

WorkWave Payments Sub-Merchant Agreement

This WorkWave Payments Sub-Merchant Agreement (this “**Agreement**”) consists of: (1) the general terms and conditions set forth below (the “**General Terms**”); (2) the appendices that are attached after the General Terms and any other appendices that reference this Agreement (each, an “**Appendix**”); (3) the application(s) completed by Sub-Merchant to receive services hereunder (each, an “**Application**”); and (4) the purchase order(s) executed by Sub-Merchant that reference this Agreement (each, a “**Purchase Order**”). In the event of any conflicts among the foregoing documents, the order of priority will be as follows, from highest to lowest, where the terms and conditions of a higher priority document will supersede any conflicting terms or conditions of a lower priority document: (1) the applicable Purchase Order, (2) the applicable Appendix, (3) the General Terms, and (4) the applicable Application.

The parties to this Agreement are: (i) WorkWave LLC, with its principal place of business at 101 Crawfords Corner Road, Suite 2511-W, Holmdel, New Jersey 07733 (“**WorkWave**”), and (ii) the business that is subscribing to receive payment card, eCheck, or other payment processing/facilitation services from WorkWave (“**Sub-Merchant**”). Because this Agreement includes terms and conditions required by various other entities (such as acquirers, banks, and card associations), some documents may alternatively use the words “**Merchant**” or “**you**” to refer to Sub-Merchant, and the words “**we**” or “**us**” to refer to WorkWave or others.

This Agreement governs Sub-Merchant’s access to and use of the Services described in the General Terms or in an Appendix. To access and use the applicable Service, Sub-Merchant must agree to be bound by all the terms and conditions of this Agreement, as evidenced by the electronic or physical signature of an authorized representative of Sub-Merchant on a Purchase Order for the applicable Service, or by the submission of a transaction through the applicable Service. In addition, Sub-Merchant must agree to be bound by the terms and conditions of the Merchant Services Agreement for Sub-Merchants, which is an agreement among Sub-Merchant, an acquirer, and the acquirer’s designated bank.

Capitalized words contained in these General Terms or in any Appendix may be defined either in the section where they appear or in the “Definitions” section located at the end of these General Terms or the applicable Appendix.

1. SERVICE

- A. **Service Offering.** Subject to and in accordance with the terms and conditions of this Agreement, WorkWave will act in the capacity of a “payment service provider” or “payment facilitator”, as those terms are used in the applicable Operating Regulations. In such capacity, WorkWave will provide to Sub-Merchant the Payment Card Processing services, eCheck Processing services, and any other services described herein and in the applicable Appendix or agreed by WorkWave and Sub-Merchant. WorkWave provides Payment Card Processing with respect to certain payment card brands of the Associations. Sub-Merchant acknowledges that no party will acquire any right, title, or interest in or to the marks of any Association. Sub-Merchant will not assign to any third party any of the rights to use the marks of any Association, and the Association may use information obtained in the Application to monitor Sub-Merchant in connection with card marketing and administrative purposes.
- B. **Transactions Accepted.** Sub-Merchant will accept transactions of all of the card and other payment types described in this Agreement, unless Sub-Merchant notifies WorkWave otherwise, specifying the card or other payment type(s) that Sub-Merchant does not elect to accept. Sub-Merchant may change these elections from time to time upon at least sixty (60) days’ advance written notice to WorkWave. WorkWave will use reasonable efforts to accommodate Sub-Merchant’s elections in less time but will not be obligated to do so. After the effective date of Sub-Merchant’s notice, Sub-Merchant will no longer accept transactions of the card or other payment type(s) specified in the notice, unless otherwise directed by WorkWave.
- C. **New Card or Payment Types.** If WorkWave offers a new card or payment type, WorkWave will amend or supplement this Agreement as necessary. Sub-Merchant will not seek authorization for or submit any transactions of the new card or payment type before agreeing to the terms and conditions of such amendment or supplement.
- D. **Inadvertent Acceptance.** With respect to inadvertent or unintentional acceptance of a transaction of a type not included or elected by Sub-Merchant (including, without limitation, a different card type), Sub-Merchant will be responsible for all applicable Fees and will be liable, obligated and responsible under this Agreement for any such transaction to the same extent as if the transaction had been included or elected by Sub-Merchant.
- E. **Timing of Obligations.** Sub-Merchant’s obligations with respect to each transaction will be deemed incurred and existing on the posted transaction date of such transaction.
- F. **Exclusive Provider.** Sub-Merchant understands and agrees that WorkWave will be Sub-Merchant’s exclusive provider of the Service during the term of the Agreement.
- G. **Non-Discriminatory Practices.** With respect to card transactions, subject to any elections that Sub-Merchant has made via the notice procedure described above, Sub-Merchant will not engage in any acceptance practice or procedure that discriminates against, discourages the use of, or declines to honor any particular card brand described in this Agreement in favor of any competing card brand, or any particular U.S. card issuer in favor of any competing card issuer. For example, if Sub-Merchant accepts Visa credit cards, Sub-Merchant will submit transactions without regard to whether the credit card is a Visa-branded rewards credit card or Visa-branded business purpose credit card.

- H. Illegal Activity. Sub-Merchant understands and agrees that accepting transactions for any purposes related to illegal or prohibited activity, including, but not limited to, money laundering or financing of terrorist activities, is expressly prohibited.

2. SUB-MERCHANT OBLIGATIONS AND REQUIREMENTS

- A. Compliance. Sub-Merchant acknowledges that each Association and network has Operating Regulations applicable to merchants, including Sub-Merchant, and that Sub-Merchant has reviewed all applicable Operating Regulations, which are incorporated into this Agreement by reference. Sub-Merchant agrees to fully comply with all applicable Operating Regulations, as well as any and all Applicable Laws. Should any Operating Regulations not be publicly available or otherwise made available to Sub-Merchant, such unavailability will not alter or limit Sub-Merchant's obligation to comply with the Operating Regulations. Notwithstanding any assistance that WorkWave may provide with understanding the Operating Regulations, Sub-Merchant expressly acknowledges and agrees that it is assuming the risk of Sub-Merchant's compliance with all provisions of the Operating Regulations, regardless of whether Sub-Merchant has possession of those provisions. In the event of any inconsistency between any provisions hereof and the Operating Regulations, the Operating Regulations will govern to the fullest extent possible under Applicable Laws.
- B. High Transaction Volumes. Sub-Merchant acknowledges that Acquirer and Bank must maintain closer controls over high-volume sub-merchants of WorkWave and, therefore, Sub-Merchant must immediately notify WorkWave if it has, or in Sub-Merchant's reasonable opinion will have, greater than \$1,000,000 in annual card sales volume processed under this Agreement (based upon the date Sub-Merchant's account is boarded) for any one Association. Furthermore, Sub-Merchant also must notify WorkWave immediately if it has, or in Sub-Merchant's reasonable opinion will have, greater than \$2,000,000 in annual card sales volume processed under this Agreement.
- C. Underwriting.
- i. In order to enable WorkWave to comply with its underwriting obligations in connection with the Services, Sub-Merchant must promptly and accurately provide to WorkWave, via an Application, certain information regarding Sub-Merchant's business (e.g. business name, location, owners, and structure; goods sold and services offered; and bank account information). Thereafter, Sub-Merchant agrees to provide WorkWave with thirty (30) days' prior written notice of Sub-Merchant's intent to change its business name, address, applicable bank account information, or structure (e.g. a change from a limited liability company to a corporation), or to sell all of the stock or assets of Sub-Merchant's business. Sub-Merchant may not use any Service to provide goods or services other than those described to WorkWave in the Application or otherwise disclosed to WorkWave in writing.
 - ii. Sub-Merchant authorizes WorkWave and its agents to investigate the background and personal credit history of any of the owners and employees associated with Sub-Merchant's business, and to obtain reporting on Merchant's business (e.g. Dunn & Bradstreet reporting). Upon WorkWave's request, Sub-Merchant will provide all of its books and records, including financial statements for the business and its owners. Sub-Merchant authorizes WorkWave to make on-site visits to any and all of Sub-Merchant's business locations that are pertinent to the Services. WorkWave may terminate this Agreement if the information received in any investigation is unsatisfactory in WorkWave's sole discretion.
 - iii. WorkWave may audit, from time to time, Sub-Merchant's compliance with the terms of this Agreement, and Sub-Merchant will provide all information reasonably requested by WorkWave in connection with such audit.
- D. Sub-Merchant Identifier. To the extent Sub-Merchant interacts with a Cardholder, Sub-Merchant will prominently and unequivocally inform the Cardholder of the identity of the Sub-Merchant at all points of interaction so that the Cardholder readily can distinguish the Sub-Merchant from any other party, such as a supplier of products or services to Sub-Merchant, including WorkWave. Further, Sub-Merchant must ensure that the Cardholder understands who is responsible for transactions processed by a Service, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the transaction.
- E. Third Party Service Providers. WorkWave and Sub-Merchant may use one or more TPSPs. In no event will Sub-Merchant use a TPSP unless such TPSP is compliant with all applicable Security Programs required by the applicable Operating Regulations. Sub-Merchant acknowledges and agrees that Sub-Merchant will cause its TPSPs to complete any steps or certifications required by any Association. Sub-Merchant will cause each TPSP to cooperate with Acquirer in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such TPSP. Sub-Merchant will be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps and certifications. Sub-Merchant will bear all risk and responsibility for conducting Sub-Merchant's own due diligence regarding the fitness of its TPSPs for a particular purpose and for determining the extent of each of its TPSP's compliance with the applicable Operating Regulations and Applicable Laws. Sub-Merchant expressly agrees that none of WorkWave, Acquirer or Bank will in any event be liable to Sub-Merchant or any third party for any actions or inactions of any TPSP used by Sub-Merchant, even if WorkWave, Acquirer or Bank introduced or recommended such TPSP.
- F. Retention of Sales Information. Sub-Merchant is responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases or sales. Without limiting the generality of the foregoing, Sub-Merchant will store all sales drafts and transaction records in a limited access area for at least one year after the date of the applicable sale or service. Sub-Merchant will retain all original sales drafts and transaction records (or copies in legible paper or electronic form) for at least three years.
- G. Transaction Investigations. Sub-Merchant will assist WorkWave in any and all investigations of transactions in a timely manner and will provide written reports of investigated transactions to WorkWave upon WorkWave's request.

