

AMENDMENT #1 OF BANKING SERVICES AGREEMENT

RFP 22-012 Banking Services

CLERK TRACKING NO. 2023-00058

This **Amendment #1** to the BANKING SERVICES AGREEMENT (hereinafter "this Amendment") is made and entered into effective the 24th day of **March 2023** by and between the **City of Naples** (the "CITY") located at 735 8th Street South 34102 and **Fifth Third Bank**, an Ohio Corporation authorized to do business in the State of Florida, (the "BANK").

WITNESSETH

WHEREAS, the CITY, is a Florida municipal corporation, having a responsibility to provide certain services to benefit the citizens of the CITY; and

WHEREAS, the CITY and BANK entered into a BANKING SERVICES AGREEMENT dated January 18, 2023 (Clerk Tracking No. 2023-15011) (hereinafter the "Agreement"); and

WHEREAS, the BANK has provided services under the Agreement, in a manner satisfactory to the CITY; and

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. **Recitals.** The foregoing recitals are true and correct and constitute the material basis for this Amendment. Said recitals are hereby ratified and made a part of this Amendment of BANKING SERVICES AGREEMENT.
2. The Terms of the shall remain the same with said services being provided through January 31, 2026, and may be renewed for up to two (2) additional one (1) year Terms upon agreement of the parties in writing unless sooner terminated under the terms of this Agreement. Each renewal or extension shall be automatically extended for automatic and successive additional terms unless either party gives written notice to the other not fewer than ninety (90) days prior to the expiration of the then-current term.
3. The Original Agreement is amended to include the Bank Card Merchant Agreement to the BANKING SERVICES AGREEMENT for this Amendment as indicated in **Attachment A Bank Card Merchant Agreement**, attached and made a part of this Amendment for a total Agreement.
4. Unless otherwise stated herein, all remaining terms, provisions, and conditions, including, but not limited to the terms for payment, of the Agreement dated January 18, 2023, incorporated in this Amendment by reference, all remain in full force and effect.
5. **E-Verify.** BANK affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., BANK is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, BANK requires from each of its subcontractors an affidavit stating

that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that BANK is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes. The E-Verify Affidavit attached as Attachment B is incorporated into this Amendment by reference.

- 6. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. BANK hereby certifies that BANK is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. BANK further hereby certifies that BANK is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. BANK understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject BANK to civil penalties, attorney's fees, and/or costs. BANK further understands that any contract with CITY for goods or services of any amount may be terminated at the option of CITY if BANK (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of CITY if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.
- 7. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by CITY specified in the Agreement shall not be construed as a waiver of CITY's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by CITY in the Agreement in derogation hereof shall be void and of no force or effect.
- 8. Non-appropriation.** CITY's performance and obligation to pay under this Agreement is contingent upon an appropriation during the CITY's annual budget approval process. If funds are not appropriated for a fiscal year, then the BANK shall be notified as soon as is practical by memorandum from the CITY Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal yearend shall be without penalty or expense to the CITY subject to the CITY paying all invoices for services rendered during the period the Agreement was funded by appropriations.

9. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the CITY and the BANK have caused this Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.



By: *Patricia L. Rambosk*
Patricia L. Rambosk, City Clerk

CITY:

CITY OF NAPLES, FLORIDA

By: *Jay Boodheshwar*
Jay Boodheshwar, City Manager

Approved as to form and legal sufficiency:

By: *Jeff Brooks*
City Attorney

BANK:

Fifth Third Bank
999 Vanderbilt Beach Rd.
Naples, Florida 34108
Attention: **Dawn Choate**,
Vice President/Treasury Management Officer III

(CORPORATE SEAL)

[Signature]
Witness (Signature)
Printed Name: *Timothy J. Reiter*

By: *Dawn Choate*
(Signature)

Printed Name: Dawn Choate

Title: Vice President

FEI/EIN Number: (OH) 31-0676865



FIFTH THIRD BANK

Merchant Services Powered by Worldpay

BANK CARD MERCHANT AGREEMENT

This Bank Card Merchant Agreement is made among WORLDPAY, LLC ("Processor") having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384, the Member Bank and City of Naples ("Merchant") having its principal office at 735 8th Street South, Naples, Florida 34102. Processor, Member Bank and Merchant hereby agree as follows:

I. Processor and/or Member Bank participates in programs affiliated with MasterCard, VISA, Discover, and Other Networks which enable holders of Cards to purchase goods and services from selected merchants located in the United States by use of their Cards.

II. Merchant wishes to participate in the MasterCard, VISA, Discover, and the Other Networks systems at its United States locations by entering into contracts with Cardholders for the sale of goods and services through the use of Cards.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the parties agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

Account shall mean an open checking account at a financial institution acceptable to Processor which Processor or its agent can access through the ACH system.

Account Change means a change in the Account or the financial institution where the Account is located.

ACH shall mean the Federal Reserve's Automated Clearing House ("ACH") system.

Agreement means this Bank Card Merchant Agreement, the Merchant Price Schedule, and each exhibit, schedule, and addendum attached hereto or referencing this Agreement, as well as all documents and other materials incorporated herein by reference.

Association means VISA, MasterCard, Discover, or any Other Network, as the same are defined herein.

Rules Summary means the document containing a summary of key Operating Regulations governing this Agreement as amended from time to time, which is incorporated into this Agreement by reference.

Cards shall mean MasterCard, VISA, Discover and Other Network cards, account numbers assigned to a cardholder, or other methods of payment accepted by Processor, for which pricing is set forth in the Agreement.

Cardholder shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.

Data Incident shall mean any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

Discover shall mean Discover Financial Services, LLC.

Disputed Amount shall mean amounts invoiced by Processor which are disputed by Merchant in good faith for which Merchant provides a reasonably detailed notice of the dispute before such amounts are past due. A dispute will not exist as to an entire invoice merely because certain amounts on the invoice are Disputed Amounts.

Event of Default shall mean each event listed in Section 13.

Float Event shall mean a circumstance where Processor, for whatever reason, advances settlement or any amounts and/or delays the assessment of any fees.

Force Majeure Event shall mean strikes, riots, earthquakes, epidemics, terrorist actions, criminal acts by unrelated third parties, wars, fires, floods, weather, power failure, telecommunications outage, acts of any military, civil, or regulatory authority, or, acts of God, or any other cause, whether similar or dissimilar to the foregoing, beyond a party's reasonable control.

Initial Term shall mean three years from the 1st day of the calendar month following the later of the date Processor executes this Agreement or the first date that all of Merchant's locations receive the Services from Processor.

IP Rights shall mean copyright, trademark, trade name, trade secret, patent, database rights or other intellectual property right.

Member Bank shall mean a member of VISA, MasterCard and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, the Member Bank shall be Fifth Third Bank, N.A.

Service Delivery Process means Processor's then standard methods of communication, service and support, including but not limited to communication via an online Merchant portal, email communication, statement notices, other written communications, etc.

Merchant Supplier shall mean a third party other than Processor or Member Bank used by Merchant in connection with the Services received hereunder, including but not limited to, Merchant's software providers, equipment providers, and/or third party processors.

MasterCard shall mean MasterCard International, Inc.

Operating Regulations means the by-laws, operating regulations and/or all other rules, policies and procedures of VISA, MasterCard, Discover, and/or Other Networks as in effect from time to time.

