



## Merchant Agreement

RevTrak, Inc. (we, us, our) will process credit card and online payments for schools, cities, other government entities, or related non-profit organizations (Merchants).

### Definitions

**Merchant** A school, city, other government entity, or related non-profit that uses us to process their credit cards and online payments.

**Customer** The person or cardholder who pays money to the Merchant.

**Client Statement** A statement we provide to a Merchant that details transaction activity and fees.

### Fees

Online Transactions No changes.

Qualified Card Present Transactions No changes.

Card Reader (optional) No changes.

### Payment Method

You authorize us to process and fund transactions to bank accounts specified by you. Payments shall be funded by ACH transfer to your Designated Bank Account(s). An ACH debit for the fees will be generated from your account 2 business days after the Client Statement is generated.

A Client Statement will be provided electronically in accordance with the Operating Guide on approximately the 5<sup>th</sup> business day of each month detailing the transaction and fee activity for the previous month.

### Term & Cancellation

This is a month to month agreement and either party may cancel this agreement with a 30 day written notice.

### Miscellaneous

This Agreement and related documents constitute the entire understanding of the parties with respect to this Agreement. Both we and you shall be governed by this Merchant Agreement, and the User Guide to Operations which is incorporated by reference and is attached to this document. These Terms and Conditions may change from time to time at which time we shall provide a 30 day advance notice of any change.

You shall be liable for all taxes required to be paid or collected as a result of this Agreement. This Agreement shall be governed by the laws of the state of Minnesota.

### Merchant/User Information

<b>Legal Name:</b>			<b>Contact Name:</b>
<b>Address:</b>			<b>Contact Email:</b>
<b>City:</b>	<b>State:</b>	<b>Zip:</b>	<b>Contact Phone:</b>

### Acceptance

You do not need to sign and return this agreement as your continued use of our payment processing services will act as your acceptance of these new Terms and Conditions included in the User Guide, effective with the first processing by the new payment processor, and indicates your consent to be legally bound by them.



## User Guide to Operations

Revised: 10/24/12

### Introduction

This Guide is included to help you be a successful payment processing professional. As a merchant processing payments through RevTrak (us), you will use this Guide to help with best practices, legal requirements and the rules and regulations of the Associations (Visa, MasterCard, Discover, and NACHA) and software providers that assist us in taking payments. These organizations require that all persons using them agree to all of their rules and regulations. This Guide exists to help you understand the regulations. This Guide forms part of your agreement with us, along with the RevTrak Merchant Agreement, the Association Operating Regulations ('Operating Regulations'), and Merchant Services Agreements (Addendum A).

### 1. Getting Started

Upon receipt of your documentation, we will create a secure website to allow you to receive and monitor payments through the **RevTrak**<sup>®</sup> Web Store (the "Site"). The Site URL will be similar to <http://yourorganizationname.revtrak.net>. Your payments will be sent by ACH to your Bank Account based on the voided check or the substitute that you provide.

### 2. Underwriting

We will review some or all of the information that you submit in connection with your request to establish a Merchant Agreement, which we may forward on to our processor. After you submit your application, we or our processor may conclude that you will not be permitted to use our services.

### 3. Client / Customer Service

You are solely responsible for all customer service issues relating to your goods or services, including pricing, order fulfillment, order cancellation by you or your customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support, and feedback concerning experiences with your personnel, policies or processes. We are solely responsible for client service issues relating to any Merchant Agreement, payment, card processing, debiting or crediting. In performing customer service, you will always present yourself as a separate entity from us.

#### **4. Client Statements**

A Client Statement will be provided electronically on approximately the 5<sup>th</sup> business day of each month. Either an ACH debit will be generated for the fees from your Designated Account approximately two (2) business days after the Client Statement is generated, or payments will be funded to your Designated Account net of applicable fees, as determined by you, from available account options.

