

## MERCHANT SERVICES AGREEMENT

### 1. GENERAL

CSG Forte Payments, Inc. (“FORTE”) provides payment processing and related services including but not limited to Automated Clearing House (“ACH”), Credit and Debit Card processing, account verification and customer identification (collectively and individually, as applicable, the “Services”) to FORTE’s customers (“Merchant(s)”) engaged in the business of selling goods or services to customers that may be businesses or Consumers. The Merchant Services Agreement (“Agreement”) shall consist of these terms and conditions, each of the Appendices attached hereto, if applicable, and all modifications and amendments thereto. Under the terms of the Agreement, which may be amended from time to time in accordance with the terms and provided herein, Merchant will be furnished with the products and services described in the Agreement and attached Appendices, which are selected by Merchant and approved by FORTE. For any terms herein that are specifically applicable to any particular product or service offered by FORTE, only the terms and conditions that apply to the specific Service(s) requested by Merchant at any given time shall apply. Some capitalized terms which are not defined herein have specific definitions provided in Appendix A, attached hereto and incorporated by reference.

### 2. USE LICENSE.

**2.1** FORTE hereby grants to Merchant a non-exclusive and nontransferable limited license to access and use the Services contracted for under this Agreement and Merchant hereby accepts such license and agrees to utilize and access the selected Services in accordance with the practices and procedures established by FORTE and which may be amended from time to time in accordance with the terms and provided herein.

**2.2** Merchant may use the Services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its customers, unless otherwise prohibited by FORTE, FORTE’s financial institution or an applicable Payment Association or other regulatory body.

**2.3** No license or right to reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of FORTE’s Proprietary Property, as defined in Section 3 below, in whole or in part, is granted except as expressly provided by this Agreement. Neither Merchant nor any of its Users or Affiliates shall reverse engineer, decompile or disassemble the Proprietary Property.

**2.4** Nothing in the Agreement shall be construed to provide Merchant with a license of any third-party proprietary information or property.

### 3. OWNERSHIP

**3.1** All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to the Services (the “Proprietary Property”), are and will remain the sole and exclusive property of FORTE, whether or not specifically recognized or perfected under applicable Laws.

**3.2** FORTE shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the Services and/or any new programs, upgrades, modifications or enhancements developed by FORTE in connection with rendering Services to Merchant, even when refinements and improvements result from Merchant’s request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in FORTE by virtue of Merchant’s agreement to the terms of this Agreement or otherwise, Merchant hereby transfers and assigns (and, if applicable, shall cause its Users or Affiliates to transfer and assign) to FORTE all rights, title, and interest which Merchant or any of its Users or Affiliates may have in and to such refinements and improvements.

**3.3** All reference to any of FORTE’s service marks, trademarks, patents or copyrights, or those of FORTE’s partners or vendors, shall be made in compliance with the requirements, including periodic updates thereto, as provided at <http://www.forte.net/trademark>.

#### **4. TRANSACTION PROCESSING SERVICES.**

**4.1 Accepting Transactions.** FORTE shall accept Transactions on a 24-hour basis. Transactions received after the designated cut-off time will be included in the next day's processing. FORTE is responsible only for processing Transactions that are received by FORTE in the proper format, pre-approved by FORTE and on a timely basis.

**4.2 Identifying Numbers.** Merchant understands and agrees that FORTE may rely solely on identifying numbers provided by Merchant to determine the bank and/or account related to each Transaction even if the numbers identify a bank or account holder that differs from the one Merchant has identified by name.

**4.3 Processing Limits.** FORTE may impose a cap on the number or dollar amount of Transactions it will process for Merchant. These limits may be adjusted as part of FORTE's standard risk management processes. If Merchant exceeds the established limits, FORTE may temporarily suspend Transaction processing and/or temporarily hold the funds that are in excess of the established limits. Should FORTE place a hold on Merchant's account due to a Merchant exceeding its limits, FORTE will provide Merchant with notice of the hold, including the reason for the hold.

**4.4 Receiving Reports and Transaction Result Files.** Reports regarding Transaction processing are available for Merchant to access through its online Merchant portal. Merchant is responsible for communicating with FORTE's systems to receive daily reports, settlement files and/or Transaction results. FORTE is under no obligation to transmit this data to Merchant.

#### **4.5 Modifying Transactions.**

4.5.1 At Merchant's request, FORTE will make reasonable efforts to reverse, modify, or delete a Transaction after it has been submitted by Merchant prior to being submitted to the applicable Payment Network. All requests must be made by an individual pre-authorized by Merchant to make such requests, and timely delivered to FORTE.

4.5.2 Merchant agrees that FORTE will not be held responsible for any losses, directly or indirectly, incurred by Merchant or other third parties as a result of FORTE's inability to

accomplish the requested modification or deletion before the Transaction has been submitted to the applicable Payment Network. Further, Merchant acknowledges that once a Transaction is submitted to the applicable Payment Network, it cannot be modified or deleted.

**4.6 Rejecting, Delaying or Returning Transactions.** FORTE may reject, delay or return any Transaction without prior notification to Merchant for any reason permitted or required under any applicable Laws or Rules, or if FORTE has reason to believe such Transaction is fraudulent or improperly authorized. FORTE shall have no liability to Merchant by reason of the rejection, delay or return of any such Transaction. FORTE shall make available to Merchant details related to any such Transaction and FORTE may retransmit a returned or rejected Transaction at Merchant's request but shall have no obligation to do so.

#### **4.7 Reserve.**

4.7.1 FORTE may require a security deposit or Reserve (as defined in [Appendix A](#)) to process Transactions for Merchant. The Reserve may be used by FORTE to offset any returned items, chargebacks, fees/fines, billing or other Merchant obligations to FORTE that FORTE is unable to collect from Merchant. Should FORTE determine that a Reserve is required, FORTE will provide Merchant notice in writing, including email, regarding amount required and form of collecting the Reserve. Merchant authorizes FORTE to make withdrawals or debits from funds available in the Reserve, without prior notice to Merchant, at such times and in such amounts as may be necessary to fulfill Merchant's obligations under this Agreement. Merchant also understands and agrees that such funds from the Reserve will be held in a non-interest-bearing account with FORTE's ODFI and, as such, FORTE shall not be responsible to Merchant for any interest on such funds. The Reserve amount may be revised based on periodic review of Merchant's financial condition, Transaction volumes, Transaction amounts and return ratios resulting in a greater or lesser Reserve amount. Merchant will be notified of any such revision.

4.7.2 The Reserve may be funded through (a) direct payment by Merchant or (b) a

percentage of the Transactions settled on Merchant's behalf (i.e., a "Rolling Reserve").

