

# Merchant Terms of Service

Effective July 18, 2009



Photo courtesy of Jack Sykes of *Professional Pilot* magazine

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# U.S. Bank Multi Service Aviation Merchant Participation Agreement and Terms

## Merchant Participant Agreement and Terms

Please read this Agreement and Terms carefully and retain for future reference.

This Merchant Participant Agreement (“**Merchant Participant Agreement**”) is made and entered into by “**Merchant**” (identified on the MSA New Merchant Application) and U.S. Bank National Association dba Multi Service Aviation (collectively referred to herein as “**MSA**”). This Merchant Participant Agreement becomes effective when accepted and signed by an authorized agent of MSA.

1. Merchant hereby agrees to accept the Multi Service Aviation Card as payment for products and services provided by Merchant. Merchant agrees to contact MSA to obtain authorization and a corresponding number prior to providing any products or performing any services under this Merchant Participant Agreement. All sales using Multi Service Aviation Cards must be serviced, processed, and handled by MSA and by no other party. Merchant agrees that it will not enter into or attempt to enter into any agreement with any other party to allow such other party to service, process, or handle transactions generated by use of the Multi Service Aviation Card.

Furthermore, Merchant agrees to abide by the following terms and conditions:

Merchant shall accept periodic payments from MSA for products and services performed under this Merchant Participant Agreement. Service fees for processing will be deducted by MSA from the gross amount of the sale due to Merchant and are dependent upon speed of remit chosen by Merchant. Merchants are not authorized to charge the service fee to the Cardholder. These fees also apply to credit transactions. Standard fee structure is as follows:

### Fast Pay – Remit in 10 days

Processing Fees:	
Fuel Purchase < 300 Gal .....	4%
Fuel Purchase >= 300 Gal .....	3%
Non Fuel Purchase <\$1000 .....	4%
Non Fuel Purchase >=\$1000 .....	3%
AIR Card Fees.....	4.25%

### Regular Pay – Remit in 30 days

Processing Fees:	
Fuel Purchase < 300 Gal .....	3%
Fuel Purchase >= 300 Gal .....	2%
Non Fuel Purchase <\$1000 .....	3%
Non Fuel Purchase >=\$1000 .....	2%
AIR Card Fees.....	3.25%

### Bankcard Direct

#### NATA Member Fees

Remit in three (3) days	
Qualified.....	1.89%
Non-qualified*.....	2.71%
P/Business Cards.....	2.71%

#### non-NATA Member Fees\*

Remit in ten (10) days	
Qualified.....	2.10%
Non-qualified*.....	2.75%
P/Business Cards.....	2.75%

\* Non-Qualified transactions are defined as all transactions that are not swiped, all self-service transaction, all transactions that are not settled by 11:59 PM CST, and all P/Business Card transactions.

For National Air Transportation Association (“NATA”) members, monthly NATA fees may be deducted on the first Friday of each month.

NOTE: Settlement on a daily basis is recommended to ensure remittance is sent to Merchant within the above outlined parameters. Based upon the above schedule, with direct deposit remittance, electronic funds transfer will be sent to Merchant’s bank on Fridays, but Merchant’s account credit may take up to three (3) business days to appear. Bankcard payments are generated daily, and payments on Multi Service Aviation Cards and AIR Cards are generated weekly.

2. Merchant shall accept all valid Multi Service Aviation Cards when properly presented as payment from Cardholders for authorized purchases. Merchant is required to obtain an authorization code from Multi Service Aviation Processing to ensure the Multi Service Aviation Card is valid. For handwritten invoices, the authorization code must be written legibly (such legibility shall be determined by MSA in its sole discretion) on the invoice. Every invoice must be completed by Merchant in full following the Merchant Operating Procedures, attached hereto. MSA cannot guarantee payment for invoices that fail to meet the requirements outlined in these procedures. Transactions which are rejected for insufficient or inaccurate data will not be processed. Please see the Merchant Operating Procedures for more details regarding rejections.

3. Merchant shall provide the MSA Cardholder with a copy of the sales draft or receipt and credit vouchers at the time of the sale. Merchant shall retain a copy of any sales draft or receipt and credit voucher for a period of at least twelve (12) months.
4. MSA shall have the right to charge back a sale to Merchant for sales that are disputed and
  - a) required authorization was not obtained,
  - b) were for unauthorized merchandise,
  - c) were fraudulently made by an employee of Merchant,
  - d) the Cardholder is dissatisfied with the product or service provided and has been unable to reach a mutually agreeable solution with Merchant,
  - e) the Cardholder disputes the validity of the sale according to prevailing Card Association regulations,
  - f) Merchant had previously billed the same transaction to the Cardholder, or
  - g) the Cardholder was delinquent in the payment of other transactions involving Merchant.

Any Chargeback may include a fee. MSA will notify Merchant of any Chargebacks by fax within three (3) to ten (10) business days before a Chargeback goes into effect. MSA shall have the right to deduct unpaid Chargeback invoices from Merchant’s future sales. Merchant shall not initiate a sale transaction in an attempt to collect a Chargeback. Notwithstanding termination or expiration of this Merchant Participant Agreement, Merchant shall remain liable for all outstanding Chargebacks.

Merchants may not receive payment from MSA or may have any received payments be subject to Chargebacks for any invoices that do not comply with the regulations and instructions listed in the Merchant Operating Procedures. In the event that MSA receives an invoice that does not comply with the Merchant Operating Procedures, MSA may elect to bill the invoice and attempt to collect from the Cardholder. Any Chargeback will be made by MSA within twelve (12) months from the billing date, except for erroneous or fraudulent charges, for which there is no time limit.

5. AIRCRAFT LIENS. In addition to any lien rights which MSA might possess as a result of services provided to the Cardholder, upon receipt of payment, Merchant shall irrevocably transfer to MSA any lien rights that Merchant might have arising from the transaction(s) for which Merchant has been paid.
6. CASH PAYMENTS. No Merchant shall receive any payments from Cardholders with respect to charges for a transaction involving the use of the Multi Service Aviation Card, and no cash advance shall be paid by Merchant to the Cardholder for any Multi Service Aviation Card transaction.
7. BANKCARDS. Please refer to the “Bank Card Agreement” for rules and regulations pertaining to Visa/MasterCard transactions, if applicable. All Bank Card transactions must be entered electronically.
8. Merchant shall establish a fair policy for the exchange and return of merchandise. Merchant shall promptly submit credits to MSA for any returns that are to be credited to the Cardholder’s account.
9. MSA reserves the right to offset outstanding amounts owed by Merchants on such Merchants’ Multi Service Aviation Card accounts against any sums payable to Merchant by MSA under any contract, agreement, or arrangement.
10. Merchant acknowledges and agrees that it shall indemnify, defend, and hold harmless MSA from and against all losses, costs, damages, liabilities, and expenses, including, without limitation, reasonable attorneys’ fees and costs arising out of, or otherwise related to, any breach of Merchant or Merchant’s affiliates or agents of this Merchant Participant Agreement. Furthermore, Merchant acknowledges and agrees that MSA shall not in any event be liable for any special, indirect, incidental, exemplary, punitive, or consequential damages of any nature arising in connection with MSA’s performance with regard to this Merchant Participant Agreement. In the event of termination of this Merchant Participant Agreement for a reason other than Cause, neither party will have any further obligation or liability hereunder to the other party, except to fulfill its obligations hereunder that became due and owing to the other party prior to termination.

## U.S. Bank Multi Service Aviation Merchant Participation Agreement and Terms

11. Merchant agrees to provide MSA with prompt written notice if Merchant or its parent, or any of its subsidiaries or affiliated entities is the subject of any voluntary or involuntary bankruptcy or insolvency petitions or proceedings. Furthermore, Merchant and Merchant's representatives signing this Merchant Participant Agreement for Merchant hereby authorize MSA to investigate their personal and business history and obtain individual credit bureau reports and information from any other source which may bear upon their financial responsibility or acceptability of the program set forth in this Merchant Participant Agreement. All statements made by Merchant to MSA, including, without limitation, statements contained in any applications are true and correct. Merchants shall immediately notify MSA of any changes to any fact previously stated.
12. MSA and Merchant shall act in an independent capacity and not as officers, agents, or employees of the other. Neither party shall have any authority to represent and bind the other except as expressly provided herein. This Merchant Participant Agreement is not intended to create, nor does it create, and shall not be construed to create a relationship of partner, joint venture, or an association for profit between and among MSA and Merchant. Nothing in this Merchant Participant Agreement shall create or be deemed to create any third-party beneficiary rights in any entity or person not a party to this Merchant Participant Agreement.
13. This Merchant Participant Agreement is effective from the date signed by MSA. Either party may terminate this Merchant Participant Agreement without cause by providing ten (10) days prior written notice of termination. MSA may immediately terminate without prior written notice if Merchant violates any term of this Merchant Participant Agreement or if MSA, at its sole discretion reasonably exercised, determines that Merchant has become inactive or that any fraud or other emergency has occurred or imminently will occur with respect to Merchant's activities hereunder. All obligations, warranties, and liabilities of Merchant, incurred or existing as of the date of any termination of this Merchant Participant Agreement, including, without limitation, Merchant's obligations with respect to subsequent Chargebacks of Sales Drafts tendered to MSA prior to such termination, and the parties' obligations related to transactions processed prior to termination of this Merchant Participant Agreement, shall survive such termination of this Merchant Participant Agreement and shall continue in full force and effect as if such termination had not occurred. Upon termination of this Merchant Participant Agreement, all POS devices or other hardware obtained from MSA shall be returned to MSA once written notice is sent. If devices or other hardware obtained from MSA are not returned to MSA, MSA will charge Merchant for the market value of the item.
14. All required notices to MSA shall be in writing and delivered to the address below and shall be effective on the date stated therein taking into consideration any time periods required herein.

Multi Service Aviation  
Attn: Merchant Services Department  
P.O. Box 13050  
Overland Park, KS 66282-3050

All required notices to Merchant shall be in writing and delivered to the address listed on the Merchant Application and shall be effective on the date stated therein taking into consideration any time periods required herein.