3. ACCOUNT REQUIREMENTS

A. Operating Account.

- i. Sub-Merchant will establish an Operating Account at a financial institution of Sub-Merchant's choice prior to submitting any transactions to a Service. The Operating Account will be utilized for deposits from Payment Card Processing Transactions, eCheck Processing Transactions and any other transactions agreed by WorkWave and Sub-Merchant. Sub-Merchant will advise WorkWave of the name and address of the financial institution, and the routing number and account number of the Operating Account. Sub-Merchant authorizes WorkWave to debit Fees from the Operating Account either daily, monthly or at other times deemed appropriate by WorkWave through the ACH Network or by a manual debit.
- ii. Sub-Merchant will maintain the Operating Account throughout the term of this Agreement, including any extensions or renewals. Sub-Merchant agrees to deposit funds into the Operating Account and to maintain sufficient funds in the Operating Account at all times, to ensure that all Fees can be paid and all Entries can be processed.
- iii. Sub-Merchant will designate employees authorized to make changes to the Operating Account. Any changes proposed to the Operating Account will be submitted in writing to WorkWave and must be approved in writing by WorkWave. Should Sub-Merchant make changes to the Operating Account without following the aforementioned process, Sub-Merchant will indemnify and hold WorkWave harmless for any administration and/or ACH activity initiated by WorkWave or its employees.
- iv. Sub-Merchant authorizes WorkWave to make deposits to or withdrawals from the Operating Account in connection with a Service. WorkWave will have no signatory or ownership rights in the Operating Account and will have no right to negotiate or assert ownership rights in deposited funds. If required by WorkWave, or by any other financial institution where the Operating Account is maintained, Sub-Merchant agrees to sign any additional documents to authorize deposits and withdrawals, including without limitation, ACH Transactions. Sub-Merchant waives any claims for loss or damage arising out of any charges or debits to the Operating Account against any financial institution where the account is maintained. Sub-Merchant will be responsible for all bank charges.

B. Security Interest and Lien; Reserve.

- i. Sub-Merchant hereby grants to WorkWave a security interest and lien upon the Operating Account or any substitute account now and in the future and all proceeds thereof, to secure all Fees and other amounts owed under this Agreement. In the exercise of its rights with regard to the security interest and lien, WorkWave may debit the Operating Account or any substitute account only to the extent of the outstanding Fees and other amounts owed under this Agreement, and WorkWave will only do so if WorkWave reasonably believes that Sub-Merchant will not or cannot fulfill its obligations with respect thereto. Sub-Merchant hereby authorizes WorkWave to prepare all documents or to take other actions that are reasonably necessary to perfect WorkWave's security interest or lien in the Operating Account or any substitute account, and Sub-Merchant will provide such documentation as reasonably requested by WorkWave in connection with the security interest and lien.
- ii. If WorkWave reasonably believes that the outstanding Fees and other amounts owed under this Agreement may exceed the Operating Account balance, or if WorkWave reasonably believes there are other risks which may prevent or delay WorkWave's ability to receive Fees or other amounts owed under this Agreement, WorkWave may require establishment of a reserve ("**Reserve**") funded by a portion of the proceeds from transactions submitted to the Services or by a lump sum payment from Sub-Merchant. In such event, WorkWave will provide Sub-Merchant with notice of the Reserve, including the terms thereof, and Sub-Merchant hereby agrees to maintain the Reserve balance set forth in WorkWave's notice. Sub-Merchant authorizes WorkWave to fund the Reserve directly from transactions associated with any business owned or operated by Sub-Merchant that uses a Service. WorkWave may hold the Reserve as long as WorkWave reasonably deems necessary under the circumstances, during which period WorkWave may, without additional notice, apply funds from the Reserve to collect any Fees and other amounts owed, satisfy any of Sub-Merchant's outstanding obligations, and exercise WorkWave's rights under this Agreement, including, but not limited to, its rights of set-off and recoupment. Sub-Merchant agrees that it is liable for all outstanding obligations associated with its use of the Services notwithstanding the release of any Reserve.

- C. Set-Off. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, WorkWave may set off any Fees or other amounts owed under this Agreement or under any other agreement between WorkWave and Sub-Merchant against: (i) any amounts which WorkWave otherwise would deposit to the Operating Account; (ii) any other amounts WorkWave may owe to Sub-Merchant under this Agreement; or (iii) any other amounts or property of Sub-Merchant in the possession or control of WorkWave.

4. FEES AND ASSESSMENTS

- A. Fees. Sub-Merchant agrees to pay all Fees and other accrued amounts in accordance with this Agreement and any other agreement between Sub-Merchant and WorkWave.
- B. Third Party Assessments. Notwithstanding any other provision of this Agreement, Sub-Merchant will be responsible for all fines, assessments, penalties, loss allocations or similar amounts imposed or assessed to Sub-Merchant, WorkWave, Acquirer, or Bank in connection with this Agreement by third parties such as, but not limited to, Associations and TPSPs (including telecommunication companies) to the extent that such amounts are not the direct result of the negligence or willful misconduct of Acquirer, Bank or WorkWave, as applicable. Any changes or increases in such amounts will automatically become effective upon notice to Sub-Merchant. In the event that Acquirer assesses WorkWave with the cost of funds associated with a circumstance where Acquirer, for whatever reason, advances settlement or other amounts and/or delays the assessment of any fees, Sub-Merchant will be responsible for any portion of such assessment that is attributable to the Services provided to Sub-Merchant.

- C. Late Fees. If Sub-Merchant does not pay all Fees due within thirty (30) days of the applicable invoice date, WorkWave may charge, and Merchant agrees to pay, a late fee of 1.5% per month on the outstanding balance, or the highest amount allowed by law, whichever is less.
- D. Collection Charges. Should WorkWave take any action against Sub-Merchant to collect Fees due hereunder, Sub-Merchant agrees to pay all costs associated with such collection efforts, including, but not limited to, reasonable attorney's fees.
- E. Taxes, Information Filings and Backup Withholding. Sub-Merchant agrees to pay all federal, state, and local sales, use, income, property and excise taxes that it is legally obligated to pay in connection with the Services. Sub-Merchant understands and agrees that WorkWave or its designee will provide information to the Internal Revenue Services and applicable state treasurers for all reportable transactions of Sub-Merchant. If necessary, WorkWave or its designee will conduct backup withholding on the revenue generated by the reportable transactions of Sub-Merchant.
- F. Right to Dispute. Sub-Merchant agrees that any failure to notify WorkWave that Sub-Merchant has not received settlement funds within three (3) Business Days from the date the applicable settlement was due to occur, or any failure to reject any report, notice, or invoice within thirty (30) Business Days from the date the report or invoice is made available to Sub-Merchant, will constitute Sub-Merchant's acceptance of the same. In the event Sub-Merchant believes that WorkWave has failed in any way to provide the Service, Sub-Merchant agree to provide WorkWave with written notice, detailing the alleged failure, within sixty (60) days of the date on which the alleged failure first occurred.

5. TERM AND TERMINATION

- A. Term. The term of this Agreement commences on the Effective Date and, unless terminated earlier in accordance with its terms, will be coterminous with the term of the agreement for the WorkWave software subscription through which Sub-Merchant utilizes the Services (the "**Core Software Subscription Service**").
- B. Termination. WorkWave may terminate Sub-Merchant's use of one or more Services and/or this Agreement at any time for any reason. Sub-Merchant's use of the Services and this Agreement will automatically terminate upon termination of the agreement for the Core Software Subscription Service. All obligations with respect to transactions submitted before any termination of a Service or this Agreement will remain in full force and effect until settlement of the applicable transaction, and any such termination does not relieve Sub-Merchant of its obligations to pay Fees and other amounts that accrued under this Agreement or any other agreement between Sub-Merchant and WorkWave prior to such termination. Any funds that WorkWave is holding in custody for Sub-Merchant at the time of termination, less any applicable Fees and other amounts, will be paid out subject to and in accordance with this Agreement. If an investigation is pending at the time of termination, WorkWave may hold Sub-Merchant's funds until completion of the investigation; if Sub-Merchant is later determined to be entitled to any of the held funds, WorkWave will release the hold on the applicable amount.
- C. Suspension of Services. WorkWave may, in its sole discretion, suspend the Services at any time in its reasonable discretion upon notice to Sub-Merchant. WorkWave may selectively terminate one or more of Sub-Merchant's approved locations or certain Services without terminating this Agreement.
- D. Deconversion Fees. If this Agreement is terminated and Sub-Merchant requests assistance from WorkWave with transitioning to a new payment facilitator, Sub-Merchant agrees to pay WorkWave for such assistance at WorkWave's then current rates for deconversion services, and Sub-Merchant agrees to reimburse WorkWave for any associated third party transfer fees incurred by WorkWave; provided, however, in no event will WorkWave be obligated to provide deconversion services to Sub-Merchant other than to the extent required by Applicable Laws.
- E. Termination Fee. If Sub-Merchant elects to terminate a Service or this Agreement, or if this Agreement terminates as a result of any termination of the agreement for the Core Software Subscription Service where payment of a termination fee is required under that agreement, Sub-Merchant agrees to pay a termination fee in the amount of \$500.00. For clarity, this amount is in addition to, and not in lieu of, the termination fee applicable to the Core Software Subscription Service. Sub-Merchant recognizes and agrees that this termination fee is fair and reasonable, as it would be not possible to calculate a termination fee based on Sub-Merchant's actual volume and activity for the period after termination.
- F. Survival. The following sections of this Agreement and obligations of Sub-Merchant will survive any termination of this Agreement: Sub-Merchant's obligations to pay Fees and other amounts that accrued prior to termination; the security interest and lien described in Section 2 until all Fees and other accrued amounts are determined and paid in full; Sections 7 through 11; and any other sections that, by their nature, reasonably should survive termination of this Agreement.