4.7.3 The Reserve funds shall be held by FORTE for a minimum of ninety (90) calendar days beyond the date of the last item processed by FORTE on Merchant's behalf. In the event FORTE has reason to believe that (a) Merchant has acted in a fraudulent manner with regard to its account with FORTE or any Transaction processed through FORTE's systems; or (b) Merchant has not obtained proper authorization for one or more Transactions; or (c) Merchant will not be able to meet its obligations to FORTE; or (d) FORTE is at risk of incurring additional expenses/potential losses in relation to Services provided to Merchant pursuant to this Agreement, FORTE may extend the hold on Merchant's Reserve funds up to two (2) years from the last Transaction activity date or the maximum time allowed by applicable Laws or Rules upon written notice to Merchant (including electronic mail) at the contact information FORTE has on file for Merchant's account. After expiration of the hold time period and, subject to any extension(s) hereunder, FORTE will then attempt to release the Reserve funds to Merchant less any fees and/or any other amounts owed to FORTE using the bank account information FORTE has on file for Merchant. It is Merchant's obligation to update FORTE with any change in bank account and/or to request release of the held funds. Should FORTE be unable to successfully credit the release of funds to Merchant's designated bank account after the hold time has expired, FORTE is obligated to escheat the funds held to the state in which Merchant is located per that state's escheatment laws less any applicable processing and/or handling fees.

**4.8 Funding Hold.** Should any of the following occur: (i) Merchant's account experiences funding issues, including but not limited to chargebacks or returned funding or billing; (ii) FORTE observes irregular, suspicious or possible fraudulent Transaction activity on Merchant's account; or (iii) FORTE is required by Laws or at the instruction of ODFI or a Payment Network, FORTE reserves the right to place a funding hold on Merchant's processing account without prior written notice to Merchant. In the event FORTE places a funding

hold on Merchant's account under the terms of this Section, FORTE will provide Merchant with notice of the hold and the reason for such hold so long as communicating such would not create a security risk or violate any legal obligation of FORTE. Any funds held under this Section will be treated as a Reserve and be governed by the terms of this Section 4.

**4.9 Temporary Suspension of Services.** Should any of the following occur: (i) FORTE observes irregular, suspicious or possible fraudulent Transaction activity on Merchant's account; (ii) FORTE determines there is an irregularity in Merchant's account, documentation, processes or financial condition that is inconsistent with FORTE's risk requirements; (iii) Merchant is in material breach of its payment or other financial obligations to FORTE; or (iv) FORTE is required by Laws, Rules or a Payment Network, FORTE reserves the right to temporarily suspend Services to Merchant without prior written notice. In the event FORTE suspends Services to Merchant under the terms of this Section, FORTE will provide Merchant with notice of the suspension and the reason for such suspension, along with remediation actions so long as communicating such would not create a security risk or violate any legal obligation of FORTE.

**4.10 Authorization.** Merchant specifically authorizes FORTE to (i) to debit and credit Merchant's designated bank account in order to carry out its duties under this Agreement and (ii) debit its designated bank account and any account owned by the same entity as Merchant or by an entity with the same tax identification number as Merchant to collect any payment obligation owed to FORTE by Merchant hereunder. Further, Merchant authorizes FORTE to act as its agent for receipt of settlement funds in connection with the Services and FORTE accepts such appointment subject to any conditions and limitations of this Agreement. Merchant agrees that receipt by FORTE of funds from Merchant's customer shall constitute receipt of payment to Merchant, extinguishing such customer's payment obligation to Merchant (to the extent such obligation has not otherwise been extinguished) as if such customer had paid Merchant directly. If FORTE fails to fund Merchant's account in an amount corresponding

to such customer's payment, Merchant's sole recourse shall be to FORTE, not the customer.

**4.11 Data Security.** FORTE shall implement and maintain an information security program that includes, at a minimum, industry standard administrative, technical and physical safeguards reasonably designed to: (i) ensure the security and confidentiality of PII, as more fully defined in [Appendix A](#); (ii) protect against any anticipated threats or hazards to the security or integrity of such PII; (iii) protect against unauthorized access to or use of PII that could result in substantial harm to any Consumer; and (iv) process, transmit, store and/or dispose of PII in a secure manner.

## **5. PRICING AND PAYMENT.**

**5.1** Payment for all utilized Services shall be in accordance with the fee schedule attached hereto as Exhibit H, as those fees may be amended by FORTE from time to time. Fees may be amended by FORTE with a minimum of thirty (30) days' notice and such amended fees will become effective on the designated effective date, which shall be no less than thirty (30) days from the date of the written notice to Merchant. Continued use of the Services on and after the designated effective date shall be deemed acceptance of the amended fees.

**5.2** Forte reserves the right to impose a fee on Merchant's account due to Merchant's failure to comply with applicable Rules, Laws or regulations. Such non-compliance fee shall be assessed until such time as Merchant becomes compliant.

**5.3** Fees shall be immediately due and payable upon receipt of Services unless otherwise agreed upon between the parties. Fees will be automatically debited from the designated bank account on or after the 10<sup>th</sup> of each month for the prior month's activity unless otherwise agreed between the parties.

**5.4** Failure to pay any amount due to FORTE within the time period or on the terms set forth in this Section shall constitute a material breach of the Agreement by Merchant. FORTE shall assess a late fee of one and one-half percent (1½%) per month on all amounts due and payable after the monthly deadline. In addition to imposing such late fees, FORTE may elect to terminate the Agreement, which shall terminate

Merchant's access to the Services in accordance with Section 18 below. Additionally, a \$25.00 fee shall be assessed for any return of a debit processed to the designated bank account.

**5.5** FORTE shall have the right to offset against any amount payable by FORTE to Merchant under any provision of this Agreement, any amounts owed FORTE related to Services provided to Merchant, including but not limited to chargebacks or returns posted to Merchant's account, or any fees, fines or costs incurred damages sustained by FORTE as a result of Merchant's violation, breach or non-performance of its obligations under the Agreement.

**5.6** In the event the funds in the designated account are insufficient to cover Merchant's obligations, Merchant agrees to submit payment of amounts owing to FORTE upon demand and through alternative means. Unless otherwise agreed upon, FORTE may debit any alternative account maintained by Merchant for the amounts due and owing without further notice to or approval from Merchant.

## **6. TAXES.**

Each party is solely responsible for payment of any taxes (including sales or use taxes, transfer taxes, excise taxes, intangible taxes, property taxes, and similar taxes and duties) owed as a result of the processing relationship established hereunder and hold the other party harmless from all claims and liability arising from its failure to report or pay such taxes. Additionally, Forte will rely solely on Merchant to provide its proper entity name and corresponding federal tax identification number for submission to applicable taxing authorities. Merchant understands and agrees that it is liable for all ramifications from improper reporting to tax authorities unless such is based solely on Forte's actions or inactions.

## **7. REPRESENTATIONS AND WARRANTIES.**

**7.1 FORTE's Representations and Warranties.** FORTE makes no representations or warranties concerning its Services except as may be specifically authorized, in writing, or set out herein.

7.1.1 FORTE hereby warrants that

its software solutions and Services will perform in accordance with their published specifications in all material respects.

7.1.2 FORTE further warrants that in performing its obligations hereunder, it shall exercise due care and reasonable efforts to ensure that information originated by Merchants is transmitted accurately.

**7.2 Merchant's Representations and Warranties.** Merchant represents and warrants to FORTE that:

7.2.1 If applicable, with respect to all Transactions originated by FORTE on behalf of Merchant (i) each Transaction in all respects has been properly authorized by Receiver; (ii) each Transaction is for an amount agreed to by the Receiver and; (iii) Merchant shall provide proof of authorization in compliance with applicable Rules for any Transaction to FORTE upon request within five (5) Business Banking Days.