Other Network shall mean any network or card association other than VISA, MasterCard, or Discover that is identified in the Merchant Price Schedule and in which Merchant participates hereunder.

PCI shall mean the Payment Card Industry Data Security Standard.

Service shall mean any and all services described in, and provided by Processor pursuant to, this Agreement.

VISA shall mean VISA USA, Inc.

Other defined terms and Services applicable to this Agreement will be contained in a "General Services Addendum" as described herein.

2. Rules Summary; Operating Regulations; General Services Addendum. Merchant acknowledges receipt and review of the Rules Summary, which are incorporated into this Agreement by reference. Merchant agrees to fully comply with all of the terms and obligations in the then current Rules Summary, as changed or updated by Processor from time to time, at Processor's sole reasonable discretion with notice in accordance with the Service Delivery Process. The Rules Summary is a summary of key Operating Regulations that govern this Agreement. In the event there is a change in the Rules Summary by Processor that is not related to or based on a corresponding Association rule or requirement, such provision will not be binding on Merchant. Merchant agrees to participate in the Associations in compliance with, and subject to, the Operating Regulations. Without limiting the foregoing, Merchant agrees that it 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 PCI, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, the American Express Data Security Requirements (DSR), and any other program or requirement that may be published and/or mandated by the Associations. Should any Operating Regulation(s) not be publicly available or otherwise made available to the Merchant, such unavailability shall not alter or limit Merchant's obligation to comply with the Operating Regulations. Notwithstanding Processor's assistance in understanding the Operating Regulations, Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with all provisions of the Operating Regulations, regardless of whether Merchant has possession of those provisions. Both MasterCard and VISA make excerpts of their respective Operating Regulations available on their internet sites. Merchant acknowledges responsibility for any liability resulting from its

decision not to participate in optional Association programs, including but not limited to any increased Data Incident liability resulting from its decision not to participate in an Association EMV program. In the event Merchant chooses to participate in an optional Association program, including but not limited to an EMV program, Merchant acknowledges and agrees that it shall be responsible for (i) ensuring compliance with any applicable program requirements and/or Operating Regulations applicable to such program, including but not limited to making any updates to its point of sale equipment and (ii) any cost associated with its participation in the applicable program, including any costs assessed to Merchant by Processor. Certain other Services applicable to this Agreement will be contained in Addendum A - General Services Addendum as may be published and modified from time to time by Processor and the parties agree that such addendum shall be incorporated into and made part of this Agreement and that such addendum is incorporated into and made part of this Agreement and that such addendum shall apply only with respect to those addendum Services actually provided by Processor and received by Merchant hereunder. Merchant acknowledges receipt and review of the General Services Addendum. In the event of a conflict between the fees set forth on the Merchant Price Schedule and the General Services Addendum, the Merchant Price Schedule shall control.

3. Application; Change In Business. Merchant represents that all information supplied by Merchant in connection with its application or other request for services is complete and accurate. In accordance with Section 326 of the USA Patriot Act, Processor is required to review and record information from the documents used in identifying new merchant customers. The preceding sentence is intended to inform Merchant of Processor's procedures and of Processor's responsibility under the USA Patriot Act. Merchant agrees to provide Processor with 30 days prior written notice of Merchant's intent to change its business form or entity in any manner (e.g. a change from a limited liability company to a corporation), and/or of Merchant's intent to sell its stock or assets to another entity.

4. Card Acceptance. Merchant must accept all Cards and complete all Card transactions in accordance with the Operating Regulations. In the event Processor for whatever reason is unable to obtain, or due to system delays chooses not to wait to obtain, authorization from an Association, Processor may at its option "stand-in" for such entities and authorize the sales transaction based on criteria established by Processor, and Merchant remains responsible for such sales transaction in accordance with this Agreement. Merchant has identified to Processor the products and/or services for which it intends to accept Cards as payment. Merchant agrees that it shall only complete and deliver to Processor sales transactions produced as the direct result of bona fide sales made by Merchant to Cardholders for such identified products and/or services, unless otherwise agreed by Processor in writing.

5. Transaction Processing. Processor or Member Bank will initiate payment to Merchant of the total face amount of each sales transaction acquired and accepted hereunder, subject to the terms and conditions of this Agreement, the Operating Regulations, and applicable law, after Processor receives payment for such sales transactions. Unless otherwise agreed to in writing by Processor, Merchant shall electronically deliver to Processor and in a format acceptable to Processor all credit vouchers and sales transaction records within two (2) business days after the applicable transaction date (or such shorter period as determined by the applicable Association), except (i) in the case of a delayed merchandise delivery, when the sales transaction record shall be delivered within two (2) business days of the merchandise delivery or (ii) as specified otherwise in the Operating Regulations. Merchant agrees that it shall deliver sales transaction records to Processor at least every business day. The preparation and delivery to Processor by Merchant of sales transactions shall constitute an endorsement to Processor by Merchant of each sales transaction, and Merchant authorizes Processor or its representative to place Merchant's endorsement on any sales transaction at any time. Processor may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Merchant pursuant to this Agreement, if it had acquired the sales transaction or claim. Merchant acknowledges and agrees that Processor is not responsible for any action or inaction taken by the financial institution or other entity that issued the Card(s) to the Cardholder or the processor of such Card(s). Merchant agrees that Processor may set off any amounts due to Processor from amounts owed to Merchant, including but not limited to any amounts owed to Merchant from Processor and/or any of its affiliate(s).

6. Exception Items. Merchant agrees to reacquire and pay Processor the amount of any sales transaction, and Processor shall have the right at any time to charge Merchant's Account therefore with notice via Processor's Service Delivery Process, for any return, chargeback, compliance case, any other Association action, or if the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local or otherwise; or if Processor has not received payment for any sales transaction, notwithstanding Processor's prior payment to Merchant for such sales transaction pursuant to Section 5 above or any other section. Not limiting the generality of the foregoing, Merchant agrees that any operational and/or other Services performed on behalf of Merchant, including but not limited to, production of facsimile drafts in response to copy requests, response to compliance cases, augmentation of Merchant data for interchange, transaction stand-in, digital draft storage and retrieval, etc. shall in no way affect Merchant's obligations and liability in this Agreement including those in the foregoing sentence. Merchant may instruct Processor in the defense of chargebacks, compliance cases and similar actions, and Merchant agrees that it will promptly provide any such instructions to Processor. When Processor has determined it has all necessary information and instructions, Merchant hereby authorizes Processor to resolve chargebacks and respond to retrieval requests and other inquiries without further consulting Merchant.

7. Merchant Suppliers. Merchant may use one or more Merchant Suppliers in connection with the Services and/or the processing of some or all of its Card transactions. In no event shall Merchant use a Merchant Supplier unless such Merchant Supplier is compliant with PCI and/or the Payment Application Data Security Standard ("PA-DSS"), depending on the type of Merchant Supplier, as required by the Operating Regulations. Merchant acknowledges and agrees that Merchant shall cause its Merchant Supplier to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc.). Merchant shall cause its Merchant Supplier to cooperate with Processor in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such Merchant Supplier. Merchant shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. Merchant shall bear all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of any Merchant Supplier(s) for a particular purpose and for determining the extent of such Merchant Supplier's compliance with the Operating Regulations and applicable law. Merchant expressly agrees that Processor shall in no event be liable to Merchant or any third party for any actions or inactions of any Merchant Supplier used by Merchant, even if Processor introduced and/or recommended the use of such Merchant Supplier to Merchant, or never objected to the use of such Merchant Supplier, and Merchant hereby expressly assumes all such liability.