6. SUB-MERCHANT REPRESENTATIONS AND WARRANTIES

- A. General. Without limiting any other warranties hereunder, Sub-Merchant represents, warrants and covenants as follows:
 - i. Sub-Merchant is authorized to operate its business and to enter into this Agreement, and no other authorizations, consents or approvals are required in connection with the validity and enforceability of this Agreement or Sub-Merchant's execution, delivery and performance of this Agreement;
 - ii. Sub-Merchant has obtained all necessary regulatory approvals, certificates and licenses to sell the goods and provide the services it intends to offer to its customers, evidence of which will be provided to WorkWave upon request;

- iii. Sub-Merchant has not changed the nature of its business, card acceptance practices, delivery methods, return policies, or types of goods or services offered requiring a different merchant category code under the Operating Regulations, in a way not previously disclosed to WorkWave;
 - iv. Sub-Merchant will use the Services only for its own proper business purposes and will not resell, directly or indirectly, any part of the Services to any person;
 - v. Sub-Merchant and its TPSPs have not filed, and do not intend to file, a bankruptcy petition not disclosed to WorkWave;
 - vi. all information and data provided by Sub-Merchant to WorkWave, or which Sub-Merchant engages a TPSP to provide to WorkWave, is complete, truthful, accurate and valid, and Sub-Merchant has the right to communicate such information; and
 - vii. Sub-Merchant is in compliance with, and will at all times comply with, and all present and future Applicable Laws.
- B. **Transactions.** Without limiting any other warranties hereunder, Sub-Merchant represents, warrants and covenants as follows with respect to each transaction submitted to WorkWave:
- i. the transaction is genuine and arises from a bona fide sale of goods or provision of services by Sub-Merchant directly to the Cardholder or Payor, permissible under the Operating Regulations and Applicable Laws;
 - ii. the amount charged for the transaction (including taxes, but without any surcharge) is only for goods sold or services provided by Sub-Merchant and, except for any delayed delivery or advance deposit transactions expressly authorized by this Agreement, those goods or services were actually delivered to or performed contemporaneously with Sub-Merchant accepting and submitting the transaction for processing;
 - iii. the transaction represents a valid obligation of the Cardholder or Payor for the amount shown on the sales draft, and the sales draft is free of any alteration not authorized by the Cardholder or Payor;
 - iv. the amount charged for the transaction is not subject to any dispute, set off or counterclaim; and
 - v. Sub-Merchant has no knowledge or notice of any fact, circumstance or defense which would indicate that the transaction is fraudulent or not authorized by the Cardholder or Payor, or which would otherwise impair the validity or collectability of the Cardholder's or Payor's obligations arising from the transaction or relieve the Cardholder or Payor from liability with respect thereto.

7. DISCLAIMERS, INDEMNIFICATION AND LIMITATIONS OF LIABILITY

- A. **Warranty Disclaimers.** SUB-MERCHANT ACKNOWLEDGES THAT WORKWAVE HAS NOT PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. SHOULD THERE BE ANY ERRORS, OMISSIONS, INTERRUPTIONS, OR DELAYS OF ANY KIND WITH RESPECT TO THE SERVICES OR RESULTING FROM WORKWAVE'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER, WORKWAVE'S LIABILITY WILL BE LIMITED TO CORRECTING THE ISSUE, IF COMMERCIALY REASONABLE. SUB-MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND eCHECKS, AND SUB-MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.
- B. **Indemnification.** Sub-Merchant will indemnify, defend, and hold harmless WorkWave and its directors, officers, employees, affiliates and agents from and against all claims, suits, actions, proceedings, demands, losses, damages, liabilities, costs and expenses, including reasonable legal and accounting fees and expenses and reasonable collection costs, resulting from or arising out of: Sub-Merchant's payment activities; the business of Sub-Merchant or its customers; the transactions submitted to WorkWave and/or acquired by Acquirer or Bank; any noncompliance by Sub-merchant or its agents or TPSPs with the applicable Operating Regulations or Applicable Laws; any issues, problems, or disputes between Acquirer and Sub-Merchant or between Bank and Sub-Merchant; any Data Incident; any infiltration, hack, breach or violation of any system of Sub-Merchant or its TPSPs; any breach or nonperformance of any provision of this Agreement on the part of Sub-Merchant or its TPSPs, or its or their respective employees, agents, affiliates or customers; and any additional indemnities set forth in an Appendix. As used herein, "**Data Incident**" means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of a card or cardholder data, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, hardware or software of any system (wherever located) through which card information resides, passes through, and/or could have been compromised.
- C. **Limitations of Liability.** IN NO EVENT WILL SUB-MERCHANT, WORKWAVE OR ANY OF WORKWAVE'S ACQUIRERS, BANKS, OR THIRD PARTY SUPPLIERS (OR THE RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR AGENTS OF ANY OF THE FOREGOING) BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE OR THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER. IN NO EVENT WILL THE MAXIMUM LIABILITY OF WORKWAVE OR ANY OF WORKWAVE'S ACQUIRERS, BANKS, OR THIRD PARTY SUPPLIERS (OR THE RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR AGENTS OF ANY OF THE FOREGOING) EXCEED THE AMOUNT DUE TO WORKWAVE UNDER THIS AGREEMENT FOR THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY. Notwithstanding the foregoing, nothing contained in this section is in any way intended, or should be construed, to limit: (i) Sub-Merchant's obligation to pay any Fees or other amounts owed under this Agreement, including, but not limited to, assessments or other amounts imposed by any Association, Acquirer, Bank or telecommunications services provider; (ii) any damages related to the failure of Sub-Merchant to exclusively receive the Services from WorkWave; or (iii) Sub-Merchant's obligation to indemnify WorkWave pursuant to this Agreement. In no event will WorkWave be liable for any damages or losses that are wholly or partially caused by Sub-Merchant or its TPSPs, or its or their respective employees, agents, affiliates or customers, nor will WorkWave be liable to Sub-Merchant or Sub-Merchant's customers or any other person or entity for any loss or liability resulting from the products or services of any third party.

8. CONFIDENTIALITY

Neither party (in such capacity, a “**Recipient**”) will disclose to any third party any Confidential Information received from the other party (in such capacity, a “**Discloser**”), nor will it use such Confidential Information for any purpose other than the purpose for which it was originally disclosed. Recipient agrees to treat the Discloser’s Confidential Information with the same degree of care and security that it uses with similar confidential and proprietary information of its own, but with no less than a reasonable degree of care. Recipient may disclose the Discloser’s Confidential Information to its employees, agents and TPSPs who require such Confidential Information in connection with this Agreement, provided that such employees, agents and TPSPs are subject to obligations of confidentiality consistent with those set forth herein. Confidential Information will not include information that: (i) is known to Recipient at the time it receives such information; (ii) has become publicly known through no wrongful act of Recipient; (iii) has been rightfully received by Recipient from a third party authorized to provide it without restriction; (iv) has been approved for release by written authorization of Discloser; or (v) is required by law to be disclosed. In the event Recipient receives a subpoena or other validly issued administrative or judicial process requesting Discloser’s Confidential Information, Recipient will promptly notify Discloser of such receipt and may, thereafter, comply with such subpoena or process to the extent permitted by law. The parties’ obligations under this section will bind their successors and assigns.

9. ENTIRE AGREEMENT; AMENDMENTS

- A. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other agreement, written or oral, that may have been made or entered into by the parties relating to such subject matter.
- B. Amendment by WorkWave.
 - i. Sub-Merchant acknowledges that pass-through amounts charged by Acquirer, Bank, Associations and other third parties, including, but not limited to, assessments and interchange or ACH related fees, may be changed from time to time. WorkWave will provide Sub-Merchant with as much notice as is reasonably possible in the event of any such changes in pass-through amounts. From time to time, WorkWave may change the Fees or other non-pass through amounts set forth in this Agreement. WorkWave will provide a minimum of thirty (30) days written notice to Sub-Merchant of all amendments to Fees or other non-pass through amounts. Such notice may be given on the Sub-Merchant Statement.
 - ii. WorkWave may amend or modify this Agreement, and any such amendment or modification will be effective and binding on Sub-Merchant upon notice. Sub-Merchant’s continued use of a Service after the effective date of any such amendment or modification will constitute Sub-Merchant’s acceptance of, and agreement to abide by, the terms and conditions contained in any such amendment or modification.

10. NOTICES

Except for notices provided by WorkWave to Sub-Merchant on the Sub-Merchant Statement, all notices, requests, demands or other instruments that are required to be given by Sub-Merchant or WorkWave in connection with this Agreement will be in writing and will be deemed to have been properly given: (i) five (5) Business Days after being sent by certified mail, return receipt requested; or (ii) upon delivery by a nationally recognized overnight delivery service, in either case to the recipient’s addresses described below. Notices will be addressed as follows:

If to WorkWave: WorkWave LLC
 101 Crawfords Corner Road Suite 2511-W
 Holmdel, New Jersey 07733
 Attn: Legal Department
 With a copy to: generalcounsel@workwave.com

If to Sub-Merchant: Sub-Merchant’s address in the Application

WorkWave or Sub-Merchant may change the address to which subsequent notices are to be sent, by giving notice to the other party in a manner described above.

11. MISCELLANEOUS

- A. Independent Contractors. In the performance of its obligations under this Agreement, each party will be an independent contractor, not an employee or agent of the other party.
- B. Governing Law, Arbitration. This Agreement will be governed and construed in accordance with the laws of the State of Delaware, without regard to its conflict of law principles. Any controversy or claim arising out of or relating to this Agreement or the breach thereof will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The number of arbitrators will be one. The place of arbitration will be in New York, New York. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- C. Assignment. This Agreement may not be assigned by Sub-Merchant without the prior written consent of WorkWave. A change in control of Sub-Merchant as a result of a sale, reorganization, merger or otherwise will be deemed an assignment and will require the written consent of WorkWave.

