputes as a result of Transactions to your Account, the Acquirer may defer payout and/or restrict access to your funds until PPS or Acquirer reasonably believes, in their sole discretion, that the risk of receiving a chargeback or dispute has passed. Acquirer and PPS have no obligation to payout funds that are proceeds of Transactions that violate the Rules or the Laws.

5.0 Additional Merchant Responsibilities.

5.1 Compliance with Rules. You must comply with all rules and operating regulations issued from time to time by Acquirer (as PPS makes them available to you), the Card Network Operating Rules, any policies and procedures provided by us, the Payment Card Industry Data Security Standard ("PCI DSS") and the Payment Application Data Security Standard ("PA-DSS") (collectively, the "Rules"). The Rules are incorporated into this Agreement by this reference. Merchant may review the Visa, Mastercard, and American Express websites and may contact Discover for a copy of each of their respective rules and regulations. As of the date of these Terms, the Visa rules are at https://usa.visa.com/support/small-business/regulations-fees.html and the Mastercard rules are at https://www.mastercard.com/us/en/for-the-world/about-us/mastercard-privacy-and-data-responsibility.html. You acknowledge and agree that the Card Networks have the right to enforce any provisions of their respective Card Network Operating Rules and to prohibit you from engaging in any conduct that the Card Network deems could injure or create a risk of injury to the Card Network, including but not limited to injury to reputation, or that could adversely affect the integrity of the Card Networks.

5.2 **Security of Data**. As used in these terms, "Cardholder Data" means information associated with a payment card, such as account number and expiration date. If you handle, transmit, or store any Cardholder Data in connection with your use of the Service, you agree to comply with the PCI DSS. Further, you agree to certify such compliance and provide documentation in accordance with Card Network Operating Regulations, or when asked by PPS to do so. You also agree that you will use only PCI DSS-compliant service providers in connection with the storage, processing, or transmission of Cardholder Data. You agree that all point-of-sale ("POS") devices used by you will comply with PCI DSS, the Card Network Operating Regulations, and any other applicable security requirements as may be required by PPS or Acquirer from time to time. PPS is required to monitor and maintain a record of your compliance with such requirements and will apply a fee, subject to Section 3.1, of $14.95 per merchant identification number (MID) to each monthly statement for such monitoring. If you have not validated PCI DSS compliance within ninety (90) days of Account approval, or in subsequent years on or before the anniversary date of Account approval, PPS may charge a monthly non-compliance fee, subject to Section 3.1, of $75.00 until you provide validation of compliance. You are fully responsible for the security of data (including but not limited to Cardholder Data) on your website or otherwise in your possession or control and compliance with all Laws, including any and all privacy laws relating to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (both technical and physical), disposal, destruction, disclosure or transfer of such data. You are responsible for the actions or inactions of your officers, directors, shareholders, employees and agents, including any service providers. You agree to comply with all applicable laws, Card Network Operating Regulations, and rules in connection with your collection, security and dissemination of any personal, financial, or transaction information. You must maintain all systems and media containing Cardholder Data and Transaction information in a secure manner to prevent unauthorized access to or disclosure of such information.

5.3 **Compliance with Laws**. You further agree to comply with all state, federal, and local laws, rules, and regulations applicable to Merchant's business ("Laws"), as amended from time to time, including but not limited to anti-money laundering laws and regulations, provisions of the Bank Secrecy Act (BSA) for which PPS or Acquirer may require your compliance; regulations and guidance promulgated by the U.S. Treasury's Office of Foreign Assets Control (OFAC); and, the consumer protection laws and regulations enforced by the Federal Trade Commission and other applicable federal and state regulatory or enforcement agencies.

5.4 **Transactions**. Merchant will not submit Transactions for processing for any businesses, materially different products or services, or methods of selling other than those stated in the Application without PPS and Acquirer's prior written consent. Merchant agrees to submit through the Services only Transactions that are authorized by its Customers. Merchant may set a minimum Transaction amount to accept a card that provides access to a credit account, under the following conditions: (a) the minimum Transaction amount does not differentiate between card issuers; (b) the minimum Transaction amount does not differentiate between Mastercard, Visa, or any other acceptance brand; and, (c) the minimum Transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve System). You agree to comply with the fraud control standards prescribed by the Card Networks and maintain a chargeback to sales volume ratio below the Card Networks' requirements regarding excessive chargebacks.