8. Cardholder Information. Merchant shall not disclose, sell, purchase, provide, or exchange Cardholder name, address, account number or other information to any third party other than to Processor or an Association for the purpose of completing a sales transaction unless specifically permitted by the Operating Regulations. Merchant represents and warrants that neither it nor its Merchant Supplier shall retain or store any portion of the magnetic-stripe data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Operating Regulations and/or this Agreement.

Processor acknowledges responsibility for payment card data on its proprietary systems. Processor will (i) maintain its PCI-DSS certification and (ii) be validated as a PCI-DSS compliant service provider. In the event Processor is deemed not to be in compliance with PCI-DSS, Processor shall make commercially reasonable efforts to become compliant and maintain compliance thereafter. As of the execution of the Agreement, PCI-DSS information and standards can be found at the Payment Card Industry Security Council website at <https://www.pcisecuritystandards.org/index.htm>.

9. Term. The term of this Agreement shall commence on the date Processor executes this Agreement, and shall continue for the Initial Term as defined in Section 1 of this Agreement. Except as hereafter provided, unless either party gives written notice to the other party at least 60 days prior to the expiration of any term, the Agreement including all addenda, schedules and exhibits hereto or referencing this Agreement shall be automatically extended on a calendar month to calendar month

basis. Termination of the Agreement or any Service shall not impact any right or obligation arising prior to termination.

Upon termination or expiration of the Agreement or a Service: (i) Merchant shall: (a) discontinue all use of the affected Service, and (b) promptly return to Processor any related Processor property and Processor Confidential Information; and (ii) to the extent practicable, at Merchant's expense, and subject to Section 27, Processor shall use reasonable efforts to comply with Merchant's written instructions regarding the disposition of Merchant Confidential Information or, if Merchant fails to give such instruction within thirty (30) days after such termination or expiration, then Processor may destroy Merchant Confidential Information in a manner designed to preserve its confidentiality.

10. Processor Fees. Merchant agrees to pay Processor the fees, expenses and all other amounts set forth in the Agreement including, but not limited to, the Merchant Price Schedule. For avoidance of doubt, in the event Merchant elects to use buy now, pay later Services offered by Processor, Merchant will be subject to per transaction fees for said transactions in addition to all other applicable buy now, pay later fees owed (e.g., third party pass through fees) as memorialized in the Merchant Price Schedule, amendment or addendum. Processor may change or add fees and/or charges upon notice to Merchant via Processor's Service Delivery Process, and such fees and/or charges shall be immediately payable by Merchant when assessed by Processor. In the event Processor changes or adds its fees and/or charges pursuant to the immediately preceding sentence ("Fee Change"), Merchant may, subject to the following provisions, terminate the Agreement upon 60 days advance written notice to Processor provided Processor receives such written notice from Merchant of its intention to so terminate within 90 days of the date the Fee Change becomes effective. Upon Processor's receipt of Merchant's written notice pursuant to the immediately preceding sentence, Processor shall have 30 days to rescind or waive the Fee Change, and, in the event Processor elects to rescind or waive the Fee Change, Merchant shall not have the right to terminate this Agreement as a result of the Fee Change and this Agreement shall remain in full force and effect notwithstanding Merchant's written notice to terminate. Merchant acknowledges and agrees that this Section shall not be intended or construed to permit Merchant to terminate the Agreement as a result of a change or increase in fees from third parties and/or in pass through fees as referenced in this Agreement or the Merchant Price Schedule. At Merchant's request, Processor may, in its sole discretion, establish multiple Merchant billing definitions on its system, and in such event Processor shall assess all applicable fees separately and independently with respect to each such billing definition.

11. Third Party Assessments. Notwithstanding any other provision of this Agreement, Merchant shall be responsible for all amounts imposed or assessed to Merchant, Processor, and/or Member Bank in connection with this agreement by Member Bank and/or third parties such as, but not limited to, Associations and Merchant Suppliers (including telecommunication companies), to the extent that such amounts are not the direct result of the gross negligence or willful misconduct of Processor. Such amounts include, but are not limited to, fees, fines, assessments, sponsorship fees, penalties, loss allocations, etc. Any changes or increases in such amounts shall automatically become effective upon notice to Merchant via Processor's Service Delivery Process and shall be immediately payable by Merchant when assessed by Processor. In the event of a Float Event, Processor reserves the right to assess to Merchant, and Merchant shall pay to Processor, a cost of funds associated with the Float Event (which Processor may at its option assess as a transaction surcharge), the amount of which shall be determined by Processor in its reasonable discretion, and which may be changed by Processor from time to time, and such cost of funds shall be effective as of the start of the Float Event and shall be immediately payable by Merchant when assessed by Processor.

12. Exclusivity. Processor and Member Bank reserve the right to enter into other agreements pertaining to the Services with others including without limitation other merchants. Merchant agrees that Processor shall be the exclusive provider to Merchant, at all of Merchant's locations, of the Services and any services that are the equivalent of the Services available from another provider, including any Services or their equivalents that relate to any Cardholder transactions originating at or

with a Merchant Supplier that incorporate Merchant's goods and/or services.

13. Default. The following events shall be considered an "Event of Default":

- (i) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Merchant, or Merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or
- (ii) Merchant fails to pay or reimburse the fees, expenses or charges referenced herein when they become due; or
- (iii) Merchant is in default of any terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; or
- (iv) Processor reasonably believes that there has been a material deterioration in Merchant's financial condition; or
- (v) any standby letter of credit, if and as may be required pursuant to Section 20, will be cancelled, will not be renewed, or is not in full force and effect; or
- (vi) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than 30% of either the legal or beneficial ownership of Merchant.

Upon the occurrence of an Event of Default, Processor may at any time thereafter terminate this Agreement by giving Merchant written notice thereof. However, except in instances where immediate termination is required by any Association or if Member Bank and/or Processor reasonably believe that the Event of Default poses material risk to either of them or involves a violation of applicable law, Merchant will have 30 days following Processor's notice to cure an Event of Default under Section (i), (ii), (iv) or (v) prior to termination under this section. Termination of Merchant for any reason shall not relieve Merchant from any liability or obligation to Processor. If, prior to the date on which the then current term of this Agreement is scheduled to expire, either this Agreement is terminated by Processor as specifically permitted by this Agreement, or Merchant for any reason discontinues receiving the Services from Processor (except as may be specifically permitted by this Agreement), Merchant shall be liable to Processor for liquidated damages in an amount equal to the average monthly revenue (which does not include interchange and other Association fees) payable to Processor as a result of this Agreement for the three calendar months in which such revenue was the highest during the preceding 12 calendar months, or such shorter period if this Agreement has not been in effect for 12 months, multiplied by the number of months remaining during the then current term of this Agreement. Merchant recognizes and agrees that the liquidated damages are fair and reasonable because it is not possible to establish the actual increase in volume and activity by Merchant during the term of this Agreement. Merchant shall also reimburse Processor for any damage, loss or expense incurred by Processor as a result of a breach by Merchant, including any damages set forth in any addendum and/or schedule and/or exhibit hereto and including all past due, unpaid and/or future invoices for services rendered by Processor in connection with this Agreement. All such amounts shall be due and payable by Merchant upon demand. Processor shall also have the option to require Merchant to reacquire all outstanding sales transactions acquired by Processor hereunder. In addition to, and not in limitation of the foregoing, Processor may refuse to provide the Services in the event it has not been paid for the Services as provided herein.