- D. Force Majeure. WorkWave will be excused from performing any of its obligations under this Agreement that are prevented or delayed by any occurrence not within WorkWave's reasonable control, including, but not limited to, natural disasters, accidents, war, riots, emergency conditions, strikes or other labor matters, interruption of transmission or communications facilities, or failure of equipment or destruction of or damage to any building not controlled by WorkWave.
- E. No Waiver. Any delay, waiver or omission by either party in exercising any right or power in connection with any breach or default of the other party of any term, provision or covenant of this Agreement will not be construed to be a waiver of any subsequent breach or default of the same or any other term, provision or covenant, nor will any waiver will be deemed to modify any of the terms of this Agreement. All remedies afforded by this Agreement for a breach hereof will be cumulative.
- F. Severability. If any provision of this Agreement is held, or is deemed to be, inoperative or unenforceable as applied in any particular situation, such circumstance will not have the effect of rendering any other provision or provisions hereof invalid, inoperative or unenforceable. If any provision of this Agreement is determined to be ambiguous, then the rule of construction that such provision is to be construed against its drafter will not apply to the interpretation of such provision.
- G. Bankruptcy. Sub-Merchant will notify WorkWave within five (5) days upon the filing of voluntary or involuntary bankruptcy proceedings by or against Sub-Merchant. The parties acknowledge that this Agreement constitutes an extension of financial accommodations by WorkWave to Sub-Merchant within the meaning of Section 365 of the US Bankruptcy Code. Sub-Merchant agrees that this Agreement is a contract of recoupment and as such, WorkWave is not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Fees, Chargebacks, Entries or other amounts secured by the security interest or lien described in this Agreement. Nevertheless, Sub-Merchant agrees not to contest or object to any motion for relief from an automatic stay filed by WorkWave.
- H. Power of Attorney. Sub-Merchant hereby appoints WorkWave as its attorney-in-fact to execute such documents as necessary or desirable to accomplish perfection of any security interests described in this Agreement. Such appointment is coupled with the applicable interest and will be irrevocable as long as Sub-Merchant owes any amount to WorkWave.
- I. Attorneys' Fees. If WorkWave takes legal action against Sub-Merchant in connection with this Agreement, or if Sub-Merchant is required to indemnify WorkWave pursuant to this Agreement, Sub-Merchant will pay reasonable costs and attorneys' fees incurred by WorkWave whether suit is commenced or not.
- J. Headings. The headings used herein are for identification and reference purposes only and will not be used in the construction or interpretation of this Agreement.

12. DEFINITIONS

"ACH" means automated clearing house.

"ACH Network" means the ACH funds transfer system (network) governed by NACHA's Operating Rules.

"ACH Transaction" means the acceptance of a check, whether in electronic or paper form, or routing and account information associated with Payor's bank account, for payment for goods sold or services provided to Payor by Sub-Merchant and receipt of payment by Sub-Merchant via the ACH Network.

"Acquirer" means Worldpay, LLC, which is the entity contracted by WorkWave to submit transaction information to the Associations on behalf of WorkWave and to receive and settlement funding for transactions.

"Applicable Laws" means any and all local, state, and federal laws, rules, and regulations applicable to a Service and the transactions submitted under this Agreement, including, but not limited to, the Bank Secrecy Act, the USA PATRIOT Act, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, the Telephone Disclosure and Dispute Resolution Act, and the regulations of the Federal Trade Commission and the Federal Communications Commission.

"Association" means the following card or electronic payments networks/associations: Visa, MasterCard, Discover, American Express, Diners Club and JCB. Where the context requires, NACHA is an Association.

"Authorization" means an affirmative response by or on behalf of an Issuer to a request by Sub-Merchant to affect a Payment Card Processing Transaction, that a Payment Card Processing Transaction is within the Cardholder's available credit limit, and that the Cardholder has not reported the applicable card lost or stolen. All Payment Card Processing Transactions require Authorization.

"Bank" means Fifth Third Bank, which is the financial institution contracted by WorkWave that is a member of the Associations and provides sponsorship services for card transactions submitted by WorkWave for processing.

"Banking Day" means any day that the applicable bank is open and accepts banking transactions.

“Business Day” means any day other than: any Saturday or Sunday; any day which is a federal legal holiday in the United States or on which banking institutions in the State of New York are authorized or required by law or other governmental action to close; or any day on which the Federal Reserve Bank is closed.

“Card” means a specific credit card or debit card for which WorkWave provides Payment Card Processing under this Agreement.

“Card-Not-Present Transaction” means a mail order, telephone order, e-commerce (Internet) order or other transaction that is not a Card-Present Transaction.

“Card-Present Transaction” means a Payment Card Processing Transaction in which a Card is swiped through a terminal, register or other device, capturing the information encoded on the Card’s magnetic strip or chip.

“Cardholder” means a person authorized to use a Card.

“Chargeback” means a Payment Card Processing Transaction that WorkWave returns to Sub-Merchant pursuant to this Agreement.

“Confidential Information” means any information (including, without limitation, information received from third parties) that is identified as, or reasonably should be understood to be, confidential, including, but not limited to, non-public financial information, information that is personally identifiable to a Cardholder or Payor, know-how, trade secrets, technical processes and formulas, software, merchant lists, unpublished financial information, business plans, projections, marketing data, and the terms and conditions of this Agreement.

“eCheck Processing” means the acceptance of an ACH or EFT transaction for payment of goods sold or services provided to Payor by Sub-Merchant and receipt by Sub-Merchant of payment via the ACH Network using the Service, whether the transaction is approved, declined, or processed as an “NOC” or other exception.

“eCheck Processing Transaction” means a transaction submitted by Sub-Merchant for eCheck Processing.

“Effective Date” means the date on which WorkWave approves Sub-Merchant for use of at least one Service.

“Entry” means a credit entry, debit entry, on-us entry, or other entry consistent with NACHA’s Operating Rules, and any data related thereto.

“Fees” means any and all fees, costs, penalties, assessments, charges, or other amounts related to the Service or this Agreement, including, but not limited to: processing fees, monthly service fees and set-up fees stated in a Purchase Order for a Service; Chargebacks, Return Entries and refunds; and assessments or other amounts described in this Agreement. Fees may include, without limitation, an amount equal to a specified percentage of each applicable transaction amount, a specified amount per transaction, and other fees such as set-up or installation fees, monthly terminal fees, monthly statement fees, and other fees identified in a Purchase Order.

“File” means a group of Entries stored for delivery to an ACH receiving point.

“Financial Institution” means a financial institution with which Sub-Merchant or WorkWave establishes a demand deposit account or other deposit account designated for use in connection with eCheck Processing.

“Forced Sale” means Payment Card Processing without an approved electronic authorization number being obtained for the full amount of the sales transaction at the time of processing.

“Issuer” means an Association member that issues a Card to a Cardholder.

“Member Bank” means, collectively, Acquirer and Bank.

“NACHA” means the National Automated Clearing House Association, which governs ACH Transactions.

“Operating Account” means any account established by Sub-Merchant for a purpose described in this Agreement, such as an account used for deposits and withdrawals from Payment Card or eCheck Processing Transactions.

“Operating Regulations” or **“Operating Rules”** means the by-laws, operating regulations, and other rules, regulations, policies, procedures and guidelines that are published or mandated by an Association, NACHA or other payment network (or by any applicable bank or other institution, organization or association) which govern or affect the processing of credit or debit card information, electronic payments or funds transfers, or any other services provided under this Agreement, as any or all of the foregoing may be amended from time to time. Operating Regulations or Operating Rules include, but are not limited to, the Security Programs, the NACHA Operating Rules, and any other similar programs or requirements that may be published and/or mandated by the Associations or payment networks. Operating Regulations or Operating Rules are available on web sites such as <http://www.usa.visa.com/merchants>, www.americanexpress.com/merchanttopguide, and <http://www.mastercardmerchant.com>, as such web sites may be updated from time to time.

“Originating Depository Bank” or **“ODFI”** means a financial institution that originates ACH Transactions on behalf of its customers. ODFIs must abide by NACHA’s Operating Rules.

“Originator” means a company, individual, or entity that initiates Entries into the ACH Network.

“Payment Card Processing” means the acceptance of a Card or information embossed on a Card for payment for goods sold or services provided to a Cardholder by Sub-Merchant and receipt by Sub-Merchant of payment using the Service, whether the transaction is approved, declined, or processed as a Forced Sale.

“Payment Card Processing Transaction” means a transaction submitted by Sub-Merchant for Payment Card Processing.

“Payor” means a person authorized to pay with a check.

“Pre-Authorized Recurring Order Transaction” means a Payment Card Processing Transaction that has been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed on a recurring basis without having to obtain approval from the Cardholder each time.

“Receiving Depository Bank” or **“RDFI”** means a financial institution qualified by NACHA to receive ACH Transactions.

“Return Entry” means an Entry that cannot be processed and is being returned by the RDFI to the ODFI for correction or re-initiation.

“Security Programs” means the Payment Card Industry Data Security Standard (PCI-DSS), the Payment Application Data Security Standard (PA-DSS), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other security program or requirement that may be published and/or mandated by any Association, as any or all of the foregoing may be amended from time to time.

“Service” or **“Processing Service”** means a payment processing/facilitation service selected by Sub-Merchant via one or more Purchase Orders and provided by WorkWave under this Agreement.

“Settlement Date” means the date on which settlement occurs, i.e. the date on which funds actually change hands.

“Sub-Merchant Statement” means a statement of all charges and credits to the Operating Account.

“TPSP” means a third party service provider with which Sub-Merchant or WorkWave has entered into a direct agreement related to a Service. For clarity, none of WorkWave, Acquirer, Bank or any Associations are considered TPSPs of Sub-Merchant for purposes of this Agreement.

APPENDIX 1 PAYMENT CARD PROCESSING

WorkWave will provide, and Sub-Merchant will receive, the Payment Card Processing services indicated in the applicable Purchase Order or Application, as described in this Appendix 1, as may be amended from time to time by WorkWave. Sub-Merchant agrees that the terms and conditions of this Appendix 1 and the General Terms of the Agreement will apply to all Payment Card Processing services that Sub-Merchant receives from WorkWave, and that no other agreements or understandings related to such Payment Card Processing services will apply unless otherwise agreed in writing by WorkWave.

1. PAYMENT CARD PROCESSING

Sub-Merchant is in the business of selling goods and/or providing services to its customers as described in the applicable Purchase Order or Application. Sub-Merchant has requested that WorkWave provide Payment Card Processing in connection with such sales. Sub-Merchant agrees that it will not materially change its business or the method in which it markets or sells its goods and services without notifying WorkWave. Without the prior written consent of WorkWave, Sub-Merchant is not authorized to submit for Payment Card Processing sales of any type of goods or services other than as set forth in the Purchase Order or the Application. WorkWave reserves the right to establish volume and dollar limits on individual, daily, weekly and monthly transactions that Sub-Merchant may submit for Payment Card Processing.