#### **5. Refunds and Returns**

By accepting payment card transactions with us, you agree to process returns of, and provide refunds and adjustments for, your goods or services through your Merchant Agreement in accordance with this Agreement and the Operating Regulations. Operating Regulations require that you will (a) maintain a fair return, cancellation or adjustment policy; (b) disclose your return or cancellation policy to customers at the time of purchase, (c) not give cash refunds to a customer in connection with a Card sale unless required by law, and (d) not accept cash or any other item of value for preparing a Card sale refund.

The amount of the refund/adjustment must include any associated taxes required to be refunded and cannot exceed the amount shown as the total on the original sales receipt.

You can process a refund through your Merchant Agreement up to one hundred and twenty (120) days from the day you accepted the payment. RevTrak will then net the return with your processing.

#### **6. Chargebacks**

A transaction may be reversed or charged back to your Merchant Agreement (a “Chargeback”) if the transaction (a) is disputed, (b) is reversed for any reason by the Association, our processor, or our financial institution, (c) was not authorized or we have any reason to believe that the transaction was not authorized, or (d) is allegedly unlawful, suspicious, or in violation of the terms of this Agreement.

For any transaction that results in a Chargeback, we will withhold the Chargeback amount in reserve or we will deduct the amount of any Chargeback and any associated fees, fines, or penalties assessed by the Association or our processor from your Merchant Agreement. If we are unable to recover funds related to a Chargeback for which you are liable, you will pay us the full amount of the Chargeback immediately upon demand.

Your failure to fully pay amounts that you owe us on demand will be a breach of this Agreement. You will be liable for our costs associated with collection in addition to the

amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and any applicable interest.

If we determine that you are incurring an excessive amount of Chargebacks, we may establish controls or conditions governing your Merchant Agreement, including without limitation, (a) establishing new processing fees, (b) creating a reserve in an amount reasonably determined by us to cover anticipated Chargebacks and related fees, (c) delaying payouts, and (d) terminating or suspending the Services.

You agree to assist us when requested, at your expense, to investigate any of your transactions processed through the Merchant Agreement. You permit us to share information about a Chargeback with the customer, the customer's financial institution, and your financial institution in order to investigate and/or mediate a Chargeback. We will request necessary information from you to contest the Chargeback. If the Chargeback is contested successfully, we will release the reserved funds to your Merchant Agreement. If a Chargeback dispute is not resolved in your favor by the Association or issuing bank, or you choose not to contest the Chargeback, we may recover the Chargeback amount and any associated fees as described in this Agreement. You acknowledge that your failure to assist us in a timely manner when investigating a transaction, including providing necessary documentation within five (5) days of our request, may result in an irreversible Chargeback.

By using the Merchant Agreement, you may receive information about customers or other users. You must keep such information confidential and only use it in connection with your Merchant Agreement. You may not disclose or distribute any such information to a third party or use the information for marketing purposes unless you receive the express consent of the customer or other user.

## **7. Disclosures and Notices**

You agree that we can provide disclosures and notices required by law and other information about your Merchant Agreement to you electronically by posting it on our website, the Site, or by emailing it to the email address listed in your Merchant Agreement. You also agree that electronic disclosures and notices have the same meaning and effect as if we had provided you with paper copies. Such disclosures and notices are considered received by you within 24 hours of the time posted to our website, or within 24 hours of the time emailed to you.

We will report annually to the Internal Revenue Service ("IRS"), or other entities as required by law, your name, address, Tax Identification Number, or Employer Identification Number (EIN), the total dollar amount of the payments you receive in a calendar year, and other information as may be required.

## 8. User Content

In connection with registration for a Merchant Agreement, users may upload photos or other materials or information to the Site. You agree that you will not upload to or use content on the Site unless you have created that content yourself, or you have permission from the copyright owner to do so.

## 9. Security

We have implemented technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure; however, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes.