7.2.2 Merchant agrees to adhere to the warranties within the applicable Rules for each Transaction FORTE processes on Merchant's behalf.

**7.3 Mutual Representations and Warranties.** Each party represents and warrants to the other that:

7.3.1 The execution of this Agreement does not violate any applicable international, federal, state, or local law, Payment Network Rule or contract to which such party is subject.

7.3.2 There are no actions, suits or proceedings existing or pending against or affecting it before any judicial or regulatory authority which would have a material adverse effect on its ability to perform its obligations hereunder.

7.3.3 When executed and delivered, this Agreement will constitute a legal, valid, and binding obligation, enforceable in accordance with its terms.

## **8. CONFIDENTIALITY.**

8.1 The parties acknowledge that, by virtue of this Agreement, each has been and will continue to be entrusted with certain Confidential Information (as defined in Appendix A) pertaining to the other's business, including but not limited to the Proprietary Property developed by, acquired by or licensed by FORTE. Each party agrees that, except to the

extent and in the manner necessary to perform its duties hereunder, it will not disclose to others or use for its own benefit any Confidential Information of the other party and Merchant will hold all Proprietary Property as defined herein confidential in perpetuity.

8.2 In the course of providing and receiving the Services, each party acknowledges that it may receive or have access to PII, as more fully defined in Appendix A). As such, each party shall: (i) keep all PII in strict confidence, with the degree of care necessary to avoid unauthorized access, use or disclosure; (ii) use PII solely and exclusively for the purposes provided in this Agreement; (iii) implement administrative, physical and technical safeguards to protect PII that are at least as rigorous as accepted industry practices; and (iv) as applicable, have in place a program that complies with applicable legal requirements regarding PII, including, if applicable, PCI standards for data security.

8.3 Except with respect to PII, this Section 8 will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, (iii) is disclosed under force of law, applicable regulation, governmental regulation or court order, or (iv) is required to be disclosed by a banking partner, an Acquirer or an applicable Payment Network.

## **9. INDEMNIFICATION.**

**9.1** Each party shall defend, indemnify and hold harmless the other party against any third-party claims, lawsuits, or damages, including attorney's fees, of infringement of any copyright, patent, trademark or other similar intellectual property right of any third party in any country that the party distributes its products or services. In the event a party's product or service is held or is believed by that party to infringe, the indemnifying party shall have the option in its sole discretion, at its expense, to: (i) modify the product or service to be non-infringing; (ii) obtain for the indemnified party a license to continue using the product or service pursuant to any agreement it has with the indemnifying party, or (iii) terminate this Agreement in its

totality. The foregoing states the entire liability and exclusive remedies for infringement of intellectual property rights of any kind.

9.3 Subject to the limits of liability in Section 10, the foregoing indemnities shall survive termination of this Agreement and termination of any agreement between Merchant and FORTE when this Agreement continues in full force and effect following such termination.

9.4 The indemnifying party shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided that the indemnified party shall have the right to participate in any such litigation insofar as it concerns actions against it directly, including the right to select and retain counsel of its own choosing to represent its own interests at indemnified party's own expense.

## **10. LIMITS OF LIABILITY.**

**10.1.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE (WHETHER BASED ON TORT OR CONTRACT AND EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR SUCH PARTY'S LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE. UNDER NO CIRCUMSTANCES SHALL THE ENTIRE LIABILITY OF EITHER PARTY TO THE OTHER PARTY UNDER THIS AGREEMENT, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE AMOUNT OF THE AVERAGE MONTHLY FEES AND CHARGES PAID BY MERCHANT TO FORTE, EXCLUDING ANY PASS-THROUGH FEES, FOR THE SERVICE FOR THE IMMEDIATE THREE (3) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO MERCHANT'S CLAIM. FURTHER, FORTE WILL NOT BE LIABLE FOR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS IN CONNECTION WITH ANY SERVICE IF SUCH PERFORMANCE

WOULD RESULT IN IT BEING IN BREACH OF ANY LAW, RULE OR REQUIREMENT OF ANY GOVERNMENTAL AUTHORITY. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**10.2** No claim may be brought by Merchant or any User-or Affiliate of Merchant more than one (1) year after the accrual of the claim. The limitations of liability contained in this Section shall apply without regard to whether other provisions of the Agreement have been breached or have proven ineffective.

**10.3** Merchant acknowledges FORTE's ODFI is not liable for any action or failure to act by Merchant or FORTE and such ODFI shall have no liability whatsoever in connection with any products or services provided to Merchant by FORTE.

## **11. COMPLIANCE WITH RULES AND LAWS.**

**11.1** In performing its duties under this Agreement, each party agrees to comply with all applicable Laws and Rules including but not limited to those listed in [Appendix A](#).

**11.2** In performing its duties under this Agreement, each party agrees to comply, at its own expense, with all applicable Rules and Laws, including but not limited to industry-related data privacy and data security rules associated with the privacy and security of non-public Consumer financial information, including but not limited to, all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), all Rules of any applicable Payment Networks, all requirements under the PCI-DSS (or similar applicable data security law, rule or regulation) including but not limited to 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 Payment Networks. Each party agrees to cooperate and provide information reasonably requested by the other to facilitate its compliance with any applicable Law, Rule or regulation.

**11.3** Additionally, should a Payment Network or regulatory authority impose a fee or fine on Merchant for any violation of the Rules or Laws

or regulations by Merchant, such fee or fine may be charged to FORTE as a pass-through to Merchant. If any such fee or fine is charged to FORTE, Merchant shall reimburse FORTE for any such fees or fines.

**11.4** FORTE bears no responsibility for any lack of compliance with these Rules and Laws by Merchant or its agent and directs Merchant to seek the counsel of outside legal assistance should Merchant have questions or concerns regarding compliance with such. Merchant agrees to cooperate and provide information requested by FORTE to facilitate FORTE's compliance with any applicable Law or Rule.

**11.5** Additionally, Merchant shall reimburse FORTE for any fees, fines or loss of funds imposed on FORTE for any violation of applicable Rules or Laws by Merchant.

**11.6** In accordance with the United States Department of Treasury bureau of Financial Crimes Enforcement Network ("FinCEN") requirements, Forte will collect and conduct due diligence on Merchant's Beneficial Owners at onboarding. Merchant shall immediately notify FORTE of any subsequent changes in Beneficial Owners so that FORTE may conduct appropriate due diligence. Beneficial Owner as defined by FinCEN rules is referenced in Appendix A.

## **12. NOTICE OF ERRONEOUS OR UNAUTHORIZED TRANSFERS.**

Reports regarding Transaction processing are available for Merchant to access through its online Merchant portal. It is Merchant's obligation to regularly and promptly review all Transactions and other communications from FORTE and to promptly notify FORTE upon discovery of any and all discrepancies between Merchant's records and those provided by FORTE, Acquirer, Payment Network or financial institution. It is Merchant's responsibility to timely notify FORTE of any transfer of funds that Merchant believes was made without proper authorization or in error. Merchant agrees to provide FORTE with written notice of any discrepancy or failure immediately upon discovery, not to exceed five (5) business days. Failure to so provide notice of such erroneous or unauthorized Transaction shall be deemed an acceptance by Merchant and a waiver of any and all rights to dispute such failure or error. FORTE

shall bear no liability and have no obligations to correct any errors resulting from Merchant's failure to comply with the duties and obligations stated herein.