2. WORKWAVE OBLIGATIONS AND REQUIREMENTS

- A. WorkWave will Sponsor Payment Card Processing Services. WorkWave agrees to sponsor Sub-Merchant's acceptance of Cards for Payment Card Processing.
- B. Electronically Transmitted Transactions. WorkWave will deliver payment to Sub-Merchant by a credit to a demand deposit account or other deposit account that Sub-Merchant establishes and designates for use in connection with Payment Card Processing. This account will be deemed an Operating Account for purposes of this Appendix 1 and the General Terms. The amount credited to the Operating Account will equal the reconciled summary of Sub-Merchant's total summary Payment Card Processing Transactions since the previous credit. This credit will be net of the following:
 - i. Fees;
 - ii. Chargebacks and other amounts denied or refused;
 - iii. refunds processed during the applicable time period;
 - iv. taxes, penalties, charges and other items incurred by WorkWave that are reimbursable pursuant to this Agreement; and
 - v. any provisional credits (it being understood that any credits to the Operating Account are provisional only and subject to revocation by WorkWave until such time that the applicable Payment Card Processing Transaction is final and no longer subject to chargeback by the Issuer, Cardholder, or Associations).
- C. Sub-Merchant Statement. WorkWave will make available a Sub-Merchant Statement or similar information on no less than a monthly basis. All information appearing on the Sub-Merchant Statement will be deemed accurate and affirmed by Sub-Merchant unless Sub-Merchant objects by written notice specifying the particular item in dispute within twenty (20) days after the date of the Sub-Merchant Statement became available to Sub-Merchant. Delivery of the Sub-Merchant Statement may be in written or electronic form as determined by WorkWave in its sole discretion.
- D. Chargebacks. Sub-Merchant understands and agrees that WorkWave is not in any way financially responsible for Chargebacks. WorkWave will be authorized to charge back to Sub-Merchant amounts related to a Payment Card Processing Transaction for reasons including, but not limited to, the following:
 - i. no specific prior Authorization for the Payment Card Processing Transaction was obtained;
 - ii. the Payment Card Processing Transaction was made at or by a merchant other than Sub-Merchant;
 - iii. the Payment Card Processing Transaction violates the terms of this Agreement or any of the Operating Regulations;
 - iv. any representation or warranty made by Sub-Merchant in connection with the Payment Card Processing Transaction is false or inaccurate in any respect;
 - v. the Payment Card Processing Transaction was based on a pre-authorization and the Card on which such pre-authorization was based has been cancelled;
 - vi. the applicable Card was cancelled prior to, or at the time of, the Payment Card Processing Transaction;
 - vii. the applicable Card expired prior to the date of the Payment Card Processing Transaction, or the date of the Payment Card Processing Transaction was prior to the validation date, if any, indicated on the Card;
 - viii. the information required for documenting a Card-Not-Present Transaction was not submitted to WorkWave;
 - ix. WorkWave or Issuer received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Sub-Merchant and the Cardholder;
 - x. the Cardholder makes a written complaint to WorkWave or Issuer that the Cardholder did not make or authorize the Payment Card Processing Transaction;
 - xi. a setoff or counterclaim of any kind exists in favor of the Cardholder against Sub-Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in connection with the Payment Card Processing Transaction; or
 - xii. the Payment Card Processing Transaction is charged back by an Issuer.

In any event, including those described above, WorkWave will not be obligated to accept a Payment Card Processing Transaction for credit to the Operating Account or any Reserve. If WorkWave has credited the Operating Account or a Reserve for such Payment Card Processing Transaction, WorkWave may return the Payment Card Processing Transaction to the Sub-Merchant, and WorkWave may recover the amount of the Payment Card Processing Transaction from the Operating Account or Reserve, without prior notice to Sub-Merchant, by:

- i. charging the amount of the Payment Card Processing Transaction to the Operating Account or Reserve;
- ii. recouping the amount of the Payment Card Processing Transaction by adjustment of the credits due to Sub-Merchant; or
- iii. setting off the amount of the Payment Card Processing Transaction against any account or property that WorkWave holds for or on behalf of Sub-Merchant.

3. SUB-MERCHANT OBLIGATIONS AND REQUIREMENTS

- A. Adjustments and Returns. Sub-Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods sold and services provided to its customers whenever appropriate. In the event that goods are returned, or any services are discounted, written off, or cancelled, or any price is adjusted on a Payment Card Processing Transaction, Sub-Merchant will prepare and transmit a credit or return Payment Card Processing Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of the sales drafts transmitted for Payment Card Processing that day. In the event the amount of the credit or return Payment Card Processing Transactions exceeds the amount of the sales drafts transmitted for Payment Card Processing that day, WorkWave will charge the Operating Account or any Reserve for the excess. Sub-Merchant will make no cash refunds on Payment Card Processing Transactions and will handle all credit adjustments as provided in this section. Sales drafts for any Payment Card Processing Transaction for which no refund or return will be given must be conspicuously marked as a "final sale" and "no returns" on the customer's copy of the sales draft at the time of the Payment Card Processing Transaction. Sub-Merchant must follow all Association reservation/no-show policies and must notify Cardholders in writing of such policies on all advance reservations. Sub-Merchant must notify Cardholders of the exact number of days required for reservation deposit refunds. Any failure by Sub-Merchant to follow Association reservation/no-show policies may result in a Chargeback to the Operating Account or any Reserve for lodging regulation violations.
- B. Customer Complaints. Sub-Merchant will respond promptly to inquiries from Cardholders and will resolve any disputes amicably. WorkWave reserves the right to charge Sub-Merchant reasonable fees and reimbursement amounts, in addition to any applicable Association fees or charges, on account of excessive Cardholder inquiries, refunds, or Chargebacks. Sub-Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Sub-Merchant has received notice:
 - i. the Cardholder's name;
 - ii. a unique confirmation number, transaction sequence number, or other identifier that the Sub-Merchant can use to reference the matter in subsequent communications with WorkWave;
 - iii. the date and time that the Cardholder asserted the claim or defense;
 - iv. the nature of the claim or defense; and
 - v. the action that Sub-Merchant took in an attempt to resolve the dispute.

Upon request, Sub-Merchant will furnish WorkWave with this information in writing within ten (10) days.

4. COMPLIANCE

- A. Associations' and Issuers' Requirements. WorkWave and Sub-Merchant will comply with the Operating Regulations of the Associations and the Issuers whose Cards are used to process Payment Card Processing Transactions. Sub-Merchant and WorkWave acknowledge that this Appendix 1, as well as the Agreement where applicable, will be governed by such Operating Regulations and that any portion of this Appendix 1 which conflicts with such Operating Regulations will be superseded thereby. Without limiting the generality of the foregoing, if Sub-Merchant submits any Payment Card Processing Transactions for processing with American Express, the following additional requirements, terms and conditions apply with respect thereto (*Note: Capitalized terms below are as defined by American Express, including in the American Express Merchant Requirements, the American Express Merchant Operating Guide or similar American Express documents, rather than as defined in this Agreement*):
 - i. Merchant hereby authorizes Processor to submit Transactions to, and receive settlement from, American Express on behalf of the Merchant. If Merchant is placed in the American Express Program, Merchant will be responsible for complying with the American Express Merchant Operating Guide, which can be located at <http://www.americanexpress.com/merchantopguide>.
 - ii. Acquirer may disclose Transaction Data, Merchant Data, and other information about the Merchant to American Express; and American Express may use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes within the parameters of the Agreement. American Express may use the information from the Agreement at the time of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.
 - iii. Merchant may be converted from the American Express Program to a direct Card acceptance relationship with American Express if and when Merchant has either (a) greater than \$1,000,000 in Charge Volume in a rolling twelve (12) month prior or (b) greater than \$1,000,000 in Charge Volume in any three (3) consecutive months. Upon conversion, (y) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (z) American Express will set pricing and other fees payable by the Merchant for Card acceptance.

- iv. Merchant will not assign to any third party any payments due to it under the Agreements, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Acquirer, its affiliated entities and/or any other cash advance funding source that partners with Acquirer or its affiliated entities, without consent of American Express.
 - v. Third-party beneficiary rights may be conferred to American Express, but not obligations to the Merchant Processing Agreement, providing American Express the ability to enforce the terms of the Agreement against the Merchant in association with the American Express Program only.
 - vi. Merchant may elect to opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept other payment products by notifying Acquirer.
 - vii. Processor may terminate Merchant's right to accept American Express Cards if it breaches any of the provisions in this section or the American Express Merchant Operating Guide.
 - viii. Acquirer has the right to immediately terminate Merchant from the American Express Program for cause, fraudulent or other activity, or upon American Express' request.
 - ix. Merchant may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless Chargeback has been exercised, Merchant has fully paid for such Charge, and it otherwise has the right to do so.
 - x. Upon termination of the Agreement or termination of Merchant's participation in the Program, Merchant must remove any and all American Express Licensed Marks from Merchant's Website and wherever else the American Express Marks are displayed.
- B. Use of Marks. Sub-Merchant will display prominently at its place of business, where payments are accepted for Card-Present Transactions, Card emblems and other promotional material and literature provided by WorkWave. Subject to the prior written consent of WorkWave and upon such conditions as authorized by WorkWave, Sub-Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
- C. Payment Card Industry Security Program. Sub-Merchant agrees to be compliant with the security program established by the Payment Card Industry Security Standards Council (consisting of Visa, MasterCard, Discover Network, American Express and others) to ensure the protection of cardholder data, whether processed or stored. Information about this program, commonly known as "PCI", and its specific requirements can be obtained at www.visa.com/cisp and www.pcisecuritystandards.org. The PCI program is comprised of 12 major requirements:
- i. install and maintain a firewall configuration to protect data;
 - ii. do not use vendor-supplied defaults for system passwords and other security parameters;
 - iii. protect stored data;
 - iv. encrypt transmission of cardholder data and sensitive information across public networks;
 - v. use and regularly update anti-virus software;
 - vi. develop and maintain secure systems and applications;
 - vii. restrict access to data by business need-to-know;
 - viii. assign a unique ID to each person with computer access;
 - ix. restrict physical access to cardholder data;
 - x. track and monitor all access to network resources and cardholder data;
 - xi. regularly test security systems and processes; and
 - xii. maintain a policy that addresses information security.
- D. Compromised Data. Sub-Merchant will immediately notify WorkWave of any suspected, alleged, or confirmed compromised data ("**Compromised Data Event**"), regardless of the source, including any of Sub-Merchant's TPSPs. WorkWave, Member Bank, or an applicable Issuer may engage a forensic vendor approved by an Association. Sub-Merchant must cooperate with the forensic vendor so that it may immediately conduct an examination of Sub-Merchant's and Sub-Merchant's TPSP's equipment, systems, procedures and records and issue a written report of its findings. Sub-Merchant agrees that upon Sub-Merchant's suspected or actual discovery of a Compromised Data Event, Sub-Merchant will not alter or destroy any related records. Sub-Merchant will maintain complete and accurate documentation regarding any modifications made to such records. Sub-Merchant will share with WorkWave, Member Bank, and any applicable Issuer information related to Sub-Merchant's or any Associations' investigation related to any actual or suspected Compromised Data Event, including, but not limited to, forensic reports and systems audits, and WorkWave, Member Bank, and any applicable Issuer may share that information with Associations. Upon notice to Sub-Merchant, WorkWave, Member Bank, and any applicable Issuer (or the respective representatives of each) may conduct remote electronic scans of Sub-Merchant's systems to confirm compliance with the requirements of the Associations and Applicable Laws. Sub-Merchant must promptly cooperate with any such entities to facilitate the scans.
- E. Web Site Requirements for E-Commerce Sub-Merchants. A web site operated by the Sub-Merchant that accepts Card payments to be submitted for Payment Card Processing must contain all of the following information:
- i. complete description of the goods and services offered;
 - ii. merchandise return and refund policy, which includes communication of the policy during the order process and the requirement that Cardholders must be allowed to select a "click to accept" option or other affirmative button to acknowledge the policy;
 - iii. terms and conditions;
 - iv. customer service contact, including e-mail address or telephone number;
 - v. transaction currency;
 - vi. export or legal restrictions;
 - vii. delivery policy;