We are committed to the secure operation of the systems used to operate your Web Stores. We are audited on an annual basis, are certified and compliant with Level 1 Payment Card Industry Data Security Standards (PCI DSS). Our systems are regularly tested for compliance with all applicable PCI DSS standards and best practices. Following are some security best practices that we recommend you adopt and maintain to strengthen your security environment:

- a) Do not allow credit account numbers to be distributed via unencrypted messaging technologies, such as email, instant messaging, etc.
- b) Install anti-virus software that updates automatically.
- c) Install all operating system patches, such as Windows Updates, timely to protect your system from known vulnerabilities.
- d) All cardholder data that may be used in phone orders should be entered directly into our system. Should hard copy data be received, it should be destroyed immediately after received in a manner that reconstruction is not practically possible (shredding, incinerated, pulped, etc). Any materials that are not immediately destroyed must be secured.

## 10. Termination

You may terminate this Agreement and by sending us notice at any time. Any funds that we are holding for you at the time of closure, less any applicable fees, will be paid to you, assuming all payout-related authentication requirements have been fulfilled. If a Chargeback investigation is pending at the time you close your Merchant Agreement, we may hold your funds as described above. If you are later determined to be entitled to some or all of the funds in dispute, we will release those funds to you.

We may terminate this Agreement and close your Merchant Agreement by sending you notice at any time. We may also suspend the Site and access to your Merchant

Agreement if you (a) have violated the terms of this Agreement, or any other agreement you have with us, (b) pose an unacceptable credit or fraud risk to us, or (c) provide any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct.

If your Merchant Agreement is terminated, you agree: (a) to continue to be bound by this Agreement, (b) to immediately stop using the Site, (c) that the license provided under this Agreement shall end, (d) that we reserve the right (but have no obligation) to delete all of your information and account data stored on our servers after a reasonable period of time, and (e) that we shall not be liable to you or any third party for termination of access to the Site or for deletion of your information or account data.

## **11. License**

We will not be liable to you for compensation, reimbursement, or damages in connection with your use of the Services, or in connection with any termination or suspension of the Site. Any termination of this Agreement does not relieve you of any obligations to pay any fees or costs accrued prior to the termination and any other amounts owed by you to us as provided in this Agreement.

We grant you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to electronically access and use the Site solely to accept and receive payments and to manage the funds you so receive, in accordance with this Agreement. The Site includes our website, any software, programs, documentation, tools, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) provided to you by us. You will be entitled to Site updates, subject to any additional terms made known to you at that time, when we make these updates available.

While we want you to enjoy the Site, you may not, nor may you permit any third party to do any of the following: (i) access or monitor any material or information on any of our systems using any manual process or robot, spider, scraper, or other automated means unless you have separately executed a written agreement with us referencing this section that expressly grants you an exception to this prohibition; (ii) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material or information from us unless provided to you for that purpose; (iii) permit any third party to use and benefit from the Site via a rental, lease, timesharing, service bureau or other arrangement; (iv) transfer any rights granted to you under this Agreement; (v) violate the restrictions in any robot exclusion headers on the Site or any of our services or products, work around, bypass, or circumvent any of the technical limitations of the Site, use any tool to enable features or functionalities that are otherwise disabled in the Site, or decompile, disassemble or otherwise reverse engineer the Site, except to the extent that such restriction is

expressly prohibited by law; (vi) perform or attempt to perform any actions that would interfere with the proper working of the Site, prevent access to or use of the Site by our other users, or impose an unreasonable or disproportionately large load on our infrastructure; or (vii) otherwise use the Site except as expressly allowed under this section.

## **12. Ownership**

The Site is licensed and not sold. We reserve all rights not expressly granted to you in this Agreement. The Site is protected by copyright, trade secret and other intellectual property laws. We own the title, copyright and other worldwide Intellectual Property Rights (as defined below) in the Site and all copies of the Site and will allow you to use our Intellectual Property to display on your Site with our permission. This Agreement does not grant you any rights to our trademarks or service marks.

For the purposes of this Agreement, “Intellectual Property Rights” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, and other intellectual property rights as may now exist or hereafter come into existence, and all applications and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

You may choose to or we may invite you to submit comments or ideas about the Site, including without limitation about how to improve the Site or our other products (“Ideas”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited, and without restriction, that it will not place us under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, we do not waive any rights to use similar or related Ideas previously known to us, or developed by our employees, or obtained from sources other than you.