5.5 **Prohibited Activities**. Merchant must not:

- Process transaction on behalf of any other entity or individual;
- Submit Transactions for any purposes related to any illegal, fraudulent, or prohibited activity;
- Process recurring Transactions unless specifically approved by PPS or Acquirer and done in accordance with applicable Laws and Rules;
- Require a Customer to complete a postcard or similar device that includes the Customer's account number, card expiration date, signature, or any other card account data in plain view when mailed;

- Require a Customer to provide personal information, such as a home or business telephone number, home or business address, or a driver's license number as a condition for honoring a card, unless permitted under the Laws and Rules.
- Add any tax to Transactions, unless applicable law expressly requires that a Merchant impose a tax (any tax amount, if allowed, must be included in the Transaction amount and not collected separately);
- Add any amount to the posted price of goods or services you offer as a condition of paying with a card, except as permitted by the Laws and Rules;
- Request or use an account number for any purpose other than as payment for its goods or services;
- Disburse funds in the form of travelers checks if the sole purpose is to allow the Customer to make a cash purchase of goods or services from Merchant;
- Disburse funds in the form of cash unless Merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the Transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant), or Merchant is participating in a cash back service.
- Submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Merchant, irrespective of Customer approval;
- Accept a credit card issued by a U.S. issuer to collect or refinance an existing debt;
- Accept a credit card to collect or refinance an existing debt that has been deemed uncollectable;
- Submit a Transaction that represents collection of a dishonored check;
- Store Cardholder Data in violation of the Laws or the Rules, including but not limited to the storage, tracking, or disclosure of data except for the transaction for which it was given and any post transaction activities in connection with such immediate transaction (e.g. chargeback);
- Disclose Cardholder Data or transaction information to any third party, except to a service provider, or as otherwise required or permitted by Laws and the Card Network Operating Regulations.

5.6 **Disputes with Customers**. Merchant agrees that all disputes between Merchant and any Customer relating to any transaction will be settled between Merchant and the Customer and in accordance with the Rules. Neither PPS nor Acquirer shall bear any responsibility for such disputes. Merchant may not ask or require Customers to waive a right to dispute a Transaction.

5.7 **Cooperation**. Merchant agrees to (i) provide any information reasonably requested by PPS or Acquirer about Merchant's business activities; (ii) permit the Card Networks, Acquirer, or PPS to conduct an on-site inspection of Merchant's premises upon request and reasonable notice, and (iii) cooperate in any legal investigation, as may be required by PPS or Acquirer or any government or law enforcement agency. Merchant's failure to cooperate with the requests of PPS, Acquirer, or any government or law enforcement agency may result in an adverse action taken against Merchant, including but not limited to the assessment of chargebacks, fines, fees, or penalties. We or Acquirer may report information about you, your Account, your use of the Services, or any of your Transactions to law enforcement or other government authorities.

5.8 **MATCH™ and Negative Merchant File**. Merchant acknowledges that Acquirer may be required to report Merchant's business name and the name of Merchant's principals to the MATCH listing maintained by Mastercard and accessed by Visa or to any other negative or terminated merchant file of any other Card Network, if applicable, pursuant to the requirements of the Card Network Operating Rules. Merchant specifically consents to Acquirer's fulfillment of obligations to the listing of Merchant and Merchant information in such databases, and Merchant waives all claims and liabilities Merchant may have as a result of such reporting.

6.0 **Direct Relationship with Acquirer**. Card Network Operating Rules require upon certain conditions that you enter into a separate agreement with PPS and the Acquirer ("Acquirer Agreement"), a copy of which will be

provided to you upon request. By agreeing to the terms of this Agreement, you also agree to the terms of the Acquirer Agreement; provided however, you are not a third-party beneficiary to the Acquirer Agreement. The Acquirer Agreement is applicable to you if you process or anticipate processing greater than $1,000,000 in Visa transactions and/or $1,000,000 in MasterCard transactions in any 12-month period. If you process greater than $1,000,000 in American Express charges annually, you will be converted to a direct card acceptance agreement with American Express and be bound by the current American Express card acceptance agreement, subject to fees payable by you for American Express acceptance.

7.0 Audits; On-Site Visits. Merchant authorizes PPS and Acquirer, directly or through affiliates or contractors, to audit its records, systems, processes, or procedures to confirm compliance with these Terms. Without limiting the foregoing, and if reasonably requested by PPS due to excessive or other issues of concern with respect to Merchant's Account, Merchant will provide audited financial statements prepared by an independent certified public accountant selected by Merchant. The Card Networks, Acquirer, and PPS, directly or through affiliates or contractors, have the right to conduct on-site Merchant visits or to otherwise contact you directly to ensure compliance with all requirements under the Laws and Rules. You are responsible for demonstrating compliance with the Laws and Rules.