## **13. FORTE SERVICE POLICY.**

**13.1** FORTE makes no representations or warranties concerning its Services except as may be specifically authorized, in writing, or set out herein. Merchant acknowledges and understands that FORTE does not warrant that the Services will be uninterrupted or error free and that FORTE may occasionally experience delays or outages due to disruptions that are not within FORTE's control. Any such interruption shall not be considered a breach of the Agreement by FORTE. FORTE shall use its best efforts to remedy any such interruption in the Service(s) as quickly as possible.

**13.2** FORTE shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Transactions may be originated or through which FORTE may receive or transmit information, and no such entity shall be deemed an agent of FORTE.

## **14. USAGE.**

**14.1. Use Restricted to Non-Prohibited Purpose.** Merchant agrees that it will not transmit any material through FORTE's systems in violation of any applicable Law or Rule. FORTE reserves the right to use all means necessary to monitor Merchant's actions in the event of a real or perceived security risk. FORTE reserves the right to terminate Services to Merchant should FORTE deem Merchant's use of the Services are for an unlawful or prohibited purposes. In the event of such an occurrence, FORTE shall make reasonable efforts to notify Merchant prior to taking any such action but is not required to do so.

**14.2 Proper Usage.** Merchant agrees to comply with the reasonable and acceptable use policies and Rules of any networks accessed by Merchant through the Services. FORTE reserves the right to deny access to, or close any account Merchant has with FORTE which, in FORTE's opinion, is causing or may cause, harm to or negatively affect a FORTE server or

third-party network accessed through FORTE. In the event of such an occurrence, FORTE shall make reasonable efforts to notify Merchant prior to taking any such action but is not required to do so.

**14.3 User and System Security.** Merchant shall ensure that its Users comply with all applicable requirements of this Agreement. Merchant is responsible for protecting the confidentiality of any and all passwords and credentials provided to Merchant by FORTE for the purpose of utilizing the Services or other forms of access to Merchant's accounts with FORTE. Merchant is responsible for the security of its systems, locations and equipment used in processing Transactions under this Agreement and for developing security procedures and training its employees on the procedures. Merchant expressly assumes responsibility for the acts or omissions of all Users on its account(s) with FORTE and for User access to FORTE's systems either directly or through software.

**14.4 Use of Information and Data.** Merchant acknowledges and agrees, on behalf of itself and its customers, that all information submitted by Merchant to FORTE in order for FORTE to provide the Services to Merchant or otherwise contributed by Merchant pursuant to these Services (including Transaction results) is held in FORTE's database, and may be used by FORTE or its affiliates for the purpose of providing the Services in compliance with all applicable Laws and Rules to its customers in compliance with all applicable Laws and Rules, including in accordance with the federal Fair Credit Reporting Act ("FCRA"). Further, FORTE may track, review, compile, store and use any information or data received from Merchant as part of a Transaction or from a Payment Association or financial institution regarding a Transaction for regulatory compliance or any other legally permissible purpose. Without limiting the foregoing, Merchant agrees and acknowledges that FORTE (and/or certain of its affiliates) may use the routing numbers, account numbers and other PII submitted by Merchant as well as Transaction results provided to or received by FORTE for the purpose of supporting FORTE's (or certain of its affiliates) fraud detection, account

validation and verification, and/or other commercially available services.

**15. AUTHORIZATION OF THIRD-PARTY SERVICE PROVIDER.** If Merchant uses the Services through or in conjunction with a third-party service provider that is not a party to this Agreement, Merchant authorizes FORTE to provide the authorized third party with its FORTE merchant account information and credentials. If applicable, Merchant authorizes the third party to originate Transactions and receive the corresponding results on its behalf.

**16. MERCHANT ACCOUNT REVIEW.** In accordance with its standard risk and compliance processes, FORTE shall maintain the right to periodically review Merchant's account to ensure proper usage and updated information on the account. Merchant agrees to permit FORTE to conduct such a review and to cooperate fully with FORTE in conducting any such review of Merchant, its account and/or its use of the Services to verify that Merchant is using the services in compliance with this Agreement, applicable Law and all applicable security standards and requirements. Any confidential or proprietary information learned by FORTE or its authorized representatives during any such review shall be subject to the terms, conditions and limitations of Section 8.

**17. CREDIT REVIEW AND DOCUMENTATION REQUIREMENTS.** Merchant is on notice that FORTE will review Merchant's business and financial documentation and circumstances as part of its original underwriting of Merchant's account and FORTE may, from time to time after initial approval, review Merchant's account thereafter. Merchant agrees to fully cooperate with FORTE's reasonable requests for additional information and/or documentation through any such process. Further, Merchant authorizes FORTE to (i) authenticate Merchant's ownership of the bank account provided to FORTE for use in providing Services; (ii) to access information stored with any credit reporting or investigative agency to investigate the references given or any other statements or data obtained from Merchant, or any of its



principals, in connection with the Agreement. Subsequent investigative reports or inquiries may be required or used in conjunction with an update, renewal or extension of the Agreement.

## **18. VOLUME AND FINANCIAL RE-EVALUATION.**

FORTE reserves the right to re-evaluate Merchant's account, including but not limited to Transaction volume, chargeback ratio, Merchant's current financial position and other risk indicators. FORTE may undertake such a re-evaluation as it deems necessary throughout the course of FORTE's business relationship with Merchant. Any such re-evaluation will be done in keeping with FORTE's standard risk prevention policies. Such re-evaluation may result in modification of the fee structure, reserve or termination of the Agreement between Merchant and FORTE.

## **19. TERM AND TERMINATION.**

**19.1 Term.** The Agreement shall be effective upon the date an authorized signer of Merchant indicates Merchant's acceptance of the terms of the Agreement in writing, including by e-signature ("Effective Date"). The Agreement shall have an initial term of three (3) years from and after the Effective Date ("Initial Term").

**19.2 Termination for Convenience.** After expiration of the Initial Term, this Agreement shall automatically renew for successive one-year terms ("Renewal Term") unless either party provides written notice of to the other party of its intent to terminate not less than thirty (30) days prior to expiration of the Initial or a Renewal Term. Merchant's account will be closed at the end of the then-current billing cycle.

**19.3 Termination for Cause.** Either party may terminate this Agreement at any time if the other party is in material breach of the Agreement and fails to cure the breach within thirty (30) days of written notice describing the breach in reasonable detail. Either party may immediately terminate this Agreement without prior notice if the other party violates any Rule or applicable Law.