## **13. Indemnity**

You will, to the maximum extent allowed by law, indemnify, defend, and hold us and our processors harmless (and our respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys’ fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of our policies or the Associations’ rules; (b) your wrongful or improper use of the Site; (c) any transaction

submitted by you through the Site (including without limitation the accuracy of any product information that you provide or any claim or dispute arising out of products or services offered or sold by you); (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (e) your violation of any law, rule or regulation of the United States or any other country; (f) any other party's access and/or use of the Site with your unique username, password or other appropriate security code.

## **14. Representation and Warranties**

You represent and warrant to us that: (a) you are at least eighteen (18) years of age; (b) you are eligible to register and use the Site and have the right, power, and ability to enter into and perform under this Agreement; (c) the name identified by you when you registered is your name or business name under which you sell goods and services; (d) any sales transaction submitted by you will represent a bona fide sale by you; (e) any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a purchaser; (f) you will fulfill all of your obligations to each customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with the purchaser; (g) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to you and/or your business, including any applicable tax laws and regulations; (h) except in the ordinary course of business, no sales transaction submitted by you through the Site will represent a sale to any owner or officer of your entity; (i) you will not use the Site, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of the Site; (j) your use of the Site will be in compliance with this Agreement.

## **15. No Warranties**

The Site is provided on an "as is" and "as available" basis. Use of the Site is at your own risk. To the maximum extent permitted by applicable law, the Site is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. No advice or information, whether oral or written, obtained by you from us or through the Site will create any warranty not expressly stated herein. Without limiting the foregoing, we, our processors, our providers, our licensors (and their respective subsidiaries, affiliates, agents, directors, and employees) do not warrant that the content is accurate, reliable or correct; that the Site will meet your requirements; that the Site will be available at any particular time or location, uninterrupted or secure; that any defects or errors will be corrected; or that the Site is free of viruses or other harmful components. Any content downloaded or otherwise obtained through the use of the Site is

downloaded at your own risk and you will be solely responsible for any damage to your property or loss of data that results from such download.

We do not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the Site or any hyperlinked website or service, or featured in any banner or other advertising, and we will not be a party to or in any way monitor any transaction between you and third-party providers of products or services.

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

Unless otherwise required by law, an action or proceeding by you relating to any dispute must commence within one year after the cause of action accrues.

## **17. Right to Amend**

We have the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Site with notice that we in our sole discretion deem to be reasonable in the circumstances, including such notice on our website, EZ Help portal, the Web Store, or any other website maintained or owned by us for the purposes of providing services under this Agreement. Any use of the Site after our publication of any such changes shall constitute your acceptance of this Agreement as modified. Any dispute that arose before the modification shall be governed by the Agreement (including the binding individual arbitration clause) that was in place when the dispute arose.

## **18. Assignment**

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by us.

## **19. Other Provisions**

Except as expressly provided in this Agreement, these terms are a complete statement of the agreement between us, and they describe our entire liability and our vendors' and suppliers' (including processors) liability, and your exclusive remedy with respect to your access and use of the Site. In the event of a conflict between this Agreement and any of our other agreements, this Agreement shall prevail on the subject matter of this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. Headings are included for convenience only, and shall not be considered in interpreting this Agreement. The Agreement does

not limit any rights that we may have under trade secret, copyright, patent, or other laws. Our failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

To the maximum extent permitted by applicable law, in no event shall we, our processors, suppliers, or licensors (or their respective affiliates, agents, directors, and employees) be liable for any direct, indirect, punitive, incidental, special, consequential, or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data, or other intangible losses, that result from the use of, inability to use, or unavailability of the service. Under no circumstances will we be responsible for any damage, loss, or injury resulting from hacking, tampering, or other unauthorized access or use of the service or your Merchant Agreement, or the information contained therein.