Each party shall notify the other of any change in such names and addresses.
15. This Merchant Participant Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, exclusive of its choice of law rules. No prior waiver, course of dealing, course of performance, or trade usage shall affect the right of a party to require strict performance. Merchant may not assign this Merchant Participant Agreement without the prior written consent of MSA. That assignment shall, in no way, exempt either party from full compliance with the terms and conditions of this Merchant Participant Agreement. No waiver, modification, or amendment of the provisions of this Merchant Participant Agreement shall be binding unless it is written and signed by duly authorized representatives of both parties.

This Merchant Participant Agreement and the exhibits hereto contain the entire agreement between the parties; no prior stipulation, agreement or understanding by the parties or any of their representatives shall be of any effect. No representations by, or oral agreement with, any agent or employee or contractor, either before or after execution of this Merchant Participant Agreement shall affect or modify any of the parties' rights or obligations under this Merchant Participant Agreement. If any term of this Merchant Participant Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of this Merchant Participant Agreement shall remain in full force and effect. Nothing in this Merchant Participant Agreement or otherwise shall prohibit MSA from soliciting other suppliers to participate in the program or Merchant from contracting with other universal credit card issuers for participation in another universal card program. This Merchant Participant Agreement shall be binding upon and inure to the benefit of the parties, their permitted successors, and assigns.

### 16. USE OF TRADEMARKS, CONFIDENTIALITY AND PASSWORDS.

- a) Use of Trademarks.

Merchant will prominently display the promotional materials provided by MSA in Merchant's place of business. Use of the MSA card image, logo, or other marks owned or licensed by U.S. Bank National Association or any of its affiliates does not indicate, directly or indirectly, that MSA or its affiliates endorse any goods or services other than its own. Merchant's right to use all such marks will terminate upon termination of this Merchant Participant Agreement. Merchant has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, copyright, service mark, or trademark owned or licensed by U.S. Bank National Association.
- b) Confidentiality.
  - i) Cardholder and Transaction Information. Merchant shall, at all times, protect the confidentiality of Cardholder and Transaction information in accordance with all applicable laws and regulations. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as required by laws or regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must maintain Cardholder and Transaction information for such time periods as may be required by laws and regulations and thereafter destroy in a manner that will render the data unreadable all such media that Merchant no longer deems necessary or appropriate to maintain. Further, Merchant must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or other data after authorization for record keeping or additional authorization processing. After authorization, Merchant may only retain the Cardholder account number, name, and Multi Service Aviation Card expiration date (if applicable). Merchant shall immediately notify MSA of any Cardholder or Transaction information compromised of which it becomes aware, whether such compromise occurred at: (i) Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) Servicer or Member; or (iv) elsewhere.
  - ii) Bankruptcy. In the event of any failure or other suspension of Merchant's business operations, including bankruptcy or insolvency, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. Merchant must:
    - (1) return this information to MSA, or
    - (2) provide acceptable proof of destruction of this information to MSA.
  - iii) MSA Confidential Information. Merchant shall at all times protect MSA's confidential information. Merchant will not disclose any of MSA's confidential information to any third party except as required by laws and regulations.

c) Passwords.

If Merchant receives a password from MSA to access any of MSA's website, databases, or services, Merchant shall:

- i) keep the password confidential;
- ii) not allow any other entity or person to use the password or gain access to MSA's website, databases, or services;
- iii) be liable for all action taken by any user of the password; and
- iv) promptly notify MSA if Merchant believes MSA's website, databases, or services or Merchant's information has been compromised by use of the password. Merchant must protect passwords in the manner required by MSA and indemnify, defend, and hold MSA harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such passwords.

d) Proprietary Interest.

Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by MSA. Nothing in this Merchant Participant Agreement or Terms and Conditions shall be construed as granting Merchant any patent rights or patent license in any patent which MSA may obtain in respect to MSA's services, software, or equipment. Merchant shall make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of MSA's services, equipment, or software. The MSA program is a unique service involving proprietary information of U.S. Bank National Association. Merchant agrees that MSA program reports, manuals, documentation, systems, processes, and related materials (whether or not in writing) are confidential and will be circulated only to employees and agents of Merchant, and only to the extent necessary for Merchant to participate in the MSA program.

17. CHANGE IN TERMS OF THE MERCHANT PARTICIPANT AGREEMENT. U.S. Bank may change the terms of this Merchant Participant Agreement at any time by giving Merchant notice. If permitted by applicable law, such changes will apply to existing transactions as well as future transactions. If Merchant does not accept the changes, Merchant must notify MSA in writing within twenty-five (25) days after the effective date of the changes. By not accepting the changes, and informing MSA thereof, Merchant is hereby giving notice of termination to MSA. All terms of termination from Section 13 herein apply.

## Merchant Operating Procedures

As a Multi Service Aviation Merchant, your services will be promoted in our Multi Service Aviation Merchant Directory available online at [www.multiserviceaviation.com](http://www.multiserviceaviation.com). To identify yourself as a member of the Multi Service Aviation merchant network, please display the Multi Service Aviation decals and counter signs sent with your welcome packet in your location.

The following are some general procedures and guidelines that will help ensure your transactions are processed correctly. References to "Cards" includes Multi Service Aviation Cards as well as Bankcards.

**MULTI SERVICE AVIATION CANNOT GUARANTY PAYMENT FOR INVOICES THAT FAIL TO MEET THE REQUIREMENTS SET FORTH BELOW.**

- 1. REJECTED TRANSACTIONS.** If a transaction has insufficient or inaccurate information, it may be rejected by the system. If this does occur, Merchant will be contacted by Multi Service Aviation ("MSA") for clarification. The most common reasons for rejected transactions are incorrect tail number, miscellaneous charges over \$25.00, invalid approval codes and incorrect entry of product codes. For a list of product codes, refer to the menu of codes that was sent with the Point Of Sale ("POS") machine. Approval codes are valid for a period of 14 days. Any transaction submitted with an invalid or expired authorization code may be rejected.
- 2. CHECK THE TAIL NUMBER.** If a tail number is embossed on the Multi Service Aviation Card, verify that it coincides with the number on the aircraft for which the purchase is being made. If a suspicious situation arises, please contact MSA immediately before any further action is taken.
- 3. CARDS WITHOUT A TAIL NUMBER.** Upon request, MSA will issue Multi Service Aviation Cards without a tail number. If there isn't a tail number on the Multi Service Aviation Card, positively identify the Cardholder as being an employee of the company shown on the face of the Multi Service Aviation Card. Please enter the aircraft registration number on the invoice in the area provided.
- 4. INVOICES.** Invoice tickets for MSA transactions are provided in the new merchant set-up packet. Each invoice is individually numbered. Please monitor your supply of invoices. To order additional invoices, contact the merchant supply department at 877-MSA-CARD (877-672-2273), by e-mail at [aviationmerchantsupport@usbank.com](mailto:aviationmerchantsupport@usbank.com), or through your online account at [www.multiserviceaviation.com](http://www.multiserviceaviation.com). Please allow two (2) to three (3) weeks for order processing.

For electronic merchants, paper for the POS machine is provided free throughout the term of the lease.

- 5. COMPLETION OF INVOICES.** Every invoice must be completed by Merchant in full. For all merchants, the invoice shall be signed by the Cardholder in the space provided, except when the Card is swiped at a self-service pump. The Cardholder's copy of each invoice shall be delivered to the Cardholder after the invoice is completed. Merchant is required to obtain an authorization code from Multi Service Aviation Processing to ensure the Card is valid. For handwritten invoices, the authorization code must be written legibly on the invoice.

In the event that MSA receives an invoice that does not comply with procedures, MSA may elect to bill the invoice and attempt to collect from the Cardholder. Any chargeback will be made by MSA within two hundred ten (210) days from the billing date, except for erroneous or fraudulent charges, for which there is no time limit.

## Manual Merchants

MSA invoices should be mailed at least weekly, and must be postmarked within seven (7) days of purchase, or MSA cannot guaranty payment. Each transaction must be completed on a separate invoice by following these steps:

1. Imprint the invoice with the Multi Service Aviation Card by using any standard imprinter or write the Multi Service Aviation Card number and Cardholder name in the spaces provided.
2. Fill in the description of the item(s) purchased – non-fuel items may be entered on the same invoice with fuel, but only one (1) fuel type is allowed per invoice.
3. Fill in the merchant number and authorization code on each invoice. Call MSA at 800-423-3687 to obtain an authorization code (rotary phones dial 800-843-9373) **AUTHORIZATION MUST BE OBTAINED TO VALIDATE THE INVOICE. VALIDATION MUST BE OBTAINED PRIOR TO PILOT DEPARTURE.** The process for obtaining an authorization code is as follows:
  - a. Enter your merchant number provided by MSA, then press #.
  - b. Enter the Cardholder Multi Service Aviation Card number, then press #.
  - c. Enter the sale amount in whole dollars (do not enter cents or 00), then press #.
  - d. The computer will give you an authorization code.

**Note:** MSA has certain business rules in effect with a number of companies, and because of these rules, Merchant may be contacted for additional information regarding the following charges:

- "Miscellaneous" charges greater than \$25.00,
- Aircraft tail number does not match to card presented,
- Invalid Aircraft Tail number, and/or
- Catering, maintenance, or aircraft cleaning charges greater than \$100.00.

Merchant shall provide an explanation of these charges, along with detailed copies of the invoice as requested.

4. Write the authorization code in the upper right-hand corner of the invoice
5. Copies are distributed as follows:
  - a. top copy to Cardholder,
  - b. dealer copy stays with Merchant, and
  - c. last hard copy is sent to Multi Service Aviation Processing.

### Electronic Merchants

Each transaction must be entered into the POS machine. Please refer to your "Multi Service Aviation POS Machine Operations and Procedures Guide" for more detailed instructions.