8.0 Term and Termination.

8.1 Term. These Terms will remain in effect for a period of three (3) years ("Initial Term") and will renew for successive twelve (12) month periods ("Renewal Term") unless terminated as set forth below. The Initial Term and the Renewal Term shall be referred to herein collectively as the "term".

8.2 Termination for Convenience. Subject to payment of the Early Termination Fee set forth herein, Merchant may terminate this Agreement by closing its PPS Account and sending at least thirty (30) days advance written notice to PPS of such closure. Merchant shall incur and pay an early termination fee equal to the Merchant's estimated Monthly Transaction Volume as set forth in the Application multiplied by the Fees, as identified in Schedule 1, excluding any network, interchange, assessment and related Acquirer processing Fees and charges, for each MID under these Terms multiplied by each month for the remainder of the then-current term ("Early Termination Fee"). Merchant acknowledges that the Early Termination Fee is not a penalty, but rather a reasonable estimate of the damages PPS sustained because of Merchant's termination of the Agreement before the end of the Initial Term and any Renewal Term. PPS may terminate this agreement, at any time, by giving Merchant thirty (30) days' written notice.

8.3 Constructive Termination. Merchant shall be deemed to have constructively terminated this Agreement for Convenience if: (a) Merchant fails to begin using Services within sixty (60) days after signing this Agreement or (b) if, during any rolling six month period, Merchant's Monthly Transaction Volume falls below seventy five (75) percent of Merchant's estimated Average Monthly Transaction Volume as set forth in the Application for two (2) consecutive months. Monthly Transaction Volume is defined for each month, as the Merchant's total card processing sales volume divided by the total number of card transactions.

8.4 Other Termination. PPS may terminate these Terms and/or immediately cease providing the Services, without notice, if (a) Merchant fails to pay any amount to PPS when due or otherwise violates this Agreement, (b) in PPS's opinion, provision of Services to Merchant may be a violation of the Rules or any Laws, (c) PPS believes that Merchant has violated or is likely to violate the Rules or the Laws, (d) PPS or Acquirer determines Merchant poses a financial or regulatory risk to PPS, Acquirer or a Card Network, (e) PPS's agreement with Acquirer terminates, (f) any Card Network deregisters PPS, (g) Acquirer ceases to be a member of the Card Networks or fails to have any required licenses, (h) Acquirer is required to terminate these Terms by any of the Card Networks, or (i) Merchant is the subject of any bankruptcy, or insolvency, or makes an assignment for the benefit of its creditors. In the event of any such termination, in addition to any other rights and remedies available to it, PPS

shall be entitled to the Early Termination Fee set forth in Section 8.2 above. The Card Networks often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated due to certain causes. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Networks for inclusion on such list(s). You agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

8.5 Effect of Termination. Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. Merchant's obligations regarding any Transactions accepted for processing shall survive termination. In addition, upon termination, any amounts owed by Merchant to PPS or Acquirer shall become immediately due and payable. Merchant authorizes PPS or Acquirer to debit such amounts from the Designated Account or Reserve Account and, if the funds in each account are insufficient, Merchant agrees to immediately pay any remaining amounts owed together with all costs and expenses incurred to collect that amount, including attorneys' fees, if applicable.

9.0 Representations and Warranties; Exclusion of Consequential Damages; Limitation on Liability.

9.1 General. You represent and warrant to us at the time and execution and during the term of this Agreement the following: (a) all information you provided to us about your business and its principals remains accurate and complete; (b) Merchant is duly organized, authorized and in good standing under the laws of the state, region or country of its organization and is duly authorized to do business in all other states, regions or countries in which Merchant's business operates; (c) Merchant and the authorized signatory executing this Agreement have the full power and authority to execute, deliver and perform this Agreement; (d) this Agreement is binding and enforceable against Merchant and no provision requiring Merchant's performance is in conflict with its obligations under any agreement to which Merchant is a party; (e) There is no investigation, action, suit or proceeding pending or to Merchant's knowledge threatened against Merchant which if decided adversely would impair Merchant's ability to carry on business substantially as now conducted or which would adversely affect Merchant's financial condition or operations; and, (f) Merchant has never entered into an agreement with a third party to perform credit card or debit card processing which has been terminated by that third party.