14. Processor Nonperformance: In the event Merchant, in good faith, reasonably believes that Processor has substantially failed to provide the Services, other than as a result of (i) a failure by Merchant (or any Merchant Supplier, or other third party acting at the request of or on behalf of Merchant) to perform any obligation under the Agreement, or to provide accurate data to Processor upon which Processor is dependent to provide accurate and timely Services to Merchant, or (ii) any Force Majeure Event, Merchant agrees to notify Processor in writing within 30 days of the date upon which such failure first occurred. Merchant agrees that such notice shall be sent in accordance with the terms of this Agreement, and shall specifically describe the nature of such failure by Processor, specify the date such failure first occurred and specifically reference this section.

Merchant acknowledges and agrees that certain Rules govern the relationships between various parties such as the Card Associations, Processor, Member Bank, and/or other entities (e.g., partners, etc.), and that any failure by Processor to abide by such Rules does not provide the basis for a breach of the Agreement claim by Merchant or any other third party.

Processor will attempt to resolve such failure within 30 days of Processor's actual receipt of such notice from Merchant. Should Processor not resolve such failure within the cure period described in the foregoing sentence, Merchant may terminate this Agreement upon 90 days prior written notice to Processor, provided Processor actually receives such notice of termination within 30 days after the end of such cure period.

15. Taxes. The charges and fees payable in connection with or attributable to the Services provided to the Merchant by Processor do not include any applicable withholding, sales, use, excise, value added or other taxes. Merchant is responsible for payment of such taxes that arise from Processor's provision of the Services. In the event Processor pays such taxes, Merchant shall promptly reimburse Processor or Processor may, at Processor's sole option, charge Merchant's Account. If Processor includes taxes in an invoice, Merchant shall pay such taxes, unless Merchant has provided a valid tax exemption certificate acceptable to the applicable tax authorities.

16. Binding on Successors; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, transferees and assignees. Neither this Agreement nor any interest herein may directly or indirectly be transferred or assigned by Merchant, in whole or in part, without the prior written consent of Processor, which will not be unreasonably delayed or withheld. Merchant will remain liable for any amounts owed under this Agreement after an unauthorized transfer or assignment by Merchant, even if Processor continues to provide Services to such transferee or assignee. Except as otherwise set forth herein, the parties do not intend, nor shall there be, any third-party beneficiary rights, and the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of the other party.

17. Notices. Unless specified otherwise herein, all notices given in connection with the Agreement must be in writing and delivered via overnight or signed for delivery. Notices shall be delivered to the address stated in the Agreement. Notices to Processor shall include a copy (which shall not constitute notice) to the Chief Legal Officer at the same address.

18. Unenforceable Provision. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of the Agreement.

19. Payment. Merchant shall always maintain an open Account. Merchant irrevocably authorizes Processor to debit and/or credit the Account to settle any and all fees and other amounts due Processor under this Agreement, and such authority shall remain in effect for a period of one (1) calendar year following the date of termination of this Agreement, regardless of whether Merchant has notified Processor of an Account Change as defined below. Merchant shall always maintain the Account with sufficient cleared funds to meet its obligations under this Agreement. In the event Merchant desires an Account Change, Merchant shall give Processor 30 days prior written notice in accordance with the provisions of Section 17 of any such change, and Processor shall use reasonable commercial efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Processor actually makes such Account Change on Processor's system. In no event shall Processor have any liability for any amounts directed to an Account that has been designated by any purported representative of Merchant or its Merchant Supplier at any time during the term of this Agreement, regardless of any Account Change. All amounts due Processor under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant as of the date Processor originates an ACH debit transaction record to Merchant's Account. Any fees not collected from Merchant by Processor when due shall bear interest at one (1) percentage point per month but in no event more than the highest rate permitted by law, except for Disputed Amounts. The acceptance by Processor, Processor's affiliate or other financial institution of Merchant's closing (or termination of) its Account shall not constitute a mutually agreed upon termination of this Agreement. Without limiting the generality of any other provision of this Agreement, Processor and/or Member Bank are hereby authorized by Merchant to charge amounts due under this Agreement i) against each day's sales transactions ii) against any reserve; or iii) by making an ACH debit to Merchant's Account.

20. Reserve; Letter of Credit. As a specifically bargained for inducement for Processor to enter into this Agreement with Merchant, Processor at its option reserves the right to i) establish from amounts payable to Merchant hereunder, and/or cause Merchant to pay to Processor, a reserve of funds satisfactory to Processor to cover actual or anticipated fees, liabilities, chargebacks, returns and any other applicable assessments incurred or expected to be incurred by Processor or Member Bank related to the Services provided to Merchant; and/or ii) require Merchant to establish an irrevocable standby letter of credit, including additional and/or replacement letters of credit if required by Processor, with a beneficiary designated by Processor, and which are issued from a financial institution other than Member Bank or any of its affiliates, that is acceptable to Processor, in a format, with an expiration date, and in an amount acceptable to Processor in its sole discretion. In the event Merchant fails to establish, for any reason whatsoever, a reserve and/or a letter of credit as required above, Processor shall have all of the rights and remedies available to Processor in this Agreement, including but not limited to exercising the rights and remedies of Processor in Section 13. In the event Processor exercises its right to establish a reserve or require a letter of credit pursuant to this Section, Merchant may, subject to the following provisions, terminate the Agreement upon 30 days advance written notice to Processor provided Processor receives such written notice from Merchant of its intention to so terminate within 90 days of the date on which Processor establishes the reserve or requires the letter of credit. Upon Processor's receipt of Merchant's written notice pursuant to the immediately preceding sentence, Processor may, at its option, return the reserve to Merchant or waive the requirement for a letter of credit, and, in the event Processor elects to return the reserve to Merchant or waive the requirement for a letter of credit, Merchant shall not have the right to terminate this Agreement pursuant to this Section and this Agreement shall remain in full force and effect notwithstanding Merchant's written notice to terminate.

Merchant shall not sell, assign, transfer or encumber all or any part of its interest in the reserve account, if any, or any present or future rights under this Agreement, including but not limited to, Merchant's right to receive any payments or funds. Neither Processor nor Member Bank shall be obligated to honor any such purported attempt to sell, assign, transfer or encumber such interest, rights, payments or funds unless both Processor and Member Bank consent in writing. In the event Merchant breaches this paragraph, then, in addition to any other rights and remedies Processor may have under this Agreement and otherwise, Processor shall have the right, at its option, to withhold any or all funds or payments which would otherwise be payable to Merchant under this Agreement until it shall have received instructions concerning the disposition of such payments or funds, satisfactory in form and substance to Processor and signed by both Merchant and any purported assignee. Merchant shall indemnify Processor and hold it harmless from and against any and all claims, liabilities and damages which may be asserted against Processor by any purported assignee or any other person arising out of Merchant's purported sale, assignment, transfer or encumbrance of all or any of Merchant's present or future rights under this Agreement.