To the maximum extent permitted by applicable law, we, our processors, suppliers, and licensors (and their respective affiliates, agents, directors, and employees) assume no liability or responsibility for any (i) errors, mistakes, or inaccuracies of content; (ii) personal injury or property damage, of any nature whatsoever, resulting from your access to or use of the service; (iii) any unauthorized access to or use of our secure servers and/or any and all personal information stored therein; (iv) any interruption or cessation of transmission to or from the service; (v) any bugs, viruses, trojan horses, or the like that may be transmitted to or through the service by any third party; (vi) any errors or omissions in any content or for any loss or damage incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available through the Site; and/or (vii) user content or the defamatory, offensive, or illegal conduct of any third party. In no event shall we, our processors, agents, suppliers, or licensors (or their respective affiliates, agents, directors, and employees) be liable to you for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount of fees earned by us in connection with your use of the service during the three (3) month period immediately preceding the event giving rise to the claim for liability.

This limitation of liability section applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if we have been advised of the possibility of such damage. The foregoing limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction.

The Site is controlled and operated from facilities in the United States. We make no representations that the Site is appropriate or available for use in other locations. Those who access or use the Site from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Site if you are a resident of a country embargoed by the United States, or are a

foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Site are solely directed to individuals, companies, or other entities located in the United States.

## **20. E-commerce Check List**

Following is a checklist of important elements that should be considered and included on your Site, which we will guide you to incorporate:

- a) A complete description of the goods and/or services offered.
- b) Merchant contact information, including the Merchant address and telephone number. The address displayed must match the physical address of the Merchant.
- c) Alternate contact information (including email address and fax number).
- d) The currency in which the transaction will be conducted.
- e) Customer service telephone number.
- f) Delivery standards, including delivery method (i.e., FedEx, UPS, USPS, etc.) and time standards i.e., product will arrive within three business days). Both domestic and foreign import/export shipping time standards must be included (if applicable).
- g) Merchants must disclose the Merchant's country of origin (i.e., United States). Card association logos must be displayed.
- h) Terms and conditions, return policies as well as export and/or legal restrictions (including for international transactions, if applicable) must be displayed on the same screen as the checkout screen (where the total purchase amount is displayed), OR within the sequence of web pages the customer accesses during the checkout process.
- i) A clear and concise privacy policy. This must also disclose what information is collected, how it is tracked and with whom it is shared.
- j) The Site's security method for the transmission of payment data (i.e., SSL Secured 128 bit).
- k) Customers must be able to review all information prior to completing the sale and have the option to cancel the sale.
- l) Contact information for the web hosting service must also be displayed.

## **21. Survival**

Any provision of this Agreement that is reasonably necessary to accomplish or enforce the purpose of this Agreement, will survive the termination of this Agreement and remain in full force and effect.

## **Addendum A**

### **Merchant Services Agreement for RevTrak Users**

In accordance with the RevTrak User Agreement, you, in connection with Vantiv, LLC and its designated Member Bank, Fifth Third Bank an Ohio banking corporation, or other financial services or payment processing entities we may use from time to time (collectively “Bank Processors”), will provide you with certain payment processing services (“Services”) in accordance with the terms of this Merchant Services Agreement. In consideration of your receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. (“MasterCard”), VISA U.S.A. Inc. (“VISA”), Discover (“Discover”), and certain similar entities (collectively, “Associations”), you are required to (i) enter into a direct relationship with an entity that is a member of the Associations and (ii) agree to comply with Association rules as they pertain to applicable credit and debit card payments. By executing this Merchant Services Agreement, you are fulfilling the Association rule of entering into a direct relationship with a Member of the Associations; however, Bank Processors understands that you may have contracted with us to obtain certain processing services and that we may have agreed to be responsible to you for all or part of your obligations contained herein. This Addendum applies to transactions processed through Vantiv/ Fifth Third.

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

#### **1. Certain Merchant Responsibilities**

You agree to participate, and to cause third parties acting as your agent (“Agents”), to participate, in the Associations in compliance with, and subject to, the by-laws, operating regulations and/or all other rules, policies and procedures of the Associations (Operating Regulations). You also agree to comply with all applicable state, federal, and local laws, rules, and regulations (“Laws”). Without limiting the foregoing, you agree that you will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, MasterCard, Discover, and/or Other Networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. For purposes of this section, Agents include, but are not limited to, your software providers and/or equipment providers.