### **19.4 RESERVED.**

**19.5 Immediate Termination.** FORTE may immediately terminate the Agreement without

prior notice under the following conditions: (i) in the event Merchant is or becomes bankrupt or is unable to pay its debts as they become due; (ii) FORTE reasonably determines that Merchant has violated any material term, condition, covenant, or warranty of the Agreement; (iii) FORTE determines that the type of business in which Merchant is engaged is or becomes an industry or business for which FORTE is prohibited from providing the Services; (iv) Merchant is using the Services for a purpose other than a permissible use; (v) FORTE observes irregular, suspicious or possible fraudulent Transaction activity on Merchant's account that is reasonably determined to expose FORTE to risk of financial, reputational, or other measurable loss; (vi) FORTE reasonably determines that Merchant is the subject of a government investigation that is likely to impact Merchant's receipt of the Services; (vii) FORTE is instructed to terminate by a financial institution (including but not limited to an ODFI), Acquirer or Payment Network; or (viii) provision of the Service is prohibited by any Laws, Rules, regulations or orders, including those of the United States Department of Treasury Office of Foreign Assets Control (OFAC) or by any FORTE internal policy that materially effects FORTE's ability to provide the Services under the terms of this Agreement.

**19.6 Payment by Third Party.** When Merchant's fees for the Services are paid by a third party, if the third party fails to make payment in accordance with the terms of its agreement with FORTE, FORTE may (i) immediately suspend or terminate Merchant's access to the Services until payment is received or (ii) seek payment from Merchant directly pursuant to FORTE's then-current payment terms, in order to continue servicing Merchant.

**19.7 Post-termination Rights and Obligations.** Upon the effective date of termination of the Agreement, Merchant's rights hereunder to use the Services shall cease, but Merchant's obligations in connection with any Transactions processed by FORTE on behalf of Merchant (whether before or after such termination) shall survive termination.

## **20. AMENDMENT OR MODIFICATION OF TERMS.**

Unless otherwise provided for in this Agreement, FORTE reserves the right to amend the terms of this Agreement upon at least thirty (30) days' written notice to Merchant. Merchant's continued use of the Services after the designated effective date of such amended terms shall indicate Merchant's acceptance of the new terms. The terms and conditions under this Agreement are subject to such modifications, changes, and additions as may be required, or deemed to be required by FORTE, by reason of any applicable Rule or regulation.

## **21. ASSIGNMENT.**

The rights granted under the Agreement are and shall be personal to Merchant and shall not be assigned by any act of Merchant or by operation of law, without the prior consent of FORTE, which shall not be unreasonably withheld. Any attempt on the part of Merchant to sublicense or assign to third parties its rights or obligations hereunder without such consent shall constitute a material breach of its agreement with FORTE and grounds for termination of the Agreement. FORTE may assign its rights and obligations under the Agreement without the approval of Merchant but shall provide reasonable notice of such assignment to Merchant.

## **22. NOTICE.**

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by fax to the intended recipient at the address most recently provided in writing.

## **23. NO AGENCY; EXCEPTION.**

Merchant and FORTE are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement; provided, however, as further provided for in Section 4.10, FORTE will be acting solely on Merchant's behalf as Merchant's agent to the extent FORTE collects and disburses funds electronically to and from Merchant's customers on Merchant's behalf.

FORTE will NOT be acting as an agent or contractor for Merchant's customers in any capacity while performing the Services for Merchant.

## **24. GENERAL PROVISIONS.**

**24.1 Binding Agreement.** The agreement between the parties hereto shall be binding on the parties only upon Merchant's acceptance of the terms of this Agreement and FORTE's approval.

**24.2 Governing Law.** The Agreement shall be governed by and construed in accordance with the internal laws of the state of Delaware without reference to choice of law rules. Merchant hereby agrees that claims applicable to American Express may be resolved through arbitration as further described in the American Express Merchant Operating Guide, see Appendix C, Section 4 herein.

**24.3 Force Majeure.** Neither party will be held liable for any damages, delay or failure to perform any of its obligations under this Agreement if such damages, delay or failure is due to circumstances beyond the reasonable control of such party and without its fault or negligence, such as acts of God, fire, flood, earthquakes or other natural disasters, epidemics, strikes and governmental acts or orders or restrictions. The party affected by such circumstances will use all commercially reasonable efforts to avoid or remove such causes of non-performance. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event. Nothing herein shall relieve a party from its payment obligations for Services rendered.

**24.4 Severability.** Should any term, clause or provision hereof be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the parties.

**24.5 Waiver.** The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default and

will not act to amend or negate the rights of the waiving party.

**24.6 Entire Agreement.** This Agreement, including the Merchant Application and any applicable appendices, constitute the entire understanding of the parties, and revoke and supersede all prior agreements between the parties and are intended as a final expression of their agreement.

## **25. ELECTRONIC SIGNATURES.**

**Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Merchant Services Agreement and all electronically executed documents related hereto are legally binding in the same manner**

**as are hard copy documents executed by hand signature when (1) a person authorized to bind Merchant indicates acceptance of the terms of this Agreement by following procedures that associate his/her electronic signature with this Agreement and related documents, (2) such authorized person consents and intends to be bound by the Merchant Services Agreement and related documents, and (3) the Merchant Services Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign.**

## APPENDIX A DEFINITIONS

**Account Controller.** “Account Controller” means an individual with significant responsibility to control, manage, or direct a Merchant, including an executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financing Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or any other individual who regularly performs similar functions.

**ACH Network.** “ACH Network” or “Automated Clearing House Network” is a batch processing, store-and-forward system that accumulates and distributes ACH transactions that are received from ODFI (defined below) and are forwarded to the specified RDFI (defined below) according to the specific schedules established by the participants.

**Acquirer.** “Acquirer” means a sponsoring financial institution or payment processor that enters into an agreement which enables merchants or their agent(s) to submit Transactions to a Payment Network.

**Affiliate.** “Affiliate” means a business entity effectively controlling or controlled by another or associated with others under common ownership or control.

**Agent.** “Agent” means any director, officer, employee, representative, Affiliate, third-party vendor or any other person acting on behalf of the Merchant with the actual, implied or apparent authority of Merchant.

**Beneficial Owner.** “Beneficial Owner” any individual, group of individuals, or entity that, directly or indirectly, owns 25% or more of the equity interests of a Merchant.

**Business Banking Day.** “Business Banking Day” means Monday through Friday excluding banking holidays.

**Confidential Information.** “Confidential Information” may include information regarding

all of the computer software and technologies, systems, structures, architectures, processes, formulae, compositions, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods, and information and databases developed, acquired, owned, produced or practiced at any time by a party or any affiliate thereof, including software programs and documentation licensed by third parties to the disclosing party, any business or financial information directly or indirectly related to the disclosing party’s company(ies) or investments or its internal administrative audit reports on internal controls, internal risk and underwriting guidelines and policies, billing and accounting systems, customer and vendor lists and information, employee personnel information and policies and procedures, information regarding the disclosing party’s products and services that is not generally available to the public.

**Consumer.** “Consumer” means a person who purchases goods or services.

**CPA. “CPA” or “Canadian Payment Association.”** “CPA” or “Canadian Payment Association” is responsible for operating the two (2) primary settlement systems (payment networks) in Canada, as well as establishing, revising and enforcing the operating rules for the Canadian payment networks.

**Chargeback.** “Chargeback” means a Transaction that is rejected by the owner of the account debited or charged because a dispute exists between the Originator of the Transaction (typically a Merchant) and the account owner.

**Credit Entry.** “Credit Entry” is an ACH/EFT Transaction that is intended to deposit funds into a Receiver’s (defined below) account which has been withdrawn from Merchant’s Settlement Account (defined below).