21. Indemnification.

A. Subject to the other limitations, terms and conditions of this Agreement, Processor shall indemnify, defend, and hold harmless Merchant, and its directors, officers, employees, affiliates and agents from and against all third party proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Merchant, its directors, officers, employees, affiliates and agents to the extent resulting from or arising out of Processor's gross negligence, or willful misconduct.

B. Merchant shall indemnify, defend, and hold harmless Processor, and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Processor, its directors, officers, employees, affiliates and agents resulting from or arising out of the Services in this Agreement, Merchant's processing activities, the business of Merchant or its customers, any sales transaction acquired by Processor, any noncompliance with the Operating Regulations (or any rules or regulations promulgated by or in conjunction with the Associations) by Merchant or its agent (including any Merchant Supplier), any Data Incident, any infiltration, hack, breach, or

violation of the processing system of Merchant, its Merchant Supplier, or any other third party processor or system, or by reason of any breach or nonperformance of any provision of this Agreement on the part of the Merchant, or its employees, agents, Merchant Suppliers, or customers.

C. The indemnification of each party shall survive the termination of the Agreement. The indemnified party shall (i) provide prompt written notice of any claim to the indemnifying party; (ii) cooperate with all reasonable requests of the indemnifying party; and (iii) surrender exclusive control of the defense and settlement of any third party claim to the indemnifying party provided that the indemnifying party will obtain the indemnified party's written consent prior to agreeing to any settlement or agreement that requires the indemnified party to make any admission of fault or to pay any amounts in connection with such settlement or agreement that are not fully paid for by the indemnifying party. The indemnified party shall not unreasonably withhold or delay any consent required under this Section. The indemnified party may elect to participate in the action with an attorney of its own choice at its own expense.

22. Review of Settlement Activity and Reports; Notice of Failure by Processor.

Merchant agrees that it shall review all reports, notices, and invoices prepared by Processor or its agent and made available to Merchant, including but not limited to reports, notices, and invoices provided via Processor's online reporting tool. Processor reserves the right to send some or all of the reports and/or invoices and/or notices of any pricing changes permitted under this Agreement via communication methods utilized as components of its Service Delivery Process which method Processor may change from time to time with notice via Processor's Service Delivery Process. Merchant expressly agrees that Merchant's failure to notify Processor that Merchant has not received any settlement funds within five business days from the date that settlement was due to occur, or fails to reject any report, notice, or invoice within thirty business days from the date the report or invoice is made available to Merchant, shall constitute Merchant's acceptance of the same. In the event Merchant believes that Processor has failed in any way to provide the Services, Merchant agrees to provide Processor with written notice, specifically detailing any alleged failure, within 30 days of the date on which the alleged failure first occurred.

23. Choice of Law; Jurisdiction; Venue.

(a) The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement or its subject matter.

(b) The Agreement and any dispute, difference, controversy, or claim directly or indirectly arising out of, relating to, or otherwise in connection with it or its subject matter or formation (including non-contractual disputes, differences, controversies or claims) (a "Claim") shall be governed by and shall be construed, resolved, and enforced in accordance with the Laws of the State of New York without regard to that state's choice-of-law provisions or principles. Except as otherwise provided in this Section, each party irrevocably agrees that any such Claim shall be resolved by arbitration in the City of Jacksonville, Florida, administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules (including, when applicable, the AAA procedures for Large, Complex Commercial Disputes but expressly excluding in all cases the AAA Supplementary Rules for Class Arbitrations). The parties hereby confirm their agreement that no Claim on behalf of or against a class or purported class may be asserted in such an arbitration; nor may any Claim for the benefit of or on behalf of the general public or other Claim as a private attorney general be asserted, or any collective Claim or Claim consolidated with another arbitration. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Agreement and shall not have the power to award punitive, exemplary, or special damages or damages other than those described in the Agreement. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Except as may be required by law, or if necessary to obtain a judgment on the award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

(c) Each party agrees that a Claim of any breach of any of the confidentiality, non-use, and intellectual property obligations of the Agreement and/or of any infringement, ownership, and enforceability of any intellectual property right may result in irreparable injury to the other for which money damages would not adequately compensate, and each party shall be entitled to seek an injunction for any such Claim. Notwithstanding Section 23 (b), each party irrevocably: (i) agrees that the Florida state courts located in the City of Jacksonville, Florida, Duval

County, or the United States District Court for the Middle District of Florida, sitting in the City of Jacksonville, Florida, shall have exclusive jurisdiction to adjudicate any such Claim described in this Section 23 (c), and consents to submit itself to the personal jurisdiction of such courts in connection with any such Claim; (ii) agrees that such courts shall be the proper venue therefor; (iii) waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought; and (iv) waives the right to trial by jury in any such action or proceeding.

24. Limit of Liability.

A. EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, THE SERVICES, DOCUMENTATION AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE (INCLUDING IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, UNINTERRUPTED OR ERROR-FREE OPERATION, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT), ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMED AND EXCLUDED FROM THE AGREEMENT. MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.

B. Under no circumstances shall either party (or any of its affiliates providing or receiving the Services under the agreement) be liable to the other or any other person for losses or damages which fall into any of the following categories: (i) lost revenues; (ii) lost profits; (iii) loss of business; or (iv) any incidental, indirect, exemplary, consequential, special or punitive damages of any kind, including any of the foregoing losses or damages resulting from merchant's use of the solution provided hereunder, or arising from any breach of the agreement or any termination of the agreement, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability) or otherwise and whether or not foreseeable, even if the relevant party has been advised or was aware of the possibility of such loss or damages.

C. Processor's liability related to or arising out of this Agreement shall in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Merchant or (ii) fees paid to and retained by Processor for the particular Services in question for the three calendar months immediately preceding the date on which Processor received a written notice from Merchant detailing Processor's material nonperformance under this Agreement. For avoidance of doubt, the cap on Processor's liability set forth in the immediately preceding sentence will not limit Processor's obligation to settle funds due to Merchant under this Agreement.

D. The limitations and exclusions set forth in sections 24.B and 24.C shall not apply to: (i) damages caused by either party's fraud or willful misconduct; (ii) a party's liability for death or personal injury due to that party's negligence; (iii) Merchant's obligation to pay any fees, assessments or penalties due under this Agreement, including but not limited to those imposed by telecommunications services providers, VISA, MasterCard and/or Other Networks; or (iv) any damages due from Merchant related to an early termination of this Agreement; (v) any damages due from Merchant related to the failure by Merchant to exclusively receive the Services from Processor to the extent required by the Agreement, (vi) Merchant's obligation to indemnify Processor pursuant to Section 21, and/or (vii) a party's liability for damages to the extent that such a limitation or exclusion of such damages is not permitted by applicable law.