- viii. consumer data privacy policy;
- ix. the security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
- x. address (including country) of the Sub-Merchant's permanent establishment.

The above information must be provided either: (a) on the same screen view as the screen used to present the total purchase amount for Payment Card Processing, or (b) within the sequence of web pages the Cardholder accesses in connection with Payment Card Processing.

F. Other Obligations.

- i. Sub-Merchant is responsible for the security of cardholder data.
- ii. WorkWave, Sub-Merchant and each payment card brand have ownership of cardholder data and may use such data only for assisting in the completion of Payment Card Processing Transactions, supporting loyalty programs, providing fraud control services, or for other uses specifically permitted or required by Applicable Laws.
- iii. In the event this Agreement is terminated by Sub-Merchant or WorkWave, each party agrees to continue to treat cardholder data as confidential.
- iv. Sub-Merchant must immediately notify Visa USA Risk Management, through its acquirer, of the use of a TPSP and must ensure the TPSP implements and maintains all applicable Security Programs.

5. COLLECTION AND USE OF PAYMENT CARD PROCESSING TRANSACTION INFORMATION

A. Documenting Payment Card Processing Transactions. Sub-Merchant will submit the following information to WorkWave in connection with each Payment Card Processing Transaction:

- i. the Sub-Merchant's name, DBA name (if applicable), and address;
- ii. the Sub-Merchant's customer service telephone number;
- iii. the Sub-Merchant's Internet address;
- iv. the Sub-Merchant's merchant number assigned by Member Bank;
- v. for each applicable Card: account number, validation date (if one appears on the Card) and expiration date;
- vi. the Cardholder's name, address and telephone number; and
- vii. such additional information as may be required by WorkWave or Member Bank and/or the Associations.

Sub-Merchant will not submit a Payment Card Processing Transaction (electronically or otherwise) until Sub-Merchant has performed its obligations to the Cardholder in connection therewith or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Sub-Merchant must not transmit a Payment Card Processing Transaction that Sub-Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Sub-Merchant is responsible for its employees' actions. Sub-Merchant may transmit a Payment Card Processing Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise (i.e. manufactured to a Cardholder's specifications) if Sub-Merchant advises the Cardholder of the immediate billing at the time of the Payment Card Processing Transaction and within time limits established by the Associations.

B. Authorization for Payment Card Processing Transactions. Sub-Merchant will obtain Authorization for each Payment Card Processing Transaction as follows:

- i. *Electronically Transmitted Transactions.* Sub-Merchant will submit each Payment Card Processing Transaction for Authorization to WorkWave's designated authorization center. WorkWave's designated authorization center will respond with the Issuer's Authorization or rejection of a Payment Card Processing Transaction and will capture and process for Sub-Merchant the information relating to the Payment Card Processing Transaction.
- ii. *Card-Present Transactions.* The following additional requirement applies to Card-Present Transactions: If a terminal or software application is inoperable at the time of an Authorization request, the Payment Card Processing Transaction may be manually authorized. In that case, the Payment Card Processing Transaction will be entered as a Forced Sale, provided the approval number is also entered, and Sub-Merchant may be subject to an additional IVR (interactive voice response) authorization fee as outlined in the Purchase Order or the Application.
- iii. *Card-Not-Present Transactions.* The following additional requirements apply to Card-Not-Present Transactions:
 - a. All Card-Not-Present Transactions are at Sub-Merchant's risk. As to each Card-Not-Present Transaction, Sub-Merchant warrants to WorkWave that the person whose name is submitted as the Cardholder either made, or authorized another to make, the purchase. Upon breach of this warranty, WorkWave may charge back the Payment Card Processing Transaction to Sub-Merchant. If WorkWave charges back the Payment Card Processing Transaction to Sub-Merchant, Sub-Merchant will pay WorkWave the amount of the Payment Card Processing Transaction, a Chargeback fee, and any Association fines or assessments. WorkWave may charge the Payment Card Processing Transaction to the Operating Account or any Reserve without prior notice to Sub-Merchant.
 - b. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required for documenting Card-Present Transactions, also will indicate: an Authorization code, if required; customer address and address verification; card verification value (CVV); card identification data (CID); and in lieu of the Cardholder's signature, a notation of (1) mail order, (2) telephone order, (3) e-commerce order, or (4) pre-authorized order, on the signature line.

- c. If Sub-Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder will execute and deliver to Sub-Merchant a written request for this pre-authorization. This written request will be maintained by Sub-Merchant and made available upon request to WorkWave. All annual billings must be reaffirmed at least once per year. Sub-Merchant will not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled, or after receiving notification from WorkWave that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored.
- d. Sub-Merchant will verify the Cardholder's address through the Association network. For telephone or mail order sales, Sub-Merchant will transmit a ticket/invoice number and will verify the Cardholder's billing address with the applicable Issuer, CVV, and CID, and only accept as approved those Payment Card Processing Transactions receiving at least a partial match or system unavailable response.

C. Prohibited Payment Card Processing Transactions. Sub-Merchant will not do any of the following with respect to any Payment Card Processing Transaction:

- i. impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- ii. charge a Cardholder more than the amount the Cardholder would pay if payment was made by cash or check;
- iii. establish a minimum sale amount below the amount allowed by the Associations; provided, however, Sub-Merchant may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Associations and/or Issuers and the minimum transaction amount does not exceed \$10.00 (or any higher amount established by applicable Operating Regulations or Applicable Laws);
- iv. establish a maximum sale amount as a condition for honoring Cards; provided, however, Sub-Merchant may establish a maximum sale amount as a condition for honoring Cards if Sub-Merchant is a department, agency or instrumentality of the U.S. Government, Sub-Merchant is a corporation owned or controlled by the U.S. Government, or Sub-Merchant's primary business is reflected by one of the following MCCs: 8220 (Colleges, Universities, Professional Schools and Junior Colleges), 8244 (Schools, Business and Secretarial), or 8249 (Schools, Trade and Vocational), provided that the maximum sale amount does not differentiate between Associations and/or Issuers;
- v. obtain multiple Authorizations for amounts less than the total transaction amount;
- vi. obtain Authorization for purposes of setting aside a Cardholder's credit line for use in future sales;
- vii. make any special charge to, or extract any special agreement or security from, a Cardholder in connection with the transaction;
- viii. transmit or accept for payment any transaction which was not originated directly between Sub-Merchant and a Cardholder for the sale of goods or the performance of services of a type indicated in the Application;
- ix. honor or accept a Card as payment for any legal services or expenses arising out of or related to: (a) the defense of any crime other than a traffic violation; (b) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on the Card; or (c) any bankruptcy, insolvency, compromise, composition or other process affecting a Cardholder's creditors;
- x. use Sub-Merchant's own Card, or one to which Sub-Merchant has access, to process a transaction for the purpose of obtaining credit for Sub-Merchant's own benefit;
- xi. redeposit a previously charged transaction, regardless of whether or not the Cardholder consents;
- xii. initiate a credit without a balance in the Operating Account equal to the credit;
- xiii. use any payment processing platform or data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- xiv. draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when a Card is processed as non-accepted;
- xv. disclose any information obtained through any payment processing platform to any person except for necessary disclosures to affected Cardholders, WorkWave, Member Bank and/or Issuer;
- xvi. add any tax unless any Applicable Laws expressly require that Sub-Merchant collect such a tax. Any tax, if allowed, must be included in the transaction amount and not collected separately;
- xvii. disburse funds in the form of traveler's checks, if the sole purpose is to allow a Cardholder to make a cash purchase of goods or services from Sub-Merchant;
- xviii. disburse funds in the form of cash, unless:
 - a. Sub-Merchant is approved by Member Bank for cashback transactions and in such transaction the cashback portion is the only portion disbursed as cash; or
 - b. Sub-Merchant is dispensing funds in the form of traveler's checks, Visa TravelMoney Cards or foreign currency. In this case, the transaction amount is limited to the value of such form of dispensation plus any fee or commission charged to the Sub-Merchant;
- xix. accept a Card to collect or refinance an existing debt;
- xx. issue a credit for return of goods or services acquired in a cash transaction;
- xxi. issue a credit to a Card account number other than the one used in the original sale;
- xxii. make any cash refund to a Cardholder who has made a purchase with a Card;
- xxiii. require a Cardholder to complete a postcard or similar device that includes the Card's account number, Card expiration date, signature or any other Card account data in plain view when mailed; or
- xxiv. accept a Visa Card or Visa Electron Card for the purchase of scrip.