**Debit Entry.** “Debit Entry” is an ACH/EFT Transaction that is intended to withdraw funds from a Receiver’s account for deposit into Merchant’s Settlement Account (defined below).

**Laws.** “Laws” means all international, national, regional and local regulations or laws which are applicable to the services provided herein, including but not limited to federal Regulation E and Title 31 of the Code of Federal Regulations Part 210, Gramm-Leach-Bliley Act, US Bank Secrecy Act (“BSA”), Fair Credit Reporting Act (“FCRA”), applicable privacy and data security laws, US and local export control laws, including US Foreign Corrupt Practices Act, the Export Administration Act, US Department of Treasury Office of Foreign Assets Control (“OFAC”) and similar restrictions under US law, executive order, regulation or rule (collectively, “Export Laws”), and Fair Credit Reporting Act and USA Patriot Act.

**NACHA.** “NACHA” or “National Automated Clearing House Association” is responsible for establishing, revising and enforcing the Operating Rules for the US ACH Network.

**ODFI.** “ODFI” or “Originating Depository Financial Institution” is the financial institution that receives ACH Transactions from Merchant through FORTE and then forwards these Transactions (defined below) to the ACH Network.

**Originator.** “Originator” means a Merchant who has contracted with FORTE to initiate ACH entries, on Originator’s behalf, to the ACH Network.

**Payment Network.** “Payment Network” means an entity that facilitates and governs payment Transactions, including but not limited to VISA, M/C, Discover, American Express, NACHA, CPA. May also be referred to as “Payment Association”.

**Payment Network Resources:**

VISA Regulations (from VISA website):  
<https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>  
MasterCard Rules (from MC website):  
<https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>  
Discover rules (from Discover website):  
<http://www.discovernetwork.com/merchants/index.html>

American Express Merchant Operating Guide:  
<http://www.americanexpress.com/merchantopguide>

NACHA: [www.nacha.org](http://www.nacha.org)

**PCI-DSS.** “PCI-DSS” or “Payment Card Industry Data Security Standard” means the system security measures established by the major credit card companies. The PCI-DSS is mandated by the credit card companies but administered by the Payment Card Industry Security Standards Council.

**Personally Identifiable Information.**

“Personally Identifiable Information” or “PII” means unencrypted, unredacted, or non-anonymized personally identifiable information regarding a Consumer or non-personally identifiable information regarding a Consumer that has been aggregated, disaggregated or decompiled in a manner that is sufficient to cause a Consumer to be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to such Consumer’s physical, physiological, mental, economic, cultural or social identity, including, by way of example, financial account numbers, credit or debit card numbers (with or without access or pin numbers, if collected), personal addresses, IP addresses, identity cards, residency permits, passport numbers, driver’s license numbers and/or other government issued numbers. PII includes “Personal Data” as commonly defined by privacy laws.

**RDFI.** “RDFI” or “Receiving Depository Financial Institution” is the financial institution that receives the ACH Transactions from the ODFI through the ACH Network and posts the Transactions to the accounts of Receivers (defined below).

**Receiver.** “Receiver” means an entity or individual Consumer that has an established account with a card issuer or financial institution upon which a Transaction is or may be acted upon.

**Reserve.** “Reserve” means a specific amount of money that is held in the Merchant account to be used by FORTE to offset amounts owed to

FORTE for Services provided, such as returned items, chargebacks, fees/fines, billing or other Merchant obligations to FORTE that FORTE is unable to collect from Merchant.

**Rules.** “Rules” means the operational rules, policies and procedures established by each applicable Payment Network to govern all transactions and parties that participate in processing Transactions through the associated Payment Network.

**Settlement Account.** “Settlement Account” means an account established and maintained by Merchant with a financial institution through which the following may occur: (a) deposit of funds for Debit Entries, (b) the extractions of funds for Credit Entries, reserve funds or fee obligations unless otherwise agreed to by the parties.

**Settlement Entry.** “Settlement Entry” means a Debit or Credit Entry to Merchant’s Settlement

Account which corresponds to the net amount owed Merchant by FORTE at the end of each Business Banking Day.

**Transaction.** “Transaction” means any transfer of data or information to FORTE in a format pre-approved by FORTE, including but not limited to, payment, verification and authentication items.

**Users.** “Users” mean all individuals who access a FORTE website or utilize any portion of the FORTE Services on behalf of Merchant directly or through software that accesses the FORTE systems through Merchant’s systems, by using Merchant’s access credentials or any other access reasonably presumed to be on behalf of Merchant.

## APPENDIX B

### ACH/EFT PROCESSING SERVICES

**1. Description of Services.** FORTE shall use information provided by Merchant to send Merchant's ACH Transactions to the ACH Network on Merchant's behalf. For Debit Entries, FORTE shall first originate each debit transaction through its ODFI to the ACH/EFT Networks for withdrawal from the Receiver's account. All funds collected on behalf of the Merchant will be transmitted to a custodial account located with FORTE's ODFI and scheduled for settlement to Merchant. For Credit Entries, FORTE will submit each Credit Transaction to the end-of-day settlement process and then schedule each transaction for Origination. On the date scheduled, each Credit Transaction is then originated through FORTE's ODFI to the ACH/EFT networks for deposit to the Receiver's account.

**2. Holding of Funds.** The standard hold time of Merchant's funds for settlement of Debit transactions and origination of Credit transactions is four (4) Business Banking Days. Merchant may request a reduction of hold time on Debit and/or Credit Entries by submitting the applicable form provided by FORTE and supporting documents. FORTE may require separate security safeguards from Merchant to support such a reduction but is under no obligation to grant Merchant's request.

**3. Settlement and Finality.**

3.1 At the close of each Business Banking Day, FORTE will calculate Merchant's Settlement Amount, including all applicable debits, credits, fees and adjustments. In the event the sum total of the Settlement Amount is a non-zero value, FORTE will initiate a Settlement transaction to Merchant's Settlement Account. Positive totals will result in a Credit to Merchant's Settlement Account; negative totals will result in a Debit to Merchant's Settlement Account.

3.2 In the event that a Debit Entry to Merchant's Settlement Account is returned for any reason, all Credit Entries initiated by Merchant may be cancelled or reversed at FORTE's discretion.

**4. Transaction Authorization.**

4.1 Receiver Authorization. Merchant shall obtain authorization from Receiver prior to originating a Transaction to Receiver's account. Merchant shall retain proof of customer(s)' and/or Receiver's authorization for a period of not less than two (2) years for standard transactions and for a period of five (5) years for health-related transactions from the authorization date or revocation of authorization date and shall provide such proof of authorization to FORTE upon request within five (5) business days of the request.

4.2 Revoked Authorization. Merchant shall cease initiating Transactions to a Receiver's account immediately upon receipt of any actual or constructive notice of that Receiver's termination or revocation of authority. Merchant may re-initiate Transactions to a Receiver's account only upon receiving new authorization from Receiver.