E. In no event shall Processor be obligated or liable for any performance problems, damages, losses (i) that are wholly or partially caused by the Merchant, or its employees, agents, or Merchant Suppliers, (ii) that should have been reported to Processor pursuant to Section 22, (iii) that first occurred, whether or not discovered by Merchant, more than 30 days prior to Processor's receipt of written notice from Merchant (iv) that were caused due to errors in data provided by Merchant to Processor, or resulting, in whole or in part, from: (i) any modification of any Service; (ii) any use of a Service in breach of the Agreement; (iii) any combination of a Service with any other software, hardware, product, technology, data or services; (iv) any use of any version of a Service other than the then currently supported release; (v) Merchant's failure to implement corrections or changes to a Service provided by Processor; or (vi) any negligence or wrongful actor omission,

or breach of the Agreement, by Merchant or its employees, agents, Merchant Suppliers, or customers.

F. No cause of action, regardless of form, shall be brought by either party more than 1 year after the cause of action arose, other than one for the nonpayment of fees and amounts due Processor under this Agreement. Any restriction on Processor's liability under this Agreement shall apply in the same manner to Member Bank. In the event that Merchant has a claim against Member Bank in connection with the Services provided under this Agreement, Merchant shall proceed against Processor (subject to the limitations and restrictions herein), and not against Member Bank, unless otherwise specifically required by the Operating Regulations.

25. Controlling Documents. This Agreement (including all addenda and schedules and exhibits hereto and all documents and materials referenced herein) states the entire agreement and understanding between the parties with respect to the Services and, supersedes all prior representations, agreements, and understandings, whether written or oral, relating to its subject matter. Unless specifically provided for herein, other services are not included as part of this Agreement. If there is a conflict between the Bank Card Merchant Agreement and an addendum or schedule or exhibit hereto, the addendum or schedule or exhibit shall control. If there is a conflict between the Rules Summary and this Agreement, the Rules Summary shall control. If there is a conflict between Operating Regulations and this Agreement, the Operating Regulations shall control. If there is a conflict between the Operating Regulations and the Rules Summary, the Operating Regulations shall control. In entering into the Agreement, each party acknowledges and agrees that it has not relied on any representation, warranty, collateral contract or other assurance (whether negligently or innocently made) except those expressly set out in the Agreement.

26. Regulatory Remedial Right. Processor may suspend or cease providing any Service in this Agreement if: (i) in Processor's reasonable opinion, such Service, or the business of Merchant, violates or would violate the Operating Regulations, or any federal, state or local statute or ordinance, or any regulation, order or directive of any governmental agency or court; (ii) Merchant is accused by any federal, state or local jurisdiction of a violation of any applicable statute or ordinance or any regulation, order or directive of any governmental agency or court, or if Processor reasonably believes, based upon the opinion of its legal counsel, that Merchant may be in violation of any of the foregoing; and/or (iii) in Processor's reasonable opinion, Merchant's activities may result in increased regulatory scrutiny or reputational harm. Processor may also suspend or cease providing any Service in this Agreement to Merchant if directed to do so by Member Bank. Should Merchant not process sales transactions through Processor's system for a period of one year or more, Processor may remove Merchant from Processor's systems without notice, without relieving Merchant from any of Merchant's obligations under this Agreement.

27. Conversion; Deconversion. Merchant shall take all necessary steps to, and shall, promptly convert to Processor's system for the Services in this Agreement not later than 90 days after the execution of this Agreement by Processor. Processor agrees that it shall not charge Merchant for Processor's standard and customary internal testing and conversion preparation only, in connection with Merchant's initial conversion to Processor's system at the commencement of this Agreement, and as determined by Processor in its sole reasonable discretion. The foregoing shall not be deemed to limit Merchant's obligation to pay any third party fees and expenses incurred by Processor in connection with Merchant's conversion, which shall remain the sole responsibility of Merchant. Merchant agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by Processor, its affiliates and/or agents) in connection with and/or related to Merchant's conversion from Processor at the termination of this Agreement and/or related to any conversion or programming effort affecting the Services after Merchant's initial conversion to Processor.

28. Confidential Information.

(a) "Confidential Information" means all business or technical information disclosed by Disclosing Party to Receiving Party in connection with the Agreement. Merchant Confidential Information includes, but is not limited to, information relating to the methods, techniques, programs, devices and operations of Merchant and the details of Merchant's computer operations. Merchant Confidential Information does not include transaction information which has been de-identified or aggregated. Processor Confidential Information includes,

but is not limited to, this Agreement, third party audit reports, and information relating to the finances, systems, methods, techniques, programs, devices and operations of Processor and/or the Associations. Except as required by law, neither party shall be obligated to preserve the confidentiality of any information that: (a) was previously known; (b) is a matter of public knowledge; (c) was or is independently developed without reference to or use of the other party's Confidential Information; (d) is released for disclosure with the other party's written consent; or (e) is received from a third party to whom it was disclosed by the Disclosing Party without restriction. Processor may use and disclose Merchant's name and logo as reasonably necessary to perform any Services.

(b) The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") will use the same reasonable efforts as it uses to protect its own Confidential Information of a similar nature (but in any event not less than a reasonable standard of care) to: (i) keep all Confidential Information of Disclosing Party strictly confidential; (ii) not disclose the Confidential Information of Disclosing Party to anyone other than its Authorized Recipients; and (iii) only use Confidential Information as permitted by applicable Laws. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use and disclosure. "Authorized Recipient" means: (a) with respect to Merchant, Merchant and any employee of Merchant, and provided that such Authorized Recipient is not a competitor of Processor; and (b) with respect to Processor, Processor's Affiliates and their respective employees, contractors, or agents, in the case of (a) or (b) that has a reasonable need to know the Confidential Information in connection with the use or provision of the Services and who are required to protect and restrict the use of the other party's Confidential Information in accordance with terms substantially similar to the requirements of the Agreement. Without limiting the foregoing, Merchant agrees that it 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.

(c) If the Receiving Party believes the Confidential Information must be disclosed or made publicly available under applicable law, an order of a court of competent jurisdiction or in response to a request from a governmental regulator, Receiving Party may do so provided that, to the extent permitted by such applicable law, court of competent jurisdiction or governmental regulator, the Disclosing Party is given a reasonable opportunity to contest such disclosure and obtain a protective order, and shall in any event omit all pricing, service level or service specific information from any such disclosure or public filing, unless such omission is prohibited by law.

(d) Merchant acknowledges receipt of Processor's privacy notice ("Privacy Notice"). Merchant should direct any questions or requests for another copy of the Privacy Notice to a Processor customer service representative or Merchant's primary relationship manager, if applicable. Notwithstanding anything to the contrary in the Privacy Notice or this Agreement, Processor may use, disclose, share, and retain any information provided by Merchant and/or arising out of the Services, during the term and thereafter: (a) with Merchant's franchisor, Merchant's franchisee(s), association(s) to which Merchant belongs and/or belonged as of the commencement of this Agreement, (b) with any affiliate of Merchant; (c) in response to subpoenas, warrants, court orders or other legal processes; (d) in response to requests from law enforcement agencies or government entities; (e) to comply with applicable Laws, regulations, or Operating Regulations; (f) with Processor's affiliates, partners and agents; (g) to perform analytic services for Merchant, Processor and/or others including but not limited to analyzing, tracking, and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving Processor's products and services; and/or (h) to offer or provide the Services hereunder.