D. Disclosure and Storage of Payment Card Processing Transaction Information.

- i. Sub-Merchant must not disclose a Card account number, personal information, or other transaction information to any third party other than WorkWave or its TPSPs or Member Bank for the sole purpose of assisting Sub-Merchant with completing the applicable transaction or as specifically required by law.
- ii. Notwithstanding the foregoing, Sub-Merchant may disclose transaction information to approved third parties for the sole purpose of supporting loyalty programs or providing fraud control services.
- iii. Sub-Merchant must store all material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and render all data unreadable prior to discarding. Sub-Merchant must not do any of the following:
 - a. retain or store full contents of any track on the magnetic stripe subsequent to a transaction;
 - b. retain or store CVV/CID data subsequent to Authorization of a transaction; or
 - c. request the CVV/CID data on any paper form.
- iv. The sale or disclosure of databases containing Cardholder account numbers, personal information, or other transaction information to third parties is prohibited.

- E. Use and Disclosure of BIN Information. If Sub-Merchant receives BIN information from WorkWave or Member Bank, Sub-Merchant must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

6. AUDITS

At any reasonable time during normal business hours, and upon reasonable notice to Sub-Merchant, Sub-Merchant will allow auditors, including the auditors of any Association or any third party designated by WorkWave, Member Bank, or the applicable Association, to review the files held and the procedures followed by Sub-Merchant at any or all of Sub-Merchant's offices or places of business. Sub-Merchant agrees that the cost of such audit will be borne by Sub-Merchant. Sub-Merchant will assist such auditors as may be necessary for them to complete their audit. In the event that a third party audit is required by an Association, Member Bank or regulatory agency, and/or required by the Operating Regulations or Applicable Laws, WorkWave may, at its option, and at Sub-Merchant's sole expense, either retain a third party to perform the audit or require that Sub-Merchant directly retain a specific third party auditor. If WorkWave requires that Sub-Merchant directly retain the auditor, Sub-Merchant will promptly arrange for such audit to be performed and will provide WorkWave, Member Bank, and the Associations with a copy of any final audit report.

7. LIMITED ACCEPTANCE

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

- i. 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.
- ii. Consumer Debit - a VISA or MasterCard branded signature-based debit card (including certain stored-value and prepaid cards).
- iii. 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 indicated in the applicable Purchase Order, Application or below, Sub-Merchant wishes to be a Limited Acceptance Merchant, which means that Sub-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)

8. TERMINATION

In order to protect WorkWave, Member Bank and the Associations, WorkWave may, in addition to its termination rights under the General Terms, terminate this Appendix 1 and the Service provided hereunder immediately in any of the following circumstances:

- i. Chargebacks in excess of Association monitoring guidelines;
- ii. Sub-Merchant's percentage of error Payment Card Processing Transactions or retrieval requests is excessive in the opinion of WorkWave; or
- iii. Sub-Merchant appears on an Association list of terminated merchants.

9. INDEMNIFICATION AND LIMITATION OF LIABILITY

- A. Indemnification. In addition to the indemnification obligations set forth in the General Terms, Sub-Merchant agrees to indemnify, defend, and hold harmless WorkWave, Member Bank, and its and their respective directors, officers, employees, affiliates and agents from and against all claims, suits, actions, proceedings, demands, losses, damages, liabilities, costs and expenses, including reasonable legal and accounting fees and expenses and reasonable collection costs, resulting from or arising out of any Card-Not-Present Transactions and any unauthorized or prohibited Payment Card Processing Transactions.
- B. Limitation of Liability. In addition to the limitations of liability set forth in the General Terms, neither WorkWave nor Member Bank will be liable to Sub-Merchant or Sub-Merchant's customers or any other person for any loss or liability resulting from the denial of credit to any person or Sub-Merchant's retention of any Card or any attempt to do so.

10. AMENDMENTS TO CARDS AND/OR PAYMENT CARD PROCESSING SERVICES

WorkWave or Member Bank may add or modify Cards or Payment Card Processing services set forth in the applicable Purchase Order or Application by notifying Sub-Merchant in writing. All provisions of this Agreement (including the General Terms and this Appendix 1) will apply to any such additions or modifications. WorkWave will notify Sub-Merchant of the fees and charges for processing additional Cards and additional or modified Payment Card Processing services. Acceptance by Sub-Merchant of a new approved Card as payment for a transaction or continued use of Payment Card Processing services after WorkWave or Member Bank has sent Sub-Merchant notice of an applicable addition or modification will constitute Sub-Merchant's agreement to the applicable addition or modification and the related fees and charges.

APPENDIX 2 eCHECK PROCESSING

If indicated in a Purchase Order or Application, WorkWave will provide, and Sub-Merchant will receive, the eCheck Processing services set forth in such Purchase Order or Application, as described in this Appendix 2, as may be amended from time to time by WorkWave. Sub-Merchant agrees that the terms and conditions of this Appendix 2 and the General Terms of the Agreement will apply to all eCheck Processing services that Sub-Merchant receives from WorkWave, and that no other agreements or understandings related to such eCheck Processing services will apply unless otherwise agreed in writing by WorkWave.

1. eCHECK PROCESSING

eCheck Processing services include Entries initiated by WorkWave on behalf of Sub-Merchant by means of the ACH Network, where standards, rules, and procedures are established by NACHA. Entries will be made to a demand deposit account or other deposit account that Sub-Merchant or WorkWave establishes with a Financial Institution and designates for use in connection with eCheck Processing. This account will be deemed an Operating Account for purposes of this Appendix 2 and the General Terms. WorkWave will, if necessary to provide eCheck Processing services, utilize the services of its chosen Financial Institution.

2. TRANSMISSION OF ENTRIES

- A. Transmission of Entries. Sub-Merchant will comply with any and all of WorkWave's procedures for conforming Entries to the format, content, data encryption, and other specifications contained in the Operating Rules. Sub-Merchant authorizes WorkWave and Financial Institution to transmit all Entries received in accordance with the terms of this Agreement and to credit or debit such Entries to the Operating Account.
- B. Form and Format of Entries. WorkWave will notify Sub-Merchant whether Entries will be in the form of balanced or unbalanced Files. If WorkWave requires that Entries be in the form of a balanced File, then WorkWave will control when and where offset Entries occur. If WorkWave requires that Entries be in the form of an unbalanced File, then this means Entries contain only the originating items for the applicable Entry without any corresponding offset or settlement transaction.
 - i. Credit Entries. WorkWave reserves the right to require that Sub-Merchant pay WorkWave in immediately available funds, at the time of transmittal or at any time prior to settlement, the amount of each credit Entry submitted by Sub-Merchant.
 - ii. Debit Entries. WorkWave will, on the applicable Settlement Date, credit the Operating Account with the amount of each debit Entry transmitted to WorkWave. In the event any Entry is returned in accordance with the Operating Rules by a Receiving Depository Bank after WorkWave has provided credit, Sub-Merchant will, upon demand, repay WorkWave the amount of the Return Entry.
- C. Name and Account Number Inconsistency. Sub-Merchant acknowledges that if an Entry describes the receiver inconsistently by name and account number, payment of the Entry may be made as provided in the Operating Rules on the basis of the account number even if it identifies a party different from the named receiver.
- D. Entry Settlement. Sub-Merchant hereby authorizes and instructs WorkWave to make deposits, withdrawals and transfers to and from the Operating Account as appropriate or necessary in connection with eCheck Processing Transactions. Not later than 8:00 a.m. local time on each Settlement Date, Sub-Merchant will provide WorkWave or Financial Institution, if so directed by WorkWave, immediately available funds sufficient to pay all Entries initiated by Sub-Merchant. Notwithstanding any other provision of this Agreement, WorkWave reserves the right to require that sufficient collected funds be in the Operating Account prior to the time any Entry is processed by WorkWave.
- E. Security of Transmission. WorkWave is responsible for establishing and maintaining procedures to safeguard against unauthorized transmissions. Sub-Merchant agrees to comply with the Security Programs and any additional procedures or safeguards required by WorkWave. Sub-Merchant agrees to verify the authenticity of Entries and take reasonable steps to maintain the confidentiality of the passwords, codes, security devices and related instructions provided by WorkWave in connection with eCheck Processing. Sub-Merchant warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards.

3. ENTRY CANCELLATION, AMENDMENT, REVERSAL, REJECTION OR RETURN

- A. Cancellation, Amendment and Reversal of Entries. Sub-Merchant will have no right to cancel or amend any Entry or File after receipt of such Entry or File by WorkWave. Notwithstanding the foregoing, Sub-Merchant may initiate reversing Entries or Files for erroneous or duplicate transactions. In doing so, Sub-Merchant warrants that: (i) it has initiated the reversing Entries or Files within five (5) Banking Days of the original Entries or Files and within twenty-four (24) hours of discovery of the error or duplication; and (ii) the account holder of a reversing Entry will be notified of the reversal, and the reason for the reversal, no later than upon settlement thereof. In addition, WorkWave will use reasonable efforts to act on a request by Sub-Merchant to cancel an Entry or File before transmitting it to the ACH Network or processing it as an on-us Entry, but WorkWave will have no liability if it fails to effect the requested cancellation.

- B. **Rejection of Entries.** WorkWave may reject any Entry or File, including any on-us Entry, if such Entry or File does not comply with the Operating Rules or Applicable Laws, or if Sub-Merchant is not in compliance with the terms of this Agreement. WorkWave will notify Sub-Merchant of such rejection no later than the Business Day such Entry would otherwise have been transmitted by WorkWave to the ACH Network or, in the case of an on-us Entry, the date set by the Originator of the transaction or the ODFI. Sub-Merchant will be responsible for remaking any Entries or Files rejected by WorkWave or the ACH operator.
- C. **Return Entries.** To the extent WorkWave has allowed Sub-Merchant to withdraw funds related to a Return Entry and sufficient funds are not available in the Operating Account to reimburse WorkWave, Sub-Merchant will provide the immediately available funds to WorkWave in the amount necessary to reimburse WorkWave, or WorkWave will be authorized to take the outstanding funds from any Reserve that has been established.
- D. **Notification of Change.** WorkWave will notify Sub-Merchant of correction Entries, which are commonly referred to as “Notification of Change” Entries (NACHA standard entry code “NOC”), received no later than two (2) Banking Days after the applicable settlement date. (For a description of NACHA standard entry codes (SECs), see www.nacha.org.) Sub-Merchant will make the applicable changes within six (6) days of receipt of the NOC notification or before the next “live” Entry, whichever is later. If the NOC notification is incorrect, Sub-Merchant will notify WorkWave, who will direct Financial Institution to generate a “Refused NOC” and deliver it to Sub-Merchant within fifteen (15) days.