**5. Provisional and Final Payment.**

Merchant, Merchant's third party senders, and/or Merchant's agent(s) acknowledge receipt of notice that for Entries transmitted through the ACH network, that payment of an Entry by the RDFI to the Receiver is provisional until receipt by the RDFI of final settlement for such Entry, and that if such settlement is not received, then the RDFI will be entitled to a refund from the Receiver of the amount credited and the Merchant will not be deemed to have paid the Receiver the amount of the Entry. The rights and obligations of the Merchant concerning the Entry are governed by and construed in accordance with the laws of the State of Texas, unless Merchant and FORTE have agreed that the laws of another jurisdiction govern their rights and obligations.

**6. Chargebacks.**

6.1 Merchant will be charged a chargeback fee as specified on the fee schedule, on a per occurrence basis, for every Chargeback posted to Merchant's account.

6.2 Using limits established by a Payment Network as a standard for review, FORTE reserves the right to suspend and/or terminate Merchant's access to the Services should Merchant's chargeback ratio exceed

allowable limits, as specified by the applicable Rules.

6.3 FORTE will make reasonable efforts to provide Merchant with notice and a time to cure its excessive chargebacks prior to suspending or terminating Merchant's access to the Services.

6.4 In compliance with the Rules, Merchant authorizes FORTE to provide to ODFI

and Payment Networks with Merchant's company and contact information as well as transaction details should Merchant's ACH chargeback ratio exceed the allowable limits.

6.5 Merchant acknowledges FORTE's right to reimbursement of any chargebacks or returns that post to Merchant's account that FORTE is unable, for any reason, to debit from Merchant's bank account.



## APPENDIX C

### U.S. CARD PROCESSING SERVICES

#### 1. Certain Merchant Responsibilities.

1.1 Merchant agrees to participate, and to cause Merchant's Agent, to participate, in the Associations in compliance with, and subject to, the by-laws, Rules and operating guidelines of each Association (see Appendix A – Payment Association Resources). Merchant also agrees to comply with all Laws. 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, American Express 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, Merchant's software providers and/or equipment providers.

1.2 If appropriately indicated on Merchant's application attached hereto, Merchant may be a limited-acceptance Merchant, which means that Merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. FORTE and its associated credit card Acquirer, Vantiv LLC ("Acquirer") have no obligation other than those expressly provided under the applicable operating Rules, or regulations and applicable law as they may relate to limited acceptance. Merchant, and not FORTE or Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

1.3 Merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Merchant to cardholders, and is 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 Merchant, or for purposes related to financing terrorist activities.

1.4 Merchant 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). Merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Merchant whose 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.

1.5 Merchant understands and agrees that should it process credit card Transactions in excess of \$100,000,000 annually, it may be required to enter a processing agreement directly with the Acquirer. The terms of this clause may be revised unilaterally by FORTE based on any changes to requirements by the applicable Acquirer or Payment Association(s).

#### 2. Merchant Prohibitions.

Merchant 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 a Merchant 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 Merchant, v) disburse funds in the form of cash unless Merchant is dispensing

funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant), or Merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the acquirer and subsequently returned to Merchant, 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 Merchant, or ix) submit a transaction that represents collection of a dishonored check. Merchant further agrees that, under no circumstance, will Merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

### **3. Settlement.**

Upon receipt of Merchant's sales data for card transactions through FORTE's Services, Acquirer will process Merchant's sales data to facilitate the funds transfer between the various Associations and Merchant. After Acquirer receives credit for such sales data, Acquirer will fund Merchant, either directly to the Merchant-Owned Designated Account or through FORTE to an account designated by FORTE ("FORTE Designated Account"), at Acquirer's sole option, for such card transactions. Merchant agrees that the deposit of funds to the FORTE Designated Account shall discharge Acquirer of its settlement obligation to Merchant, and that any dispute regarding the receipt or amount of settlement shall be between FORTE and Merchant. Acquirer will debit the FORTE Designated Account for funds owed to Acquirer as a result of the Services provided hereunder unless a Merchant-owned account is otherwise designated below. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if FORTE or Acquirer reasonably believe a transaction is unauthorized

or otherwise unacceptable, the amount of such transaction may be charged back and debited from Merchant if settled to Merchant-owned account or debited from the FORTE Designated Account if settled to that account.

### **4. American Express Card Acceptance.**

4.1 Merchant hereby acknowledges and agrees that for purposes of acceptance of American Express, the American Express Merchant Operating Guide and any amendments thereto (the "Operating Guide") is hereby incorporated by reference into this Agreement and can be found at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide). All capitalized terms found in this Section 4 shall have the attributed meaning from the Operating Guide.

4.2 Merchant hereby acknowledges and agrees that it is not a party to any agreement between FORTE and American Express.

4.3 Merchant hereby authorizes FORTE and/or Acquirer to submit American Express transactions to, and receive settlement from, American Express on behalf of Merchant. Merchant must accept the American Express card as payment for goods and services (other than those goods and services prohibited under the Operating Guide) sold, or (if applicable) for charitable contributions made, at all of its establishments, except as expressly permitted by applicable Law. Merchant is jointly and severally liable for the obligations of Merchant's establishments under the Agreement. For the avoidance of doubt, "cardholder" as used in this Agreement shall include Cardmembers as defined in the Operating Guide.

4.4 Merchant hereby acknowledges and agrees that (i) FORTE or Acquirer may disclose American Express Transaction Data (which for purposes of this section shall have the same definition as "Transaction Data" in the Operating Guide), Merchant Data (as defined below), and other information about Merchant to American Express, (ii) American Express may use such information to perform its responsibilities in connection with the American Express Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purpose, including marketing purposes, and (iii) American Express may use the

information obtained in this application at the time of setup to screen and/or monitor Merchant in connection with American Express Card (the “Card”) marketing and administrative purposes. If Merchant has provided a wireless phone number in connection with this Agreement, Merchant hereby agrees that it may be contacted at that number and the communications sent may include autodialed text messages or automated prerecorded calls. If Merchant has provided a fax number, Merchant hereby agrees that it may be sent fax communications. To opt out of American Express-related marketing communications, Merchant may contact FORTE customer service as described in this Agreement. For purposes of this section, “Merchant Data” means names, postal and email addresses, tax ID numbers, names and social security numbers of the authorized signer of Merchant and similar identifying information about Merchant. For clarification, Merchant Data does not include American Express Transaction Data.

4.5 Merchant will adhere to the following website information display guidelines in the event Merchant has a website and/or operates an e-commerce business. Merchant’s website must display the following:

- An accurate description of the goods/services offered, including the currency type for the Transaction (e.g., U.S. Dollars). Note: Transaction currency must be in U.S. Dollars.
- Merchant's physical address in the U.S.
- An email address or telephone number for customer service disputes.
- Return/refund policy.
- A description of Merchant's delivery policy (e.g., no overnight delivery).
- A description of Merchant's security practices (e.g., information highlighting security practices Merchant uses to secure Transactions on its systems, including Transactions conducted on the Internet).
- A statement of known export restrictions, tariffs, and any other regulations.
- A privacy statement regarding the type of personal information collected and how the information is used. Additionally, Merchant must provide to customers the option to decline being included in marketing

campaigns or having their personal information included on lists sold to third parties.