1. **TRANSACTIONS.** Transactions can be submitted by using the following overall procedure:
  1. Swipe the card through the magnetic card reader on the POS machine and enter each transaction. Non-fuel items may be entered on the same transaction with fuel, but only one (1) fuel type is allowed per invoice.
  2. If the transaction is for a large dollar amount or if there is an issue with the card, the POS machine may instruct you to "Call Center". If so, call MSA at 877-672-2273 and give the details of the purchase as requested. The operator will give you an authorization code.
  3. Enter the authorization code into the POS machine.
  4. Electronic merchants must perform the Batch Settlement Operation on the POS machine to electronically transmit Card transactions to MSA for processing. (NOTE: A "batch" is one or a series of transactions entered into the terminal that is/are stored until the information is electronically transferred to the processing center.) Batches should be sent to the Multi Service Aviation Processing Center by 11:59 p.m. Central Standard Time (CST) on the day the transaction took place.
2. **REVISIONS.** Multi Service Aviation may revise these Operating Procedures, and any revisions shall become effective seven (7) days after receipt of the revisions by Merchant. Merchant shall be deemed to have agreed to this and any future revisions by continued participation in the Multi Service Aviation program after the effective date of the revisions.
3. **MERCHANT SUPPORT.** If you need assistance, you can reach Multi Service Aviation Merchant Support toll-free at 877-MSA-CARD (877-672-2273). We are open 24 hrs a day, 7 days a week for your convenience. You can also email [aviationmerchantsupport@usbank.com](mailto:aviationmerchantsupport@usbank.com).
4. **MISCELLANEOUS INFORMATION.** If a customer would like to become a Multi Service Aviation Cardholder, give them an application, or have them call us at 877-MSA-CARD. They can also apply online at [www.multiserviceaviation.com](http://www.multiserviceaviation.com).

## Equipment Lease Agreement

This agreement ("Agreement") is by and between U.S. Bank National Association dba Multi Service Aviation (hereinafter referred to as "MSA"), with offices located at 8600 West 110th Street, Overland Park, Kansas 66210 and merchant as stated on submitted application (hereinafter referred to as "Merchant").

1. **LEASE OF EQUIPMENT.** MSA agrees to lease to Merchant, and Merchant agrees to lease POS software and device ("Equipment") from MSA, at the lease rate set forth in Section 3 below.
2. **TERM OF LEASE.** The term of this Agreement shall commence on the installation date of the Equipment and shall continue on a month-to-month basis. This agreement may be terminated by either party by giving the other party thirty (30) days written notice, except in the event of a default by Merchant, whereupon MSA may terminate this Agreement by written notice to Merchant.
3. **RENTAL AND PAYMENT.** The monthly payment due from Merchant to MSA for Equipment will be \$20.00 USD. The monthly rental payment will be deducted by MSA from Merchant's payment every month during the term of the lease, provided there is a positive balance in Merchant's account. If Merchant prefers to pay by wire or ACH, Merchant shall contact MSA by calling 877-MSA-CARD or e-mail to aviationmerchant-support@usbank.com. In the event Merchant's account has an insufficient balance to cover the lease payment, Merchant shall send the payment via U.S. Mail to MSA so that MSA receives the payment not later than the 10th of the month for which payment is due. If payment is sent via mail, payment should be sent to:

Multi Service Aviation Merchant Processing  
P.O. Box 13050  
Overland Park, KS 66282-3050

In the event upgrades to Equipment become necessary to integrate new software developments, Merchant agrees that MSA may revise the lease rates at MSA's sole discretion.

4. **DELIVERY AND INSTALLATION.** MSA shall arrange for delivery of Equipment to the installation site designated by Merchant upon receipt and acceptance by MSA of application containing Merchant's signature in the Processing Devices section. MSA shall not be responsible for delays in delivery which are beyond MSA's reasonable control. After delivery, MSA personnel will be available by phone to assist with installation of Equipment and set-up of software. The location of Equipment may not be changed without the express written consent of MSA.
5. **TITLE AND OWNERSHIP.** All Equipment leased hereunder is and shall remain the property of MSA or its assigns, and Merchant's interest therein is only that of lessee. Merchant agrees that it will not pledge, loan, mortgage, or attempt in any other manner to dispose of the equipment or to suffer any liens, encumbrances, or legal process to be incurred or levied upon Equipment. MSA may affix tags, decals, or plates to the equipment indicating MSA's ownership, and Merchant shall not permit their removal or concealment. Merchant shall allow MSA or its agents access to the equipment during all business hours for the purpose of inspection and for any other purpose contemplated in this agreement.
6. **LICENSE FOR SOFTWARE.** MSA hereby grants to Merchant a non-exclusive and non-transferable license to use the software together with Equipment leased hereunder. The software products licensed hereunder are proprietary to MSA and title thereto remains exclusively with MSA. All applicable rights to patents, copyrights, trademarks, and trade secrets in the software or any modifications or updates are the property of MSA. Merchant shall not sell, transfer, publish, disclose, display, or otherwise make available the software or copies thereof to others.

7. **MAINTENANCE AND REPAIRS.** Merchant shall promptly notify MSA of any malfunctions in Equipment or software supplied hereunder. MSA shall, within a reasonable period, investigate such condition and, if necessary, make the necessary corrections, adjustments, or repairs. Merchant agrees to permit access during business hours for MSA to service the software.
8. **RISK OF LOSS.** Merchant shall take good care of Equipment and shall be solely responsible for any loss or damage to Equipment. In the event Equipment is lost or stolen, or damaged as a result of Merchant's act or omission, Merchant shall pay MSA the current market value for replacement thereof.
9. **DISCLAIMER OF WARRANTIES.** MSA, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT.
10. **EXCLUSIVE AGREEMENT, MODIFICATION.** This Agreement is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, whether oral or written, and can be modified or rescinded only in writing signed by either parties or their duly authorized agents.

## Bank Card Agreement

In consideration of the mutual covenants herein, U.S. Bank National Association, doing business as Multi Service Aviation (“**MSA**”) and the undersigned merchant (“**Merchant**”) have agreed as follows:

The TOS and the other portions of this Bank Card Agreement (“**Bank Card Agreement**”) govern the Merchant’s participation in the Program.

### Section A — Definitions

#### 1. DEFINITIONS.

- a) **Account:** The commercial checking account at a financial institution acceptable to MSA and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Bank Card Agreement.
- b) **Authorization:** Merchant’s request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.
- c) **Authorization Code:** The code sent by an Issuer in response to an Authorization request.
- d) **Automated Clearing House (ACH):** The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.
- e) **Bank Card Agreement:** The Merchant Application, the Bank Card Agreement and any addenda, amendment, exhibit, schedule and/or attachment hereto.
- f) **Bankruptcy Proceeding:** With respect to a Person means that the Person or any subsidiary of such Person shall: (a) commence a voluntary bankruptcy case under United States bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any applicable law; (g) take any action for the purpose of effecting any of the foregoing; or (h) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (i) relief under United States bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
- g) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- h) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of sale.
- i) **Cardholder:** (i) The individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.
- j) **Chargeback:** A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- k) **Confidential Information:** All information or items proprietary to MSA or Member, of which the Merchant obtains knowledge or access as a result of the Merchant’s relationship with MSA and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, “know-how,” marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- l) **Convenience Fee:** Any fee or charge for the use of a Payment Device in a Transaction.
- m) **Charge Card or Card:** a (i) Visa card or other card bearing the Symbol(s) of Visa Inc.; (ii) MasterCard card or other card bearing the Symbol(s) of MasterCard Inc.; or (iii) any card bearing the symbol of any other Card Association.
- n) **Card Associations:** (i) Visa Inc.; (ii) MasterCard Inc.; (iii) and any other organization that provides Cards that are accepted by Merchant by agreement with MSA.
- o) **Card Rules:** All applicable rules and operating regulations of the Card Associations, and all rules, operating regulations, and guidelines for Card Transactions issued by MSA from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.
- p) **Credit Transaction Receipt:** A document, in paper or electronic form, evidencing a Merchant’s refund or price adjustment to be credited to a Cardholder Account.
- q) **EBT Card:** A card utilized for electronic benefits transfers.
- r) **Effective Date:** The date Merchant signs and dates the “Mastercard and Visa” section of the Merchant Application.
- s) **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., Visa, and MasterCard; and (ii) any other organization or association that hereafter authorizes MSA and/or Member to authorize, capture, and/or settle Transactions effected with debit cards, and any successor organization or association to any of the foregoing.
- t) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a purchase from a Merchant or a Merchant uses the Internet to submit the Transaction for processing to MSA.
- u) **Interchange:** The clearing and settlement system for Visa and MasterCard Cards where data is exchanged between MSA and the Issuer.
- v) **Issuer:** The financial institution or other entity that issued the Card to the Cardholder.

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- w) Laws: All applicable state, federal and local laws, rules, and regulations, orders and decrees, as amended from time to time.
- x) Mail Order/Telephone Order (MO/TO) Transaction: For MO, a Transaction that occurs when the Cardholder uses the mail to make a purchase from a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a purchase from a Merchant.
- y) MasterCard: MasterCard Inc.
- z) Member: U.S. Bank National Association. The Member may be changed by MSA at any time.
- aa) Merchant Application: Any document containing information regarding Merchants business that is submitted to MSA and Member in connection with Merchant's application for processing services.
- bb) Merchant Operating Guide: The operating manual provided by MSA to Merchants. The Merchant Operating Guide may be amended from time to time by MSA in its sole discretion.
- cc) National Automated Clearing House Association (NACHA): The national association that establishes standards, rules, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.
- dd) Payment Device: Any device used for the purpose of obtaining credit or debiting a designated Account including a Card or other device created to be used for the purpose of obtaining credit or debiting a designated Account, that is now or hereafter effected through Transactions with Merchants.
- ee) Payment Network: Any Card Association, EFT Network, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.
- ff) Payment Network Regulations: Individually and collectively, as the context may dictate, the Card Rules.
- gg) Person: Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- hh) POS Device: A terminal, software or other point-of-sale device at a Merchant location that conforms to the requirements established from time to time by MSA and the applicable Payment Network.
- ii) Prepaid Cards: A reloadable card having available funds to the Cardholder paid for in advance.
- jj) Program: The Payment Device processing services and other related products and services received by Merchant pursuant to this Bank Card Agreement.
- kk) Reserve Account: The Account established pursuant to Section (B) (6).
- ll) Reserve Amount: The amount established pursuant to the calculation set forth in Section (B) (6).
- mm) Reserve Event: The events designated in Section B (6) (B).
- nn) Retrieval Request: A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

- oo) Transaction Receipt: The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- pp) Value Added Services: Any product or service provided by a third party unaffiliated with MSA or Member to assist Merchant in processing Transactions, including without limitation, Internet payment gateways, integrated P05 Devices, inventory management and Accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.
- qq) Visa: Visa Inc.