(e) **Publicity.** Merchant and Processor agree that they will work together to issue a mutually agreeable joint press release after the execution of this agreement and/or after the conversion of Merchant to Processor's Services. In any event, Merchant acknowledges and agrees that Processor may make public the execution of this Agreement by Merchant and/or any of Merchant's affiliates, and/or the Services that may be or have been provided under the Agreement. Merchant agrees that Processor may include Merchant's name and logo on a list of Processor's

customers, which may be made public. Merchant agrees that, upon Processor's request, Merchant will provide testimonial information related to the Services received by Merchant hereunder.

29. Financial Statements. If at any time Merchant is not a publicly traded company, Merchant shall provide Processor with an audited financial statement for Merchant's most recent fiscal year end and/or quarterly financial statements prepared and certified by Merchant's chief financial officer within 15 days of Processor's request therefore.

30. No Waiver. No waiver of any breach of the Agreement shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of the Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of the Agreement. Any rights and remedies specifically provided for in any addendum or schedule or exhibit are in addition to those rights and remedies set forth in this Agreement and/or available to Processor at law or in equity.

31. Compliance with Law. Processor shall comply with all laws, enactments, orders and regulations ("Laws") applicable to it as the provider of the of the Services under the Agreement. Merchant shall comply with all Laws applicable to it as the recipient and user of the Services under the Agreement. Each party acknowledges and agrees that: (i) it has complied with and shall continue to comply with all applicable Laws relating to anti-bribery and anti-corruption; and (ii) it shall maintain in place throughout the Term of the Agreement as its own reasonable policies and procedures to ensure compliance with such anti-bribery and anti-corruption Laws. Processor Confidential Information is subject to export control Laws, including those of the United States of America. Merchant shall not import, export or utilize Processor Confidential Information where a license or other authorization is required by Law without first securing such license or authorization.

32. Security, Data Incidents. Each party will implement reasonable administrative, technical and physical safeguards to: (i) ensure the security and confidentiality of the other party's Confidential Information; (ii) protect against any anticipated threats or hazards to the security or integrity of the other party's Confidential Information; and (iii) protect against unauthorized access to or use of the other party's Confidential Information. Merchant will be solely responsible for the security, quality, accuracy, and adequacy of all transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Merchant represents and warrants to Processor that it has implemented and will maintain secure systems for maintaining and processing information and for transmitting information to Processor. Processor shall have no liability whatsoever for the security or availability of any communications connection used in connection with the Services provided hereunder. Merchant acknowledges that Processor is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including without limitation any Merchant Supplier of Merchant. Merchant shall notify Processor immediately if Merchant becomes aware of or suspects a Data Incident. Merchant agrees to fully cooperate with Processor and any Association with respect to any investigation and/or additional requirements related to a suspected Data Incident.

33. Audits. At any reasonable time upon reasonable notice to Merchant, Merchant shall allow auditors, including the auditors of any Association or any third party designated by Processor or the applicable Association, to review the files held and the procedures followed by Merchant at any or all of Merchant's offices or places of business. Should Processor conduct an audit which is not required by the Operating Regulations or is not requested by an Association, such audit will be at Processor's sole expense; otherwise the audit shall be at Merchant's expense. Merchant will assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is requested by an Association, and/or required by the Operating Regulations, Processor may, at its option, and at Merchant's sole expense, either retain a third party to perform the audit, or require that Merchant directly retain a specific third party auditor. If Processor requires that Merchant directly retain the auditor, Merchant shall arrange immediately for such audit to be performed, and will provide Processor and the Associations with a copy of any final audit report.

34. System Requirements and Upgrades. Merchant agrees that the Services shall be provided in accordance with Processor's then current

systems, standards and procedures and that Processor shall not be required to perform any special programming, to provide any special hardware or software or to implement any other system, program or procedure for Merchant. Unless otherwise agreed in writing by Processor, all sales transaction, settlement and other data and information used in connection with the Services shall be provided to Processor in Processor's then current data formats and by means of Processor's then current telecommunications configurations and protocols. Processor may make changes in the Services based upon, but not limited to, technological developments, legislative or regulatory changes, or the introduction of new services by Processor. Merchant shall comply with all time deadlines, equipment and software maintenance and upgrading requirements to the extent required by the Associations and/or Operating Regulations. Merchant shall use best efforts to comply with all other time deadlines, equipment and software maintenance and upgrading requirements which Processor may reasonably impose on Merchant from time to time. Without limiting and in addition to any other right or remedy that Processor may have hereon, including but not limited to those set forth in Section 26 of this Agreement, Processor may change or remove any features, functions, brand, third party provider, or other element of its systems or processes for a Service (each, an "Attribute") or provide a replacement for a Service or Attribute from time to time, provided that neither the overall performance nor the fees for the Service are materially adversely affected. Notwithstanding the foregoing, Processor may terminate Service(s) or Attribute(s) ("Sunset") so long as Processor is Sunsetting the Service or Attribute, no damages, liquidated damages or other remedy will be available to or due from either party as a result of such Sunset, and Merchant shall be entitled to a refund of the portion of prepaid fees (if any) for the period after the Sunset takes effect. In addition, Processor may terminate a Service, in whole or in part, without penalty, if Processor's agreement to use any third party software or service upon which the Service relies expires or is terminated; provided, however, that prior to any such termination, Processor shall use reasonable efforts to develop a work around that allows Merchant to continue to receive the Service or similar software or services without material interruptions, reduction in quality, or increase in fees.

35. Title to the Services. Merchant agrees it is acquiring only a nontransferable, non-exclusive right to use the Services. Processor shall at all times retain exclusive title to the Services, including without limitation, any materials delivered to Merchant hereunder and any invention, development, product, IP Rights software program, or derivative thereof, developed in connection with providing the Services or during the term of this Agreement ("Processor Property"). Merchant hereby unconditionally and irrevocably assigns, transfers, and conveys to Processor all of Merchant's right, title and interest in and to any Processor Property and IP Rights therein or thereto Merchant shall obtain or provide all necessary rights, consents and notices for Processor to use all of the data and information supplied by Merchant hereunder in accordance with the terms of the Agreement.

36. Limited Acceptance. If so indicated below, Merchant acknowledges and agrees that it wishes to be a Limited Acceptance merchant, which means that Merchant has elected to accept only certain VISA/MasterCard card types as indicated below, or via later notification. Merchant further acknowledges and agrees that Processor has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance and that Processor's obligations do not include policing card types at the point of sale. As a Limited Acceptance Merchant, Merchant will be solely responsible for the implementation of its decision for Limited Acceptance. Merchant will be solely responsible for policing, at the point of sale, the card type(s) of transactions it submits for processing by Processor. Should Merchant submit a transaction for processing for a card type it has indicated it does not wish to accept, Processor may process that transaction and Merchant will pay the applicable fees, charges, and assessments associated with that transaction. For Merchant's convenience, a general description of VISA/MasterCard card types are:

- a. Consumer Credit - a consumer credit card issued by a U.S. Issuer or a commercial credit card issued by a non-U.S. Issuer; this category does not include VISA or MasterCard branded signature-based debit cards.
- b. Consumer Debit - a VISA or MasterCard branded signature-based debit card (including certain stored-value and prepaid cards).

c. Commercial - a VISA or MasterCard branded credit card issued by a U.S. Issuer that bears the descriptive term "Business Card", "Corporate Card", "Purchasing Card", "Fleet Card", or similar descriptive term indicated pursuant to the Operating Regulations.