4.6 Merchant hereby agrees that, in the event that Merchant becomes a High Charge Volume Merchant (as defined below), Merchant will be converted from the American Express Program to a direct American Express Card acceptance relationship with American Express, and upon such conversion, (i) Merchant will be bound by American Express’ then-current card acceptance agreement, and (ii) American Express will set pricing and other fees payable by Merchant for American Express Card acceptance. “High Charge Volume Merchant” for purposes of this section means an American Express Program Merchant with either (i) greater than \$1,000,000 in American Express charge volume in a rolling twelve (12) month period or (ii) greater than \$100, 000 in American Express charge volume in any three (3) consecutive months. For clarification, if Merchant has multiple establishments, the American Express charge volume from all establishments shall be summed together when determining whether Merchant has exceeded the thresholds above.

4.7 Except as expressly permitted by applicable Law, Merchant must not: (a) indicate or imply that Merchant prefers, directly or indirectly, any Other Payment Products over the Card, (b) try to dissuade Cardmembers from using the Card, (c) criticize or mischaracterize the Card or any of American Express' services or programs, (d) try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check), (e) impose any restrictions, conditions, disadvantages, or fees when the Card is accepted that are not imposed equally on all other payment products, except for electronic funds transfer, cash or check, (f) suggest or require Cardmembers to waive their right to dispute any Transaction, (g) engage in activities that harm American Express' business or the American Express Brand (or both), (h) promote any Other Payment Products (except, if applicable, Merchant’s own private label card that it issues for use solely at its Establishments) more actively than Merchant promotes the Card, or (i) convert the currency of the original sale Transaction to another currency when requesting

Authorization or submitting Transactions (or both).

4.8 Merchant may offer discounts or in-kind incentives from its regular prices for payments in cash, ACH funds transfer, check, debit card, or credit/charge card, provided that (to the extent required by applicable Law): (i) Merchant clearly and conspicuously discloses the terms of the discount or in-kind incentive to its customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the Issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth Section 3.2 of the Operating Guide.

4.9 Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate its acceptance of the Card and display American Express' Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use American Express' Marks in any way that injures or diminishes the goodwill associated with the American Express Mark, nor in any way (without American Express' prior written consent) indicate that American Express endorses Merchant's goods or services. Merchant shall use the American Express brand and marks in accordance with the requirements set forth in the Operating Guide and shall remove the American Express brand and marks from Merchant's website and wherever else they are displayed upon termination Merchant's acceptance of American Express cards.

4.10 Any and all Cardmember Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Cardmember Information, nor use nor store it, other than to facilitate Transactions in accordance with this Agreement. For more information, refer to the Operating Guide, Section 4.2, "Completing a Transaction at the

Point of Sale" and Chapter 8, "Protecting Cardmember Information".

4.11 Merchant shall not assign to any third party any American Express-related payments due to it under this Agreement, and all indebtedness arising from American Express Charges (as defined below) will be for bona fide sales of goods and services (or both) at its establishments (as defined below) and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future American Express transaction receivables to FORTE, its affiliated entities and/or any other cash advance funding source that partners with FORTE or its affiliated entities, without consent of American Express.

4.12 Merchant hereby agrees that American Express shall have third party beneficiary rights, but not obligations, to enforce this Agreement as against Merchant to the extent applicable to American Express processing. Merchant understands and agrees that it shall have no third-party beneficiary rights under any agreement between FORTE and American Express and/or Acquirer. Merchant shall maintain refund policies for purchases on the American Express card that are at least as favorable as its refund policy for purchases on any other payment product. Merchant will disclose any such refund policy to Cardmembers at the time of purchase and in compliance with the Operating Guide and all applicable Laws. Merchant's termination of American Express Card acceptance shall have no direct or indirect effect on Merchant's rights to accept other card brands. To terminate American Express acceptance, Merchant may contact FORTE customer service as described in this Agreement.

4.13 Without limiting any other rights provided herein, FORTE and/or Acquirer shall have the right to immediately terminate Merchant's acceptance of American Express cards upon request of American Express. Merchant may not bill or collect from any Cardmember for any purchase or payment on the Card unless a chargeback has been exercised, Merchant has fully paid for such charge, and it otherwise has the right to do so. Merchant will comply with all procedural requirements relating

to chargebacks, as provided in the Operating Guide, Chapter 11.

4.14 American Express Liability.

SPONSORED MERCHANT

ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

## **APPENDIX D**

### **ACCOUNT VERIFICATION AND AUTHENTICATION SERVICES**

**1. Representation by Merchant.** Each request for data through the Verification and Authentication Services shall constitute a representation, warranty and certification by Merchant that the data (i) shall be used and disclosed only in accordance with the terms of the Agreement, and in accordance with any applicable Rules or laws; (ii) shall be used solely for the intended use as stated by Merchant on the MSA and that use is in compliance with the permissible uses; (iii) Merchant will follow proper procedures for adverse action notification to its customers, as provided in the FCRA Requirements Addendum located at <http://www.forte.net/fair-credit-reporting-act>; and (iv) Merchant acknowledges it has implemented security measures to prohibit the unauthorized access to the information provided.

**2. Use of Services.**

2.1 MERCHANT SHALL USE THE VERIFICATION SERVICES ONLY IN CONNECTION WITH PAYMENTS PRESENTED TO MERCHANT BY ITS CUSTOMERS IN EXCHANGE FOR GOODS OR SERVICES. MERCHANT SHALL NOT RESELL THE VERIFICATION DATA OR SERVICES TO ANY THIRD PARTIES.

2.2 Merchant understands and agrees that it cannot decline services to a consumer or customer after receiving an approval result from FORTE on a verification inquiry unless Merchant is declining based on other grounds and/or information. Further, if Merchant does decline services to a FORTE approved consumer or customer based on alternate information, Merchant shall not provide FORTE's contact information as recourse for the consumer to pursue a dispute of the result under FCRA Adverse Action requirements.

2.3 Merchant shall provide to FORTE, as part of a verification inquiry, the accurate amount for each transaction Merchant wants to verify.

**3. Retention of Data.** Merchant acknowledges and agrees that it shall not retain, store, compile or aggregate the results of verification or authentication inquiries received from FORTE except as required by applicable law or to perform its obligations under this Agreement.

## **APPENDIX E**

### **ACCOUNT UPDATER SERVICES**

- 1. Description of Services.** Participating Visa/MasterCard Issuers submit their account changes to the Account Updater Database. On a monthly basis, FORTE will compare all of Merchant's recurring tokenized transactions against the Account Updater Database. FORTE will then update the tokenized card information on file with updated account information.
- 2. Merchant Requirements for Account Updater Participation.**
  - a. Merchant must be properly established and registered in the United States.
  - b. Merchant must not have been disqualified from participating in the Visa, MasterCard, American Express, or Discover programs.
  - c. Merchant must be in compliance with all Card Association Operating Regulations.
  - d. Merchant must submit inquiries only for those account with which the merchant has an ongoing customer relationship and customer's authority to submit such payments.
  - e. Merchants may not request authorization on accounts that have returned "Contact Cardholder" or "Closed."
  - f. Merchant must not submit inquiries on behalf of any other entity.
  - g. Merchant assumes all risk associated with the use of the Account Updater Service. Forte shall have no liability whatsoever to Merchant for any liability associated with the Account Updater Service, including but not limited to the accuracy or completeness of the information provided via the Account Updater Service.