### 2. RULES OF CONSTRUCTION. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Bank Card Agreement.

Singular terms shall include the plural, and vice versa, unless the context otherwise requires.

The words "hereof," "herein," and "hereunder," and words of similar import when used in this Bank Card Agreement shall refer to this Bank Card Agreement and not to any particular provision of this Bank Card Agreement. The word "day" shall mean "calendar day", unless specifically stated otherwise.

In the event of a conflict between the terms of Section B - General Provisions, and any subsequent section of the Merchant Participant Agreement, the terms of the Merchant Agreement shall prevail.

### Section B - General Provisions

#### 3. ACCEPTANCE OF PAYMENT DEVICES. Merchant shall determine in accordance with the Payment Network Regulations and this Bank Card Agreement which types of Payment Devices it will agree to accept as payment for goods and services. The terms and conditions for the acceptance of Cards are set forth in the Merchant Participant Agreement.

The terms and conditions for the acceptance of any Payment Devices other than Cards shall be set forth in one (1) or more addenda (each an "Addendum") to the appropriate agreement and each Addendum shall be signed by both parties.

#### 4. DEPOSIT OF TRANSACTION RECEIPTS.

##### a) Funds.

- i) Deposits. Merchant agrees that the Bank Card Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, MSA will deposit to the Account all funds evidenced by Transaction Receipts complying with the terms of this Bank Card Agreement and the Payment Network Regulations and will provide Merchant provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). Merchant acknowledges that Merchant's obligation to MSA for all amounts owed under this Bank Card Agreement arises out of the same Transaction as MSA's obligation to deposit funds to the Account.
- ii) Provisional Credit. All Transaction Receipts and deposits are subject to audit and final checking by Member and MSA, and may be adjusted for inaccuracies or errors. Merchant acknowledges that all credits for funds provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or MSA may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and MSA's sole discretion.
- iii) Original Transaction Receipts. Under no circumstances will Member or MSA be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed

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- b) Processing Limits. MSA may impose a cap on the dollar amount of Transaction Receipts that it will process for Merchant. This limit may be changed from time to time, without prior notice to Merchant. If Merchant exceeds the established limit, MSA may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to Merchant or hold those deposits in a separate Account or Reserve Account.
- c) Chargebacks. Merchant is fully liable to MSA and Member for all Transactions returned to MSA or Member for whatever reason including all Chargebacks. Merchant will pay MSA and Member for all Chargebacks. Merchant agrees to accept for Chargeback, and will be liable to Member and MSA in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. Merchant authorizes MSA and Member to offset from funds due the Merchant for Transaction activity and to debit the Account, the Reserve Account, or any other Account held at Member or at another financial institution for the amount of all Chargebacks. Merchant will fully cooperate with MSA and Member in complying with the Payment Network Regulations regarding Chargebacks. If applicable, guarantors are personally liable to MSA for all Chargebacks.

### 5. ACCOUNT.

- a) Establishment and Authority. Merchant will establish and maintain with Member (or with another depository institution acceptable to MSA) one (1) or more Accounts to facilitate payment for Transactions. Merchant will maintain sufficient funds in the Account to accommodate all Transactions contemplated by this Bank Card Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties.
- b) ACH Authorization. Merchant authorizes Member, MSA, and their respective vendors and agents to initiate debit/credit entries to the Account, the Reserve Account, or any other Account maintained by Merchant at any institution that is a receiving member of ACH, all in accordance with this Bank Card Agreement. This authorization will remain in effect after termination of this Bank Card Agreement and until all of Merchant's obligations to MSA and Member have been paid in full. In the event Merchant changes the Account, this authorization will apply to the new Account and Merchant shall provide MSA and Member such information regarding the new Account as they deem necessary. It may take MSA up to ten (10) business days after MSA's receipt of a written notice from Merchant to reflect in its system any change to Merchant's Account.

### 6. SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.

- a) Security Interests.
  - i) Security Agreement. This Bank Card Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to Member and MSA a security interest in and lien upon: (A) all funds at any time in the Account, regardless of the source of such funds; (B) all funds at any time in the Reserve Account, regardless of the source of such funds; (C) present and future Transaction Receipts; and (D) any amount which may be due to Merchant under this Bank Card Agreement, including, without limitation, all rights to receive any payments or credits under this Bank Card Agreement (collectively, the "**Secured Assets**"). Merchant agrees to provide other security to MSA and Member, upon request, to secure Merchant's obligations under this Bank Card Agreement. These security interests and liens will secure all of Merchant's obligations under this Bank Card Agreement and any other agreements now existing or later entered into between Merchant and MSA and/or Member including Merchant's obligation to pay any amounts due and owing to Member or MSA. MSA and Member may execute this security interest, without notice or demand of any kind, by making an immediate withdrawal or by restricting Merchant's access to the Secured Assets.

- ii) Perfection. Upon request of Member or MSA, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Member and MSA will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Member and MSA written consent prior to granting a security interest of any kind in the Secured Assets to a third party.

### b) Reserve Account

- i) Establishment. MSA may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and MSA for any and all amounts owed by Merchant. Member and MSA shall have sole control of the Reserve Account.
- ii) Reserve Amount. The Reserve Amount is equal to the aggregate dollar value of: Average percent credits to processing volume during the same period plus average percent Chargebacks to processing volume during the same period multiplied by four multiplied by average monthly processing volume plus one month's average fees plus number of days delayed delivery multiplied by the average day's processing volume.

For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, MSA will determine, in its sole discretion, the applicable period considering factors such as Merchant's sales growth and seasonality and other payments due under this Bank Card Agreement.

Merchant irrevocably authorizes MSA and Member to debit the Account for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under this Bank Card Agreement. Merchant also authorizes MSA's or Member's vendors or agents to debit the Account for any fees due to such vendors or agents under Bank Card Agreement.

Merchant must obtain prior consent from Member and MSA to change the Account. If Merchant does not get such consent, MSA or Member may immediately and without notice terminate Bank Card Agreement and may take any other action either of them deems necessary in their discretion. MSA and Member have the right to rely upon written instructions submitted by Merchant to request changes to the Account. Merchant may request from MSA written confirmation of MSA's and Member's consent to change the Account.

- c) Account. If the Account is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the Account, subject to Section B, General Provisions, Subsection 4), Deposit of Transaction Receipts, of this Bank Card Agreement. MSA and Member have the right to delay, within their discretion, crediting the Account with funds evidenced by submitted Transaction Receipts. Merchant authorizes Member or MSA to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant provisional credit for any entry. Member will make deposits to the Account pursuant to this Bank Card Agreement and the ACH Authorization (defined below).

To the extent required, Merchant authorizes and appoints Member to act as Merchant's agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at MSA's direction, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and MSA and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. Merchant shall maintain sufficient funds on deposit in Merchant's Account to pay all items as they come due in the ordinary course of business.

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- d) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from MSA, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's Account. Merchant must promptly examine all statements relating to the Account and immediately notify MSA and Member in writing of any errors in the statement Merchant received from MSA. Merchant's written notice must include: (i) Merchant name and Account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by MSA within fifteen (15) days after Merchant receives the statement containing the asserted error. If Merchant fails to provide such notice to MSA within said fifteen (15) days, MSA and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Member or MSA for any loss or expense relating to any asserted error for forty-five (45) days immediately following MSA's receipt of Merchant's written notice. During that forty-five (45) day period, MSA will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying MSA.
- e) **Depository Institution.** Merchant authorizes its depository institution to grant MSA and/or Member access to any and all information or records regarding the Account. Merchant authorizes MSA and/or Member to direct the depository institution to hold funds in the Account in an amount which MSA and/or Member, in their respective discretion, either individually or collectively, deem sufficient to fully protect MSA's and Member's rights under this Bank Card Agreement or to block or restrict Merchant's or others' access to funds in the Account (whether or not such funds are specifically related to any previous deposit for any Transaction Receipt). Merchant directs the depository institution to immediately comply with any such direction from MSA or Member.
- f) **Indemnity.** Merchant will indemnify and hold harmless MSA and Member for any action they take against the Account or Reserve Account pursuant to this Bank Card Agreement. Merchant will also identify and hold harmless the depository institution at which Merchant maintains Merchant's Account for acting in accordance with any instruction from MSA and/or Member regarding the Account.
- g) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the total dollar value of incoming items to MSA, (c) MSA's reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, (e) termination of this Bank Card Agreement for any reason, (f) nonpayment of amounts owed to MSA or Member, and (g) the occurrence of an adverse change in Merchant's financial condition.
- h) **Funding.** Member and MSA may fund the Reserve Account up to the Reserve Amount by any one (1) or more of the following means: (1) MSA may require Merchant to deposit into the Reserve Account in an amount determined by MSA; (2) Member and MSA may debit the Account in any amount; (3) Member and MSA may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.
- i) **Use of Funds in Reserve Account.** Member or MSA may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes or future amounts Merchant will owe under this Bank Card Agreement or any other agreement between Merchant and Member or MSA. Also, Member or MSA may debit the Reserve Account to exercise their rights under this Bank Card Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or MSA. Further, Merchant agrees that MSA or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- j) **Recoupment and Set-off.** MSA retains the right of recoupment and set-off. This means that MSA may off-set any outstanding or uncollected amounts owed to MSA from: (i) any amounts MSA would otherwise be obligated to deposit into the Account; and (ii) any other amounts MSA may owe Merchant under this Bank Card Agreement or any other agreement.
- k) **Merchant acknowledges that in the event of a Bankruptcy Proceeding,** in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to MSA, Merchant must create or maintain the Reserve Account as required by MSA and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to MSA, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.
- l) **Remedies Cumulative.** The rights conferred MSA in this section are not intended to be exclusive of each other or of any other rights and remedies MSA has under this Bank Card Agreement, at law or in equity. Rather, each and every right of Member and MSA under this Bank Card Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.
7. **FEES; OTHER AMOUNTS OWED; TAXES.**
- a) **Fees.** Merchant will pay Member and MSA fees for services, supplies, and equipment in accordance with this Bank Card Agreement, and any additional application or setup form. Such fees will be calculated and debited from each Transaction processed on a Credit Card. In addition, MSA may charge for research including, but not limited to research required to respond to any third party or government subpoena, levy, or garnishment on Merchant's Account. MSA shall have the right to change fees, including adding fees for additional services utilized by Merchant, pass through to Merchant increases in interchange, assessments, or fees imposed by a third party upon thirty (30) days written notice.
- b) **Merchant will immediately pay MSA or Member any amount incurred by MSA or Member attributable to this Bank Card Agreement,** including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of Merchant's Transaction processing), and any other payments due under this Bank Card Agreement. MSA or Member may debit these amounts from Merchant's Account by ACH or withhold from Merchant's next payment. In the event such ACH does not fully reimburse MSA or Member for the amount owed, Merchant will immediately pay or be obligated to pay MSA or Member such amount. MSA may charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.
- c) **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under this Bank Card Agreement. If Merchant is a tax-exempt entity, Merchant will provide MSA and Member with an appropriate certificate of tax exemption.
8. **ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.**
- a) **Accuracy of Information.** Merchant represents and warrants to Member and MSA that all information provided to MSA in the Merchant Application, in the bid process if applicable, or otherwise in this Bank Card Agreement is correct and complete. Merchant must notify MSA in writing of any changes to such information, including, without limitation, any additional location or new business at which Merchant desires to accept payment services, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at Merchant's place of business).