4. PRE-NOTIFICATION ENTRIES

In the event that Sub-Merchant chooses to originate a Pre-notification Entry to verify the accuracy of routing and account numbers, Sub-Merchant agrees not to initiate live dollar Entries until at least six (6) Banking Days after the settlement date of the Pre-notification Entry. If WorkWave provides notice that a Pre-notification Entry was rejected or returned, Sub-Merchant will research the issue and make any necessary corrections before transmitting another Entry. “**Pre-notification Entry**” means a non-dollar Entry entered prior to a dollar Entry to verify the accuracy of the applicable routing and account numbers.

5. ENTRY WARRANTIES

Sub-Merchant certifies to WorkWave that it is in compliance with all warranties that either Sub-Merchant or WorkWave is deemed by the Operating Rules to make with respect to Entries originated by Sub-Merchant. These warranties include, but are not limited to, the following:

- i. each Entry is accurate, is timely, has been authorized by the party whose account will be credited or debited, and otherwise complies with the Operating Rules;
- ii. as of the date on which an Entry will be owing to Sub-Merchant from the party whose account will be debited, the Entry is for a sum specified by such party to be paid to Sub-Merchant, or is a correction of a previously transmitted erroneous Entry;
- iii. Sub-Merchant will comply with the Electronic Funds Transfer Act (also known as Regulation E), if applicable, and UCC4A, if applicable, and all other Applicable Laws; and
- iv. for any Entries having the NACHA standard entry code “RCK” (re-presented check), “ARC” (accounts receivable entry), “BOC” (back office conversion), “WEB” (Internet-initiated entry), or “TEL” (telephone-initiated entry), Sub-Merchant certifies its compliance with all warranties pertaining to such Entries exchanged through the ACH Network. (For a description of NACHA standard entry codes (SECs), see www.nacha.org.)

6. SETTLEMENT

WorkWave will issue to Sub-Merchant a periodic Sub-Merchant Statement that will include Entries credited and debited to the Operating Account during the applicable period. Sub-Merchant agrees to notify WorkWave within a reasonable time not to exceed thirty (30) days (except where Applicable Laws provide a sixty (60) day review period) after Sub-Merchant receives a Sub-Merchant Statement of any discrepancy between Sub-Merchant’s records and the information in the Sub-Merchant Statement, after which time the Sub-Merchant Statement will be considered accurate. Sub-Merchant agrees to cooperate with WorkWave and Financial Institution in performing loss recovery efforts.

7. REPORT OF ENTRIES AND NOTICES

Each calendar month, Sub-Merchant will provide a mutually agreed report (“**Summary Report**”) to WorkWave regarding ACH Entry volumes, identifying Entries by NACHA standard entry codes. (For a description of NACHA standard entry codes (SECs), see www.nacha.org.) The Summary Report for each calendar month must be received by WorkWave no later than the fifth (5th) day of each calendar month for Entries processed in the preceding calendar month. The Summary Report will include a total of unauthorized returns and a summary of all losses suffered or incurred by Sub-Merchant, or reasonably expected by Sub-Merchant to be suffered or incurred, in connection with failed or reversed Entries, and activity or fines assessed against Sub-Merchant relating to Entries, during the applicable calendar month. Sub-Merchant also will provide to WorkWave any notices received by Sub-Merchant relating to its or WorkWave’s compliance or alleged failure to comply with the Operating Rules, other NACHA requirements, Federal Reserve requirements, or Office of Foreign Assets actions, or otherwise relating to misuse or alleged misuse of the ACH Network, no later than two (2) Business Days after Sub-Merchant’s receipt of such notice, and in any event, as soon as possible. At WorkWave’s request, Sub-Merchant will provide information regarding specific Entries to WorkWave as soon as possible, but in no event more than forty-eight (48) hours after WorkWave’s request.

8. AUTHORIZATIONS

- A. Authorizations. Sub-Merchant agrees that it will obtain proper authorization in accordance with the Operating Rules and Applicable Laws for each initiated debit or credit Entry. Each authorization must be readily identifiable as either an ACH credit or ACH debit authorization and must clearly and conspicuously state the terms of the authorization in order that the parties to the transaction understand the authorization.
- B. Retention of Authorizations. Sub-Merchant must retain authorizations for a period of two (2) calendar years following the termination or revocation of the authorization. Sub-Merchant must promptly present any authorization to WorkWave upon WorkWave's request.
- C. Termination of Authorization. Sub-Merchant will not initiate an Entry after termination or revocation of the applicable authorization.

9. PROVISIONAL CREDITS

Sub-Merchant acknowledges that the Operating Rules make provisional any credit given for an Entry until the account specified in the Entry receives final settlement. If WorkWave does not receive final settlement, WorkWave is entitled to a refund from the credited party and the originator of the Entry will not be deemed to have paid such party.

10. EXPOSURE LIMITS

Sub-Merchant will comply with the monetary file limits established by WorkWave based on regulatory file limit guidelines. Sub-Merchant agrees that WorkWave will not be required to process any Entry (an "**Overlimit Entry**") the amount of which would cause the aggregate dollar amount of the In-Process Entries to exceed the amount permitted to be outstanding at any time ("**Entry Settlement Limit**"), which amount will be separately communicated to Sub-Merchant by WorkWave in writing from time to time. WorkWave will suspend any Overlimit Entry submitted by Sub-Merchant and may, following its receipt of an Overlimit Entry, suspend all In-Process Entries. Sub-Merchant acknowledges that any Overlimit Entries or other In-Process Entries suspended by WorkWave will not settle on their scheduled settlement date. If Sub-Merchant wishes to initiate an Entry through WorkWave that would cause the dollar amount of In-Process Entries to exceed the Entry Settlement Limit, Sub-Merchant may submit to WorkWave its request to initiate such Entry nevertheless. Sub-Merchant must submit its request at least two (2) Banking Days prior to the date on which Sub-Merchant wishes to initiate such Entry. WorkWave may require from Sub-Merchant financial or other information in connection with WorkWave's consideration of such request. WorkWave may grant or deny the request in its sole discretion. In addition to the foregoing, WorkWave generally reserves the right to limit the nature and amount of preauthorized debit and credit Entries processed under this Agreement or to refuse to process any Entry if, in WorkWave's sole judgment: (i) there is reasonable cause to believe that the Entry will be returned or will not settle in the ordinary course for any reason, (ii) to do otherwise would violate any limit set by the applicable ACH or any governmental authority or other agency to control payment system risk, or (iii) a preauthorized credit Entry or the return of a preauthorized debit Entry would create an overdraft of the Operating Account. If any of the foregoing actions are taken by WorkWave with respect to a particular preauthorized debit or credit Entry, WorkWave will notify Sub-Merchant as promptly as practicable, but in no event later than two (2) Banking Days after the decision. "**In-Process Entries**" means, in the aggregate: (a) all credit Entries initiated by WorkWave and in process on any date for which settlement has not occurred, and (b) all debit Entries initiated by WorkWave and in process with respect to which the applicable period for the return of items has not expired.

11. TERMINATION

WorkWave may, in addition to its termination rights under the General Terms, terminate this Appendix 2 and the Service provided hereunder immediately in any of the following circumstances:

- i. Sub-Merchant's total of unauthorized returns, or Sub-Merchant's losses suffered or incurred in connection with failed or reversed Entries, are excessive in the opinion of WorkWave;
- ii. Sub-Merchant is in violation of the Operating Rules or Applicable Laws related to eCheck Processing, provided that such violation presents a reputational, financial or regulatory risk in the reasonable judgment of WorkWave; or
- iii. Sub-Merchant submitted one or more eCheck Processing Transactions in violation of Applicable Laws.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

- A. Indemnification. In addition to the indemnification obligations set forth in the General Terms, Sub-Merchant agrees to indemnify, defend, and hold harmless WorkWave, Financial Institution, and its and their respective directors, officers, employees, affiliates and agents from and against all claims, suits, actions, proceedings, demands, losses, damages, liabilities, costs and expenses, including reasonable legal and accounting fees and expenses and reasonable collection costs, resulting from or arising out of any of the following:
 - i. any reversed Entry for erroneous or duplicate transactions where Sub-Merchant has failed to perform its obligations herein;
 - ii. any completed, failed or misdirected Entry;
 - iii. any failure by Sub-Merchant to pay any reversed or failed Entry that is returned to Sub-Merchant or that, pursuant to the Operating Rules or Applicable Laws, should have been returned to Sub-Merchant;
 - iv. any error or mistake by Sub-Merchant or any TPSP of Sub-Merchant in processing Entries;
 - v. any inaccurate, misrepresented or fraudulent information provided by Sub-Merchant on which WorkWave relied in determining to grant, extend or continue eCheck Processing; or
 - vi. any use or alleged misuse of the ACH Network by Sub-Merchant or any TPSP of Sub-Merchant, and/or fines assessed against WorkWave or Financial Institution in connection therewith.

- B. Limitation of Liability. In addition to the limitations of liability set forth in the General Terms, neither WorkWave nor Financial Institution will be liable to Sub-Merchant or Sub-Merchant's customers or any other person or entity for any delay by an ACH operator or bank in processing any Entry, nor will WorkWave or Financial Institution be liable for the failure of any third party to process, credit or debit any such Entry.

13. COMPLIANCE

Sub-Merchant agrees to comply with and be bound by the Operating Rules, as they may be updated from time to time. The duties of Sub-Merchant set forth in this Appendix in no way limit Sub-Merchant's obligations to comply with the Operating Rules. Any fines or liabilities imposed against WorkWave or Financial Institution for a violation of the Operating Rules caused by an action and/or inaction of Sub-Merchant will be assessed against Sub-Merchant. Costs associated with Operating Rules publications and/or Association membership will be the responsibility of Sub-Merchant.