Only if checked below, Merchant wishes to be a Limited Acceptance Merchant, which means that Merchant will accept only the VISA/MASTERCARD card types indicated below:

- VISA Credit Cards
- VISA Debit Cards (signature based)
- MasterCard Credit
- MasterCard Debit Cards (signature based)

37. Security Interest. This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant grants to Processor a security interest in all accounts owned or controlled by Worldpay at Member Bank that are funded with settlement amounts, including the Reserve Account, and the proceeds thereof (collectively, the "Secured Assets"), to secure all of Merchant's obligations under this Agreement. With respect to such security interest, Processor will have all rights afforded under the Uniform Commercial Code, any other applicable law, and in equity. In addition to the security interest in the Secured Assets, Processor shall have a contractual right of setoff against the Secured Assets.

Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action by Processor or notation in the Processor's records, although Processor may enter such set off on its books and records at a later time. Merchant warrants and represents that no other person or entity has a security interest in the Secured Assets. If a bankruptcy proceeding is filed by or against Merchant under the Bankruptcy Code (whether the petition is filed voluntarily and/or involuntarily), it waives any applicable protection related to the automatic stay provisions of 11 U.S.C. §362 (or any replacement section) and consents to an appropriate reserve of funds being established between the parties pursuant to this Agreement or by Court Order.

38. Modification of Agreement. Except as provided in this Agreement, this Agreement including any addendum or schedule or exhibit hereto shall only be modified or amended by an instrument in writing signed by Merchant and Processor. Any changes, additions, stipulations or deletions, including lining out, by Merchant, except where indicated by a space to be filled in (e.g., the space for Merchant's name and address), shall not be deemed to be agreed to or binding upon Processor unless agreed to in writing in the form of an amendment signed by each party hereto. Merchant agrees that Processor may amend this Agreement upon notice to Merchant if such amendment is a requirement of applicable law or an Association.

39. Headings and Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. Merchant and Processor each acknowledge that the limitations and exclusions contained in this Agreement have been the subject of active and complete negotiation between the parties and represent the parties' voluntary agreement. The parties agree that the terms and conditions of this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this document. As used in the Agreement, the word "including" means including but not limited to.

40. Authorization. Each of the parties hereto represents and warrants on behalf of itself that it has full power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, limited liability company or partnership or other appropriate authorizing actions; that the execution, delivery and performance of this Agreement will not contravene any applicable by-law, corporate charter, operating agreement, partnership or joint venture agreement, law, regulation, order or judgment; that execution, delivery and performance of this Agreement will not contravene any provision or constitute a default under any other agreement, license or contract which such party is bound; and, that this Agreement is valid and enforceable in accordance with its terms.

41. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

42. Facsimile and Electronic Signatures. Merchant and Processor agree that electronic signatures will have the same legal effect as original (i.e. ink) signatures and that an electronic, scanned, facsimile, or duplicate copy of any signatures will be deemed an original may be used as evidence of execution.

43. Member Bank. The Processor and Member Bank may jointly or individually assert or exercise any rights or remedies provided to Processor and Member Bank hereunder. Processor and Member Bank reserve the right to allocate the duties and obligations assigned hereunder to Processor between themselves, as they deem appropriate in their sole discretion. Member Bank has certain obligations to Merchant pursuant to the Operating Regulations. In the event of any conflict between this Agreement and the Operating Regulations on the subject of Member Bank's obligations, the Operating Regulations shall control. Processor is party to an agreement with Member Bank and under such agreement is authorized to provide the services described herein. This Agreement shall be deemed accepted by Member Bank as of the date the first transaction is acquired under this Agreement. As of the commencement of this Agreement, Member Bank shall be Fifth Third Bank, N.A, located in Cincinnati, OH. The Member Bank may delegate certain or all of its duties to an affiliate of the Member Bank at any time, without notice to Merchant. The Member Bank may be changed, and its rights and obligations assigned to another party by Processor at any time without notice to Merchant.

44. Miscellaneous.

- A. **Suitability of Services.** Merchant shall be responsible for determining the suitability of the Services for its purposes and that the processing configurations and settings of the Services are consistent with all Laws applicable to Merchant's business and Merchant's business needs.
- B. **Independent Contractor.** Processor is an independent contractor. Neither Processor nor any of its representatives are an employee, partner or joint venturer of Merchant. The Services may be provided by Processor or its affiliates. Nothing herein shall be deemed to make Processor personnel employees of Merchant and such personnel shall not be subject to background screening by Merchant or required to sign agreements directly with Merchant.
- C. **Force Majeure Event.** Except for Merchant's obligations to pay all amounts due under this Agreement or to comply with the Operating Regulations, neither party shall be liable for any loss, damage or failure due to causes beyond its control including strikes, riots, earthquakes, epidemics, terrorist actions, criminal acts by unrelated third parties, wars, fires, floods, weather, power failure, telecommunications outage, acts of any military, civil or regulatory authority, or acts of God ("Force Majeure Event"). This provision does not relieve Processor from its obligations to maintain and test disaster recovery plans for the Services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers as of the dates set forth below.

WORLDPAY, LLC Signed by:

Signature: Nick Ashcraft
 Name: 88FA4155A152466 Nick Ashcraft
 Title: VP, Assistant General Counsel
 Date: 05-Feb-2023 | 2:41 PM EST

MERCHANT LEGAL NAME: City of Naples
 Signature: _____
 Name: _____
 Title: _____
 Date: _____

Approved as to form and legality.

By [Signature]
Vose Law Firm City Attorney

Attachment: Immigration Law Affidavit Certification

This Affidavit is required and should be signed by an authorized principal of the firm, notarized and submitted with formal Invitations to Bid (ITB's) and Request for Proposals (RFP) submittals. Further, Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the vendor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Failure to include this Affidavit and acceptable evidence of enrollment in the E-Verify program, may deem the (Vendor / Bidder) being a Contractor, Firm, Consultant, etc., and their Submittal of a Bid (ITB, RFP, RFQ, etc.) as non-responsive.

City of Naples will not intentionally award CITY contracts to any vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA").

City of Naples may consider the employment by any vendor of unauthorized aliens a violation of Section 274A (e) of the INA. Such Violation by the recipient of the Employment Provisions contained in Section 274A (e) of the INA shall be grounds for unilateral termination of the contract by City of Naples.

Vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at the time of submission of the Vendor's / Bidder's proposal.

Company Name Fifth Third Bank, N.A.
Print Name Dawn Choate Title Vice President
Signature *Dawn Choate* Date 10/26/22
State of Florida
County of Collier

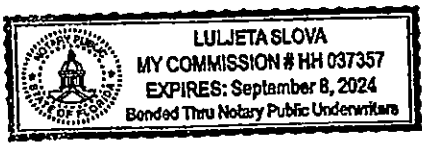
The foregoing instrument was signed and acknowledged before me this 27 day of Oct, 2022, by

Dawn Choate who has produced FLDL C300171727480 as identification.
(Print or Type Name) (Type of Identification and Number)

Luljeta Slova
Notary Public Signature

Luljeta Slova
Printed Name of Notary Public

HH037357 cx 9/8/24
Notary Commission Number/Expiration



The signee of these Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to Interrogatories hereinafter made.