9.2 Disclaimer of Warranties. THIS AGREEMENT IS AN AGREEMENT FOR SERVICES AND, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PPS AND OUR AFFILIATES DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. The parties acknowledge that the Services may be subject to outages and delay occurrences. As such, we do not guarantee continuous or uninterrupted access to the Services. Merchant further acknowledges that access to the Services may be restricted for maintenance. We will make reasonable efforts to ensure that Transactions are processed in a timely manner; however, we will not be liable for any interruption, outage, or failure to provide the Services.

9.3 No Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL,

INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.4 Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, WE AND OUR AFFILIATES' CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY MERCHANT AGAINST US AND/OR OUR AFFILIATES, WHETHER RELATED OR UNRELATED) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ADDENDA TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY US FOR SERVICES PERFORMED UNDER THIS AGREEMENT IN THE IMMEDIATELY PRECEDING 12 MONTHS PRIOR TO THE CLAIM.

9.5 Indemnification. Merchant agrees to indemnify, defend, and hold harmless PPS and Acquirer, their affiliates, officers, directors, agents, employees and suppliers from and against any lawsuit, claim, liability, loss, penalty or other expense (including attorneys' fees and cost of defense) they may suffer or incur as a result of Merchant's (a) breach of this Agreement or any other Agreement entered into with PPS or its suppliers in relation to Merchant's use of the Services; (b) the goods or services provided by Merchant to Customers; (c) Merchant's or its employees'/agents' fraud, gross negligence, willful misconduct, or failure to comply with this Agreement; (d) Merchant's use of the Services; and/or (e) Merchants violation of any Laws or Rules.

10.0 Intellectual Property.

10.1 Network Marks. You acknowledge and agree that the Card Networks are the sole and exclusive owners of their respective marks, that you will not contest the ownership of the Card Networks' marks for any reason, and any Card Network may at any time, immediately and without advance notice, prohibit you from using such Card Network's marks for any reason. Merchant's use or display of a Card Network mark must fully comply with the Card Network Operating Rules and will terminate effective with the termination of this Agreement or upon notification to discontinue such use or display. Merchant's use or display of a Card Network mark does not provide Merchant with any ownership or interest in that Card Network mark.

10.2 PPS Marks. PPS grants Merchant a revocable, non-exclusive, non-transferable license to use PPS's trademarks to identify the Service solely in conjunction with the use of the Service. Merchant agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any PPS trademark or any other mark, trade name or product designation belonging to or licensed to PPS or its affiliates (including, without limitation registering or attempting to register any trademark or any such other trademark, trade name or product designation). Upon expiration or termination of this Agreement, Merchant will immediately cease all display, advertising and use of all of the PPS trademarks.

10.3 Intellectual Property. All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layout, processing techniques, procedures, algorithms, and methods), owned, developed, or licensed by us prior to, during the term of, or after the Agreement shall be and remain our exclusive property. PAR Payment Services owns the title, copyright and other worldwide intellectual property rights in the Service and all copies of the Service. This Agreement does not grant you any rights to PAR Payment Services' trademarks or service marks, nor may you remove, obscure, or alter any of PAR Payment Services' trademarks or service marks included in the Service. Other than the express licenses granted by this Agreement, we grant no right or license by implication, estoppel or otherwise to the Service or any

of our intellectual property rights. Each party shall retain all rights, title, and interest in and to its own products and services and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein.

11.0 Confidential Information. Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this Agreement, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors, representatives and affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this Agreement). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party, or (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this section shall not prohibit the receiving party from (x) disclosing information to its affiliates, service providers, or other third parties as necessary to provide the services described in this Agreement; or (y) making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, if receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party unless prohibited by law or court order.

12.0 Miscellaneous.

12.1 Force Majeure. No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

12.2 Notices; Electronic Delivery. All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing including by electronic means. We may send notice to the mailing or e-mail address you have provided to us. You may send notice to us at PAR Payment Services, Attn: General Counsel, PAR Payment Services, LLC, 8383 Seneca Turnpike, New Hartford, New York 13413 or legal@partech.com. Notice shall be deemed to have been given, if sent by mail or email, when received and if sent by electronic means, when delivered. Merchant consents to electronic delivery of all documents related to the Services and accepts any future changes to those documents that may be delivered to Merchant. Merchant agrees to keep its e-mail information current at all times.