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The notice must be received by MSA at least ten (10) business days prior to the change. Merchant will provide any additional information requested by MSA within a reasonable time.

Merchant will defend, indemnify, and hold harmless Member and MSA for all losses and expenses incurred by Member or MSA arising out of any such change, whether or not reported to MSA, or Merchant's failure to provide requested information.

MSA may immediately terminate this Bank Card Agreement upon notification by Merchant of a change to the information in the Merchant Application.

Merchant authorizes MSA and Member to contact credit reporting agencies and Merchant's creditors to make inquiries and obtain reports regarding Merchant's credit standing upon MSA's or Member's receipt of the Merchant Application.

- b) **Indemnification.** Merchant will be liable for and identify, defend, and hold harmless MSA, Member and their respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of this Bank Card Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or MSA in the enforcement of this Bank Card Agreement, including those resulting from any Transaction processed under this Bank Card Agreement or any breach by Merchant of this Bank Card Agreement and those related to any Bankruptcy Proceeding.
- c) **Limitation of Liability.** Merchant acknowledges that MSA and Member's fees for the services provided to Merchant are very small in relation to the funds advanced to Merchant for Transactions and consequently MSA's and Member's willingness to provide these services is based on the liability limitations contained in this Bank Card Agreement. Therefore, in addition to greater limitations on MSA's or Member's liability that may be provided elsewhere, any liability of MSA and Member under this Bank Card Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed; in the aggregate, an amount equal to the fees paid by Merchant during the last three (3) months. In no event will MSA, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.
- d) **Performance.** MSA and Member will perform all services in accordance with this Bank Card Agreement. MSA makes no other warranty, express or implied, regarding the services, and nothing contained in this Bank Card Agreement will constitute such a warranty. MSA and Member disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. Neither MSA nor Member shall be liable for any failure or delay in its performance of this Bank Card Agreement if such failure or delay arises for reasons beyond the control of MSA or Member and without the fault or negligence of MSA or Member.

9. **REPRESENTATIONS AND WARRANTIES.** Merchant represents and warrants to MSA and Member as of the time this Bank Card Agreement is effective, and reaffirm to MSA and Member each time a Transaction is effected during the initial term or any renewal term of this Bank Card Agreement, the following:

- a) **Information.** Merchant is a corporation, limited liability company, partnership, or sole proprietorship validly existing and organized in the United States. All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to MSA is true and complete and properly reflects the business, financial condition and principal partners, owners, or officers of Merchant. MSA has the right to rely upon written instructions submitted by Merchant to request changes to the Merchant's business information. Merchant may request written confirmation of MSA's consent to the changes to the Merchant's business information.

Merchant will not submit Transactions for processing to MSA or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of MSA.

- b) **Corporate Power.** Merchant and the persons signing the Merchant Application have the power to execute and perform this Bank Card Agreement. Merchant represents and warrants that the person executing the Merchant Application is authorized to bind Merchant and each affiliated entity identified in Merchant Application to all provisions of this Bank Card Agreement as if each affiliated entity had executed this Bank Card Agreement, and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by MSA, now or in the future. Further, Merchant represents and warrants that signing and/or performing in accordance with this Bank Card Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
- c) **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened which if decided adversely would impair Merchant's ability to carry on its business substantially as now conducted or which would adversely affect Merchant's financial condition or operations.

Merchant has never been placed on the MasterCard MATCH system (formerly known as the Combined Tenanted Merchant File), or, if Merchant has, Merchant has disclosed that fact to MSA in writing.

- d) **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from Merchant or a return or adjustment related to such purchase. No Transaction involves Cardholder obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing with MSA.
- e) **Compliance with Laws and Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
- f) **Business Use.** Merchant is obtaining and using the processing services from MSA for business purposes only and to facilitate lawful business Transactions between Merchant and Merchant's customers. Merchant also acknowledges that the Account into which debits and credits are made is being used for lawful business purposes only.

### 10. AUDIT AND INFORMATION.

- a) **Audit.** Merchant authorizes MSA and Member to perform an audit of Merchant's business to confirm compliance with this Bank Card Agreement. Merchant will obtain and submit a copy of an audit from a third party acceptable to MSA of the financial, physical security, information security, and operational facets of Merchant's business at its expense when requested by MSA or Member. Further, Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's business to confirm compliance with the Payment Network Regulations.
- b) **Information.**
  - i) **Authority.** Merchant authorizes MSA and Member to make, from time to time, any business and personal credit or other inquiries they consider necessary to review the Merchant Application or continue to provide services under this Bank Card Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to MSA.
  - ii) **Financial Information.** Upon the request of either MSA or Member, Merchant will provide MSA and Member audited financial statements prepared by an independent certified public accountant selected by Merchant. Merchant further agrees to provide to MSA and Member such other information regarding Merchant's financial condition as MSA and/or Member may request from time to time. Within one hundred twenty (120) days after the end of each fiscal year, Merchant will furnish MSA, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

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- c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an Account. Accordingly, Merchant must provide certain information and identifying documents to allow MSA and Member to identify Merchant.
11. **RESPONSIBILITY FOR ACTIONS.** Merchant is responsible for the actions of or failure to act by Merchant's officers, directors, employees, agents, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions.
12. **FRAUD MONITORING.** Merchant is solely responsible for monitoring Merchant's Transactions and the actions of Merchant's officers, directors, employees, agents, business invitees, third party vendors, including Value Added Services, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to Merchant's Transactions, for fraudulent or other suspicious activity. MSA and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.
13. **BUSINESS CONTINUITY.** Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. MSA is under no duty to recreate lost Transactions.
14. **THIRD PARTIES.**

- a) **Products or Services.** Merchant may desire to employ Value Added Services to assist Merchant. Merchant shall not utilize any Value Added Services, unless Merchant has disclosed such use to MSA previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. Merchant must ensure that any Value Added Service used by Merchant is registered with the Payment Networks prior to the performance of any contracted services on Merchant's behalf. Further, Merchant will be bound by the acts and omissions of the third party offering such Value Added Services and Merchant will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations.

Merchant will indemnify and hold harmless MSA and Member from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any Value Added Service.

Neither MSA nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither MSA nor Member is responsible for any Transaction until MSA receives data for the Transaction in the format required by MSA.

- b) **Use of POS Devices Provided by Others.** In addition to the foregoing, if Merchant uses Value Added Services for the purposes of data capture and/or authorization, Merchant agrees: (i) that the third party providing such services will be Merchant's agent in the delivery of Transactions to MSA and Member via a data processing system or network compatible with MSA's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement.

Neither Member nor MSA will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither MSA nor Member is responsible for any Transaction until MSA receives data for the Transaction in the format required by MSA.

## 15. TERM AND TERMINATION.

- a) **Term and Termination.** This Bank Card Agreement shall become effective upon acceptance by MSA. Either party may terminate this Bank Card Agreement at any point with or without cause by providing prior written notice to the other party.
- b) **Notice of Termination.** Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's Account with MSA may take up to thirty (30) days following MSA's receipt of written notice of termination. In those limited instances where Merchant's Account is reinstated by MSA following termination by either Merchant or MSA, all of Merchant's obligations under this Bank Card Agreement are likewise reinstated.
- c) **Action upon Termination.**
- i) **Accounts.** All of Merchant's obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Merchant has paid all amounts Merchant owes MSA or Member or amounts for which Merchant is liable under this Bank Card Agreement. Merchant must maintain enough funds in the Account following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under this Bank Card Agreement for a reasonable time, but in any event, not less than one hundred eighty (180) days from the termination date. If a Reserve Account is established by MSA, then any balance remaining after Chargeback rights have expired and all other amounts owed by Merchant have been paid will be disbursed to Merchant.
- ii) **Return to MSA.** All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of MSA and must be returned to MSA or destroyed within ten (10) business days after termination of this Bank Card Agreement. Merchant will be fully liable for any and all loss, cost, and expense suffered or incurred by MSA arising out of any failure to return or destroy such materials following termination.