If appropriately indicated in your agreement with us, you may be a limited-acceptance Merchant, which means that you have elected to accept only certain Visa and/or MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Bank Processors have no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance. You, and not Bank Processors,

will be solely responsible for the implementation of your decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

You shall only complete sales transactions produced as the direct result of bona fide sales made by you to cardholders, and are expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales transactions which are produced as a result of sales made by any person or entity other than you, or for purposes related to financing terrorist activities.

You may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). You may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: You are a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) your primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

## **2. Merchant Prohibitions**

You must not i) 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, ii) add any tax to transactions, unless applicable law expressly requires that you impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) 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 you, v) disburse funds in the form of cash unless you are 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 you), or you are participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the acquirer and subsequently returned to you, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debit that has been deemed uncollectable by you, or ix) submit a transaction that represents collection of a dishonored check. You further agree that you, under no circumstance, will store cardholder data in violation of the Laws or the Operating

Regulations including but not limited to the storage of track-2 data. Neither you nor your Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

### **3. Settlement**

Upon receipt of your sales data for card transactions through us, Bank Processors will process your sales data to facilitate the funds transfer between the various Associations and you. After Bank Processors receives credit for such sales data, Bank Processors will fund you, either directly to your Merchant-Owned Designated Account or through us to an account designated by us (“Designated Account”), at Bank Processors’ sole option, for such card transactions. You agree that the deposit of funds to the Designated Account shall discharge Bank Processors of its settlement obligation to you, and that any dispute regarding the receipt or amount of settlement shall be between us and you. Bank Processors will debit the Designated Account for funds owed to Bank Processors as a result of the Services provided hereunder, unless a Merchant-owned account is otherwise designated. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Bank Processors reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from us or you.

### **4. Term and Termination**

This Merchant Services Agreement shall be binding upon you upon your execution. The term of this Merchant Services Agreement shall begin, and the terms of the Merchant Services Agreement shall be binding upon Bank Processors, on the date Bank Processors accepts this Merchant Services Agreement by issuing a merchant identification number, and shall continue until either party gives at least thirty (30) days prior written notice to the other party.

Notwithstanding the foregoing, Bank Processors may immediately cease providing Services and/or terminate this Merchant Services Agreement without notice if (i) you or we fail to pay any amount to Bank Processors when due, (ii) in Bank Processors' opinion, provision of a service to you or us may be a violation of the Operating Regulations, or any applicable state, federal, or local laws, rules, and regulations (“Laws”), (iii) Bank Processors believe that you have violated or are likely to violate the Operating Regulations or the Laws, or iv) Bank Processors are required to do so by any of the Associations.

## **5. Limits of Liability**

You agree to provide Bank Processors with written notice, specifically detailing any alleged failure, within thirty (30) days of the date on which the alleged failure or error first occurred; failure to so provide notice shall be deemed an acceptance by you and a waiver of any and all rights to dispute such failure or error. Bank Processors shall bear no liability and have no obligations to correct any errors resulting from your failure to comply with the duties and obligations of the preceding sentence.

Bank Processors' liability related to or arising out of this Merchant Services Agreement shall in no event exceed \$5,000. Your sole and exclusive remedy for any and all claims against Bank Processors arising out of or in any way related to the transactions contemplated herein shall be termination of this Merchant Services Agreement. You acknowledge that Bank Processors are not liable for any of our actions or failure to act by and that Bank Processors shall have no liability whatsoever in connection with any products or services provided by us to you.

## **6. Miscellaneous**

This Merchant Services Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Agreement may not be assigned by you without the prior written consent of Bank Processors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, Bank Processors and you and is not for the benefit of, and may not be enforced by, any other party. Bank Processors may amend this Merchant Services Agreement upon notice to you in accordance with Bank Processors' standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Merchant Services Agreement will be construed as if such provision is not contained in the Agreement. "Member Bank" as used in this Merchant Services Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Merchant Services Agreement. The Member Bank is a party to this Merchant Services Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by us or Bank Processors at any time without notice to you.