12.3 Publicity. No party shall make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).

12.4 Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes any previous agreements and understandings. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A

party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

12.5 **Severability**. If any part of this Agreement and any addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

12.6 **Assignability**. This Agreement may not be assigned by Merchant directly or by operation of law without PPS's prior written approval. If Merchant nevertheless assigns this Agreement without the consent of PPS, this Agreement shall be binding upon the assignee. Merchant shall inform PPS of any such assignment. Merchant agrees that our rights and obligations hereunder may be transferred, and we may assign this Agreement.

12.7 **Governing Law**. This Agreement is entered into, governed by, and construed pursuant to the laws of the State of New York without regard to conflicts of law provisions.

12.8 **Disputes**. IN THE EVENT OF A DISPUTE BETWEEN YOU AND US UNDER THIS AGREEMENT, YOU MUST FIRST CONTACT US TO ATTEMPT TO RESOLVE THE DISPUTE. IF YOU ARE UNSUCCESSFUL IN RESOLVING YOUR DISPUTES BY COMMUNICATING BETWEEN US WITHIN A REASONABLE TIME PERIOD, YOU AND PPS EACH AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY LAW:

(A) ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE, OR TO ANY SERVICE PROVIDED UNDER OR IN CONNECTION WITH THESE TERMS OF SERVICE, WILL BE SETTLED BY INDEPENDENT ARBITRATION INVOLVING A NEUTRAL ARBITRATOR AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER AAA ARBITRATION RULES, AS MODIFIED BY THESE TERMS OF SERVICE. AAA RULES AND FEE INFORMATION ARE AVAILABLE FROM THE AAA. ARBITRATION IS NOT A COURT PROCEEDING. THE RULES OF ARBITRATION DIFFER FROM THE RULES OF COURT. THERE IS NO JUDGE OR JURY IN AN ARBITRATION PROCEEDING;

(B) EVEN IF APPLICABLE LAW PERMITS CLASS ACTIONS OR CLASS ARBITRATIONS, YOU EXPRESSLY WAIVE ANY RIGHT TO PURSUE ON A CLASS BASIS ANY SUCH CONTROVERSY OR CLAIM AGAINST PPS OR ANY OF OUR AFFILIATES, OFFICERS, DIRECTORS, AGENTS, PARTNERS, LICENSORS, EMPLOYEES, CONTRACTORS, OR PREDECESSORS IN INTEREST. IF MULTIPLE CLAIMS ARE JOINED IN ONE ACTION, SOME OF WHICH WOULD NOT BE SUBJECT TO ARBITRATION, THE LATTER CLAIMS MUST BE STAYED UNTIL ANY CLAIMS IN THAT ACTION THAT ARE SUBJECT TO ARBITRATION HAVE BEEN RESOLVED. IF CLAIMS ARE ASSERTED AGAINST MULTIPLE PARTIES, SOME OF WHOM ARE NOT REQUIRED TO ARBITRATE, THE CLAIMS SUBJECT TO ARBITRATION MUST BE SEVERED. NO ARBITRATOR HAS THE AUTHORITY TO AWARD RELIEF IN EXCESS OF WHAT THESE TERMS OF SERVICE PROVIDE, OR TO ORDER CONSOLIDATION OR CLASS ARBITRATION, EXCEPT THAT AN ARBITRATOR DECIDING A CLAIM ARISING OUT OF OR RELATING TO A PRIOR AGREEMENT MAY GRANT AS MUCH SUBSTANTIVE RELIEF ON A NON-CLASS BASIS AS SUCH PRIOR AGREEMENT WOULD PERMIT. IN ALL ARBITRATIONS, THE ARBITRATOR MUST GIVE EFFECT TO APPLICABLE STATUTES OF LIMITATIONS AND WILL DECIDE WHETHER AN ISSUE IS ARBITRABLE OR NOT. IN A LARGE/COMPLEX CASE ARBITRATION, THE ARBITRATORS MUST ALSO APPLY THE FEDERAL RULES OF EVIDENCE AND THE LOSING PARTY MAY HAVE THE AWARD REVIEWED BY A REVIEW PANEL CONSISTING OF THREE ARBITRATORS; AND

(C) IN THE EVENT THE FOREGOING ARBITRATION REQUIREMENTS DO NOT APPLY, YOU AND PPS EACH WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY TRIAL BY JURY AND A JUDGE WILL DECIDE ANY AND ALL DISPUTES.