## 16. COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS.

- a) **Compliance with Laws and Payment Network Regulations.** Merchant agrees to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer Account, and with any policies and procedures provided by Member or MSA. The Payment Network Regulations are incorporated into this Bank Card Agreement by reference as if they were fully set forth in the Agreement. Merchant further agrees to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic fund transfers; and (iii) confidential treatment of information. Merchant will assist Member and MSA in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. Merchant will execute and deliver to Member and MSA all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.
- b) **MATCH.** Merchant acknowledges that Member and/or MSA is required to report Merchant's business name and the name of Merchant's principals to the MATCH listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to the fulfillment of the obligations related to the listing by MSA and Member, the listing itself and Merchant waives and holds harmless MSA and Member from all claims and liabilities Merchant may have as a result of such reporting.

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- c) Security Program Compliance. Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. Merchant also shall ensure that all third parties from whom Merchant procures Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, MSA will provide Merchant with the respective website links to obtain the current requirements of the Visa and MasterCard programs.

Merchant is responsible for its actions or inactions, those of its officers; directors, shareholders, employees and agents, including any third party vendors with whom Merchant contracts to perform services for it. Merchant shall indemnify and hold MSA and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the program requirements by any of the individuals or entities listed in the immediately preceding sentence.

Should Merchant participate in a program with any other Payment Network or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, Merchant must comply therewith and ensure that its officers, directors, shareholders, employees, and agents, including any third party vendors from whom Merchant procures Value Added Services or POS Devices also comply with the program requirements of such Payment Network.

- d) Data Compromise. Merchant must notify MSA immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if Merchant knows or suspects that Cardholder information has been accessed or used without authorization. Merchant must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. Merchant must work with MSA to rectify any issues that may result, including providing MSA with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with this Bank Card Agreement.

Without waiving any rights and remedies available to MSA, Merchant is liable for all fraudulent transactions related to such data incident and all costs MSA or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance.

Merchant must provide to MSA, on request, audit reports of Merchant computer systems or data incidents or allow MSA to perform such audits at Merchant's expense. Audits must identify the cause of the data incident and confirm whether or not Merchant was in compliance with the Payment Networks' PCI Data Security Standard at the time of the incident.

### 17. USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

- a) Use of Trademarks. Merchant will prominently display the promotional materials provided by MSA in Merchant's place of business. Merchant's use of Visa and MasterCard marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Merchant's right to use all such marks will terminate upon termination of this Bank Card Agreement. Merchant's use of promotional materials, provided by Visa, MasterCard, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, or such other Payment Networks endorse any goods or services other than their own and Merchant may not refer to Visa, MasterCard, or any other Payment Networks in stating eligibility for Merchant's products or services.

- b) Confidentiality.

- i) Cardholder and Transaction Information Merchant shall at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy in a manner that will render the data unreadable all such media that Merchant no longer deem necessary or appropriate to maintain. Further, Merchant must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing. In accordance with Section B, General Provisions, subsection 16., Compliance With Laws and Payment Network Regulations, d), Data Compromise, Merchant shall immediately notify MSA of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (A) the Merchant; (B) a third party from whom Merchant procures Value Added Services; (C) MSA or Member; or (D) elsewhere.

- ii) Bankruptcy. In the event of failure or other suspension of Merchant's business operations, including bankruptcy or insolvency, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. Furthermore, Merchant must: (A) return this information to MSA, or (B) provide acceptable proof of destruction of this information to MSA.

- iii) MSA or Member Confidential Information. Merchant shall at all times protect MSA's and Member's Confidential Information. Merchant will not disclose any of MSA's or Member's Confidential Information to any third party except as required by Laws.

- c) Passwords. If Merchant receives a password from MSA to access any of MSA's databases or services Merchant will: (i) keep the password confidential; (ii) not allow any other entity or Person to use the password or gain access to MSA's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify MSA if Merchant believe MSA's databases or services or Merchant's information has been compromised by use of the password.

If Merchant receives passwords from a third party, Merchant must protect such passwords in the manner required by such third party and indemnify, defend, and hold MSA and Member harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.

- d) Proprietary Interest. Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by MSA. Nothing in Merchant Participant Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which MSA may obtain in respect to MSA's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of MSA's services, equipment, or software.

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### 18. MISCELLANEOUS PROVISIONS.

- a) **Entire Agreement.** The Agreement, Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any Addendum; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) the Merchant Operating Guide; and (vi) any other guides or manuals provided to Merchant from time to time.
- b) **Governing Law.** This Bank Card Agreement will be governed by and construed in accordance with the Laws of the State of Minnesota, except that Section B, General Provisions, subsection 18. Miscellaneous Provisions, f), Arbitration, shall be governed by the Federal Arbitration Act. The parties agree that all performances and Transactions under this Bank Card Agreement will be deemed to have occurred in the State of Minnesota and that Merchant's entry into and performance of this Bank Card Agreement will be deemed to be the transaction of business within the State of Minnesota.
- c) **Exclusivity.** During the Term of this Bank Card Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by MSA and Member as contemplated by this Bank Card Agreement without MSA's written consent.
- d) **Construction.** Any alteration or strikeover in the text of this Bank Card Agreement will have no binding effect and will not be deemed to amend this Bank Card Agreement. The headings used in this Bank Card Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- e) **Assignment.** The Agreement may be assigned by Member or MSA, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of MSA. If Merchant, nevertheless, assigns this Bank Card Agreement without MSA's consent, such purported assignment shall have not effect whatsoever. If Merchant sells Merchant's business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.
- f) **Arbitration.** All claims or controversies, or other matters in question, between the parties arising out of or related to this Bank Card Agreement or the relationship between the parties that are not otherwise settled by agreement of parties will be submitted to and decided by arbitration held in Minneapolis, Minnesota in accordance with the rules of the American Arbitration Association. The arbitration proceeding shall be conducted before one (1) neutral arbitrator, who shall be a member of the bar of the State of Minnesota, actively engaged in the practice of law for at least ten (10) years. The arbitrator will have the authority to award any remedy or relief that a court in Minnesota could order or grant, including, without limitation, specific performance, issuance of an injunction or imposition of sanctions for abuse or frustration of the arbitration process.

There shall be no authority for any claims to be arbitrated on a class action basis. Arbitration can only decide MSA and/or Member's or Merchant's claim and may not consolidate or join the claims of other persons who may have similar claims.

The parties agree that anything communicated, exchanged, said, done, or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential.

The parties agree that the underlying agreement between the parties involves interstate commerce and that notwithstanding the choice of law provision in Section B., General Provisions, subsection 18., Miscellaneous Provisions. b), Governing Law, any arbitration shall be governed by the Federal Arbitration Act.

- g) **Notices.** Any written notice to Merchant under this Bank Card Agreement will be deemed received upon the earlier of: (i) actual receipt if sent via a nationally recognized carrier, or (ii) five (5) business days after being deposited in the United States mail, and addressed to the last address shown on the records of MSA.  
  
Any written notice to MSA shall be sent to 8600 W. 110th Street, Overland Park, KS 66210 and shall be deemed received upon actual receipt if sent via a nationally recognized carrier or five (5) business days after being deposited in the United States mail.
- h) **Bankruptcy.** Merchant will immediately notify MSA of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant. Merchant will include MSA on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of this Bank Card Agreement and shall allow the pursuit of any other action available to MSA under applicable Payment Network Regulations or Laws. Merchant acknowledges that this Bank Card Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.
- i) **Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Member and MSA for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or MSA: (i) in the enforcement of this Bank Card Agreement; (ii) in collecting any amounts due from Merchant to Member or MSA; (iii) resulting from any breach by Merchant of this Bank Card Agreement; or (iv) in defending against any claim or cause of action brought by Merchant against MSA or Member arising out of this Bank Card Agreement.
- j) **Customer Contact.** Merchant authorizes Member and MSA to contact its customers or their Issuer if Member or MSA determines that such contact is necessary to obtain information about any Transaction between Merchant and a customer.
- k) **Telephone Recording.** Merchant authorizes MSA to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in MSA's discretion.
- l) **Information Sharing.** Merchant understands and agrees that MSA may disclose any information gathered by MSA to (i) MSA's "affiliates" (i.e., companies related to MSA by common control or ownership) that offer financial products or services, including those identified in this Bank Card Agreement and to MSA's administrative or service units that perform such functions; (ii) to non-affiliated companies in order to assist MSA in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).
- m) **Communication with Merchant.** Merchant agrees that MSA and Member may provide Merchant with information about the Program including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.
- n) **Amendments.** MSA may propose amendments or additions to this Bank Card Agreement. MSA will inform Merchant of a proposed change in a periodic statement or other notice. Merchant will be deemed to have agreed to the change if Merchant continues to present Transactions to MSA after thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Bank Card Agreement will be effective upon notice to Merchant, unless a later effective date is

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provided. Further, MSA is entitled to pass through to Merchant any fee increases imposed upon MSA by Visa, MasterCard, any other Payment Network, and any other third party including telecommunications vendors.

- o) Severability and Waiver. If any provision of this Bank Card Agreement is found to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and this Bank Card Agreement will be construed as if the illegal or unenforceable provision is not contained in this Bank Card Agreement. Neither the failure, the delay by MSA or Member to exercise, nor the partial exercise of any right under this Bank Card Agreement will operate as a waiver of such right, nor shall such amend this Bank Card Agreement. All waivers requested by Merchant must be signed by MSA.
- p) Independent Contractors. MSA, Member, and Merchant will be deemed independent contractors and no one will be considered an agent, joint venture, or partner of the other, unless and to the extent otherwise specifically provided herein. This Bank Card Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- q) Privacy Laws. In addition to Section B., General Provisions, subsection 17., Use Of Trademarks; Confidentiality; Passwords, b), Confidentiality, above, Merchant must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of MSA to protect such information pursuant to applicable Laws, including applicable privacy laws.
- r) Survival. All of Merchant's obligations to MSA and Member shall survive termination of this Bank Card Agreement, including, without limitation, the following subsections within Section B. General Provisions: 4, 5, 6, 7, 8, 11, 14, 15, 17, 18b, 18f, 18i. of this Bank Card Agreement.
- s) Counterparts; Facsimile Signatures; Delivery. This Bank Card Agreement may be signed in one (1) or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising this Bank Card Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

### Section C — Acceptance of Visa and MasterCard

- 19. ACCEPTANCE OF VISA AND MASTERCARD. Merchant agrees to the following provisions in addition to Section A, Definitions, and Section B, General Provisions, above:
- 20. VISA AND MASTERCARD DEFINITIONS.
  - a) For purposes of this Section, "Card" shall be deemed to be limited to a: (i) credit/business product of Visa; (ii) consumer debit/prepaid product of Visa; (iii) credit/business product of MasterCard; or (iv) consumer debit/prepaid product of MasterCard as applicable.
  - b) The credit/business products of Visa are those products for which transactions by the Cardholder are paid by the Cardholder at least fifteen (15) days after the transaction including: (i) consumer credit products (including co-branded and smart Visa versions) such as Classic, Gold, Platinum, Signature, and Infinite cards; and (ii) business products such as business credit, business debit, business line of credit, and smart Visa business, purchasing cards, corporate cards, fleet cards, and commercial prepaid cards.

- c) The credit/business products of MasterCard include all other MasterCard products.
- d) The consumer debit prepaid products of MasterCard include Cardholder signature debit cards, prepaid cards, stored value cards, EDT cards and payroll cards.

### 21. HONORING CARDS.

- a) Honoring Cards. Merchant may only accept (i) only the credit/business products of Visa and/or MasterCard (further referenced in Sections C(20)(a)(i) and (iii) above); Merchant under this agreement with MSA may not accept (ii) only the consumer debit prepaid products of Visa and/or MasterCard (further referenced in Sections C(20)(a)(ii) and (iv) above); Merchants are required to display appropriate signage to communicate the above acceptance policy to Cardholders.
- b) No Minimum or Maximum. Merchant shall not establish minimum or maximum Card Transaction amounts.
- c) Cardholder Identification. In Card Present Transactions, Merchant will identify the Cardholder and check the expiration date and signature on each Card. Merchant will not honor any Card if: (i) The Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Card, is blank, or uses language to the effect of "see" or (iii) the Account number embossed on the Card does not match the Account number on the Credit Card's magnetic stripe.
- d) Card Recovery. Merchant will use reasonable, peaceful means to recover any Card: (i) if the printed four digits below the embossed Account number do not match the first four digits of the embossed Account number on a Visa Card; (ii) if Merchant is advised by Member (or its designee), the Issuer, or the designated voice authorization center to retain it; (iii) if Merchant has reasonable grounds to believe the Card is lost, stolen, counterfeit, fraudulent; or otherwise invalid, or its use is not authorized by the Cardholder; or (iv) if the printed four digits below the embossed Account number do not match the first four digits of the embossed Account number on a MasterCard Card, or the Card does not have the "Twin Globes" hologram on the lower right corner of the Card face.
- e) Surcharges. Merchant will not add any amount to the posted price of goods or services Merchant offers as a condition of paying with a Card, except as permitted by the Card Rules. This paragraph does not prohibit Merchant from offering a discount to induce a Person to pay by cash, check, or similar means rather than by Card.
- f) Convenience Fees. Merchant may not assess Convenience Fees unless Merchant has disclosed such fees to MSA previously in writing and has been approved by MSA to assess such fees. If Merchant completes a Transaction and assesses a Convenience Fee without having disclosed such fee previously in writing and obtained MSA's consent, Merchant will be in breach of this Bank Card Agreement and MSA may immediately terminate this Bank Card Agreement in addition to any other remedies available under this Bank Card Agreement, Laws, and Payment Network Regulations.

Transactions that include a Convenience Fee must comply with each of the following requirements: (i) a Convenience Fee cannot be assessed in a face-to-face merchant environment; (ii) the Convenience Fee is permitted only for one-time payments and may not be imposed on recurring payments or transactions, including, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition, or utility charges; (iii) Merchant must provide a true "convenience" in the form of an alternative payment channel outside of Merchant's customary face-to-face payment channels and the Convenience Fee must be disclosed by Merchant to the Cardholder as a charge for the alternative payment channel convenience that is provided; (iv) the Convenience Fee must be disclosed prior to the completion of the Transaction and the Cardholder must be given the option to

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cancel the Transaction if the Cardholder does not want to pay the fee; (v) the Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount (the only exception is for Card acceptance programs involving only MasterCard Cards where Visa Cards are not accepted); and (vi) the Convenience Fee must be for all payments (Visa, MasterCard, Discover, AMEX, ACH, and check) within a particular payment channel (mail, telephone, and internet).

Additional Visa Convenience Fee requirements are as follows: (i) it must be a flat fee; (ii) it cannot be tiered or percentage based regardless of the value of the payment due; (iii) it must not be authorized and settled separately from the primary transaction; (iv) it must be assessed by the same Merchant actually providing the goods and services; and (v) it may not be assessed by a different merchant.

Additional MasterCard Convenience Fee requirements are as follows: (i) it may be tiered, percentage based, or flat; and (ii) it may be authorized and settled separately from the primary transaction.

Merchants who accept both Visa and MasterCard Cards are restricted to assessing Convenience Fees equally across card types and as such the Merchant is restricted to a flat Convenience Fee and must combine all charges into one (1) authorization and clearing Transaction.

To the extent Merchant's state has passed legislation that may conflict with the Payment Network Regulations, Merchant bears all responsibility for, and agrees to hold MSA and Member harmless from, all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks. Convenience Fees may be prohibited by Laws in some states. Merchant may not charge Convenience Fees where prohibited by Laws. In no event is a Convenience Fee to be referred to as a surcharge and further, the Convenience Fee cannot be advertised as an offset to processing fees.

- g) Return Policy. Merchant must properly disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Card Rules, any limitation Merchant has on accepting returned merchandise.
- h) No Claim against Cardholder. Merchant will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or MSA refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). Merchant will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if Merchant receives such payments, Merchant will promptly remit them to MSA.
- i) Disputes With Cardholders. All disputes between Merchant and any Cardholder relating to any Transaction will be settled between Merchant and the Cardholder. Neither MSA nor Member bears any responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Credit Card Rules.

### 22. AUTHORIZATION.

- a) Required on all Transactions. Merchant must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Card number is valid, the Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. Merchant will follow any instructions received during Authorization. Upon receipt of an Authorization Code, Merchant may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt.

In any case in which a sales Transaction is completed without imprinting the Card, Merchant, whether or not an Authorization Code is obtained, shall be deemed to warrant the true identity of the customer as the Cardholder.

For all Card Not Present sales Transactions, Merchant must obtain the Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.

- b) Effect. An Authorization Code does not: (i) guaranty the Merchant final payment for a sales Transaction; (ii) guaranty that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect Merchant in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of this Bank Card Agreement or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.
- c) Unreadable Magnetic Stripes. For Card Present Transactions, if Merchant authorizes and presents Transactions electronically and Merchant's terminal is unable to read the magnetic stripe on the Card, Merchant must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) A physical imprint of the Card using a manual imprinter, and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

### 23. PRESENTMENT OF TRANSACTION RECEIPTS.

- a) Transaction Receipts.
  - i) Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions). Merchant will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include: (1) Card Account number (truncated Account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard); (2) Merchant name and location; (3) Location Code (i.e., merchant identification number issued by MSA); (4) Transaction amount, including applicable taxes; (5) Transaction date; (6) space for Cardholder signature for Card Present Transactions; (7) indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy); (8) Authorization Code; and (9) terms and conditions of the sale, if restricted.
  - ii) Electronic Commerce Transactions. Merchant will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include: (1) Card Account number (truncated Account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard); (2) Merchant name; (3) Merchant online address; (4) purchaser name; (5) Authorization Code; (6) Transaction amount; (7) Transaction date; (8) customer service contact, including telephone number; and (9) terms and conditions of the sale, if restricted.
- b) Signatures. In Card Present Transactions, Transaction Receipts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in this Bank Card Agreement.
- c) Reproduction of Information. For Card Present Transactions, if the following information embossed on the Card is not legibly imprinted on the Transaction Receipt, Merchant will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) Account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, Merchant will legibly reproduce on the Transaction Receipt the name of the bank that issued the Card as it appears on the face of the Card.

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- d) Truncation. The Card Account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "i," or "#," and not with blank spaces or numeric characters.
- e) Delivery and Retention of Transaction Receipts. For Card Present Transactions, Merchant will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, Merchant will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail) or paper (e.g., handwritten or terminal-generated) format. Merchant will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Card Transaction (or such longer period as the Credit Card Rules or the Laws may require).
- f) Electronic Transmissions. If Merchant utilizes electronic Authorization and/or data capture services, Merchant will enter the data related to Transactions into a POS Device, settle the Transactions and transmit the data to MSA or its designated agent in the form specified by MSA no later than the close of business on the date the Transactions are completed. If Member or MSA requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, Merchant must provide it within the time frame specified in the request.

### 24. RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING.

- a) Retrieval Requests. Merchant must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If Merchant fails to provide a legible copy of the Transaction Receipt, Merchant will receive a Chargeback that cannot be cured.
- b) Chargebacks. Merchant is fully liable to MSA and Member for all Transactions returned to MSA or Member for whatever reason including, but not limited to, Chargebacks. Merchant agrees to accept for Chargeback and will be liable to Member and MSA in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. Merchant will pay MSA and Member on demand the value of all Chargebacks. Merchant authorizes MSA and Member to offset from incoming Transactions and to debit the Account, the Reserve Account, or any other Account held at Member or at another financial institution the amount of all Chargebacks. Merchant will fully cooperate with MSA and Member in complying with the Card Rules regarding Chargebacks. Guarantors are personally liable for all Chargebacks.

The following is not to be considered a complete listing of the reasons for which Merchant may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur. i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request, ii) Unauthorized use of a Credit Card as alleged by the Cardholder, iii) Dispute by the Cardholder over the quality of goods or services, iv) Failure by Merchant to provide goods or services, v) The Transaction Receipt does not bear the Cardholder's signature, vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder, vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules, viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.

- c) Excessive Activity. Merchant's presentation to MSA of Excessive Activity will be a breach of this Bank Card Agreement and will be cause for termination of this Bank Card Agreement as set forth in Section B., General Provisions, subsection 15., Term and Termination, b), Notice of Termination.

**"Excessive Activity"** means, during any monthly period, and for any one (1) of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of Merchant's sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. Merchant authorizes, upon the occurrence of Excessive Activity, Member and MSA to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Bank Card Agreement.

### d) Credits.

- i) Credit Transaction Receipt. Merchant will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the Account for the total face amount of each Credit Transaction Receipt submitted to MSA. Merchant will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to MSA, nor will Merchant submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. Merchant will, within the time period specified by applicable Laws or the Card Rules, whichever time period is shorter, provide MSA with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Card Rules.
- ii) Revocation of Credit. Member or MSA may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.
- iii) Reprocessing. Merchant will not resubmit or reprocess any Transaction that has been charged back.

- e) Fraud and Factoring. Merchant will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between Merchant and a Cardholder or any Transaction Merchant knows or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials.

Merchant will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. Merchant agrees that MSA may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate suspicious or unusual deposit activity. MSA and Member will have no liability for losses Merchant may attribute to any suspension of funds disbursement.

### 25. OTHER TYPES OF TRANSACTIONS.

- a) Mail Order/Telephone Order (MO/TO). Merchant may not solicit or accept MO/TO sales Transactions unless Merchant have disclosed such method of sale to MSA previously in writing. If Merchant completes a MO/TO sales Transaction without having disclosed such method of sale previously in writing, Merchant will be in breach of this Bank Card Agreement and MSA may immediately terminate this Bank Card Agreement in addition to any other remedies available under this Bank Card Agreement, Laws, and Card Rules, and Merchant may have to pay a surcharge on each such Transaction.

Merchant understands that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. Merchant is liable for all Chargebacks and losses related to MO/TO sales Transactions. Merchant may be required to use an address verification service ("**AVS**") on MO/TO sales Transactions. AVS is not a guaranty of payment and the use of AVS will not waive any provision of this Bank Card Agreement or validate a fraudulent Transaction.

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Merchant will obtain the expiration date of the Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, Merchant will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: "telephone order" or "TO," or "mail order" or "MO," as appropriate.

MSA recommends that Merchant obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.

- b) Recurring Transactions.
- i) Requirements. For recurring Transactions (e.g., payment of insurance premiums or subscriptions), Merchant must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's Account, the frequency of the recurring charge, and the duration of time during which such charges may be made. Merchant will not complete any recurring Transaction after receiving: (1) A cancellation notice from the Cardholder; (2) a notice from MSA or Member that authority to accept recurring Transactions has been revoked; or (3) a response that the Payment Device is not to be honored. Merchant must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to recurring Transactions.
  - ii) Limitations on the Resubmission of Recurring Transactions. In some limited instances, Merchant may resubmit a preauthorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one (1) of the following: (1) Authorization denied; (2) insufficient funds; (3) exceeds approval amount limit; or (4) exceeds withdrawal frequency.
  - iii) Recurring Transaction Receipts. Merchant must print legibly on the Transaction Receipt the words "Recurring Transaction." Merchant must obtain the Cardholder's signature, including an electronic signature or other similar authentication that is effective under applicable Laws, on the Transaction Receipt. For an Electronic Commerce Transaction, Merchant must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.
  - iv) Electronic Commerce Recurring Transactions. In addition to the above, for an Electronic Commerce Transaction, Merchant must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder's request for goods or services was initially accepted online.
  - v) Recurring Transactions with Varying Amounts. For Recurring Transactions of varying amounts, all of the following apply: (1) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this Section; (2) Merchant must inform the Cardholder of their right to receive, at least ten (10) calendar days prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (3) the Cardholder may choose to receive the notification in any of the following ways: (A) for every charge; (B) when the Transaction amount does not fall within the range of amounts specified on the order form; or (C) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communications with, and disclosures to, Cardholders comply with Laws.
- c) Multiple Transaction Receipts. Merchant will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) Partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt

represents an advance deposit in a sales Transaction completed in accordance with this Bank Card Agreement and the Card Rules.

- d) Deposits.
- i) Prior Consent. Merchant will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless Merchant has disclosed such method of sale to MSA previously in writing. If Merchant accepts a Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to MSA previously in writing, Merchant will be in breach of this Bank Card Agreement and MSA may immediately terminate this Bank Card Agreement in addition to any other remedies available under this Bank Card Agreement, Laws, and Card Rules.
  - ii) Acceptance. If Merchant has disclosed such method of sale to MSA previously in writing, then Merchant will complete such sales Transactions in accordance with this Bank Card Agreement, Laws, and Card Rules. Merchant must execute one (1) Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. Merchant will note the words "deposit" or "balance" on the applicable Transaction Receipt, as appropriate. Merchant will not deposit the Transaction Receipt labeled "balance" until the goods have been delivered to Cardholder or until Merchant has fully performed the services.
- Merchant will not present any Transaction Receipt or Credit Transaction Receipt to Member or MSA for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery unless Merchant has disclosed such method of sale to MSA previously in writing and Merchant has been approved by MSA to submit such Transactions. If Merchant has disclosed such method of sale to MSA previously in writing, Merchant represents and warrants to Member and MSA that Merchant will not rely on any proceeds or credit resulting from such sales Transactions to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Transaction Receipts or other Credit Transaction Receipts in connection with future delivery sales Transactions or until Merchant has fully performed the services.
- e) Electronic Commerce. Merchant may not solicit or accept Electronic Commerce sales Transactions unless Merchant has disclosed such method of sale to MSA previously in writing, and Merchant may process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to MSA and Member. If Merchant submits Electronic Commerce sales Transactions without having disclosed such method of sale to MSA previously in writing, Merchant will be in breach of this Bank Card Agreement and MSA may immediately terminate this Bank Card Agreement in addition to any other remedies available under this Bank Card Agreement, Laws, and the Payment Network Regulations.

Merchant understands that sales Transactions processed via the Internet are high risk and subject to a higher incidence of Chargebacks. Merchant is liable for all Chargebacks and losses related to Electronic Commerce Transactions, whether or not: (i) Such Transactions have been encrypted; and (ii) Merchant has obtained MSA's consent to engage in such Transactions. Encryption is not a guaranty of payment and does not waive any provision of this Bank Card Agreement or otherwise validate a fraudulent Transaction. MSA recommends that Merchant obtains a signed Transaction Receipt or other proof of delivery signed by the Cardholder for all Electronic Commerce sales Transactions.

All communication costs and compliance with Laws related to Electronic Commerce Transactions will be Merchant's responsibility. Merchant understands that MSA will not manage the telecommunications link for Electronic Commerce Transactions and that it is Merchant's responsibility to manage that link.

Merchant authorizes MSA and Member, at Merchant's cost and expense, to perform an annual audit and examination of Merchant's website and a due diligence review as required by the Payment Network Regulations for Electronic Commerce Merchants.

- f) Electronic Commerce Requirements. For goods to be shipped on Electronic Commerce sales Transactions, Merchant may obtain authorization up to seven (7) days prior to the shipment date. Merchant need not obtain a second authorization if the Transaction Receipt amount is within fifteen percent (15%) of the authorized amount, provided the additional amount represents shipping costs.

Further, Merchant's Web site must contain all of the following information: (a) complete description of the goods or services offered; (b) returned merchandise and refund policy; (c) customer service contacts, including electronic mail address and/or telephone number; (d) complete address (street address, city, state, zip code, and country) of the permanent establishment of the business; (e) complete address of the permanent establishment of the business on either the checkout screen (which displays the total purchase amount) or within the sequence of Web pages presented to the Cardholder during the checkout process; (f) Transaction currency (such as U.S. or Canadian dollars); (g) export or legal restrictions, if known; (h) delivery policy; (i) customer data privacy policy; and (j) Merchant's method of Transaction, security.

If Merchant stores Cardholder Account numbers, expiration dates, or other personal Cardholder data in a database, Merchant must follow the applicable Payment Network rules on securing such data. Merchant may not retain or store CVV2/ CVC2 data after authorization for record keeping or additional authorization processing.

26. INTERCHANGE. Interchange qualification requirements, as defined by the Card Associations, affect Merchant's fees or surcharges owed for Transactions. Merchant will pay a higher discount rate, higher fees, and surcharges for Transactions that do not meet the best rate qualification criteria or have been processed in a manner other than for which Merchant was approved. If MSA provides authorization and/or data capture services to Merchant for American Express, Discover, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to Section A, Definitions, and Section B, General Provisions, above.
27. ACCESS. Upon request and fulfillment of the following conditions, MSA will provide access to authorization and/or data capture services for Bankcard Transactions to Merchants who have been approved by Visa and MasterCard and have entered into a separate agreement provided, however that neither MSA nor Member shall be responsible for funding such Transactions.
28. FORWARDED INFORMATION. MSA will forward certain information pertaining to Merchant, including, but not limited to, contact information and Account numbers, to one (1) or more of such Card Associations, unless MSA receives from Merchant written instructions to the contrary.

## Air Card Acceptance Operating Procedures

### Important Contact Information

Voice Authorization: 866-308-3811, Option 4

Voice Authorization: local or collect calls: 913-217-9303

AIR Card Support (payment inquiries): 866-308-3811 (toll free in US or Canada)

AIR Card Support (payment inquiries): local or collect calls: 913-451-2400

AIR Card Support E-Mail: support@airseacard.com

International Flight Scheduling Inquiries: 877-672-2273 or +31 70 770 3266 (The Netherlands) or by e-mail at aviationflightsupport@elavon.eu or aviationflightsupport@usbank.com

AIR Card Support Fax: 913-217-9308 Submit your manual invoices to:

By e-mail: aircardinvoices@airseacard.com  
By fax: 913-217-9340  
By mail: AIR CARD PROCESSING CENTER  
8650 College Boulevard  
Overland Park, Kansas 66210  
United States of America

### Acceptance Policies

- 1. AGREEMENT.** As an authorized Defense Energy Support Center division of the U.S. Federal Government (“DESC”) AIR Card Merchant, you agree to sell merchandise, products or services to authorized holders of DESC AIR Cards. All sales using DESC AIR Cards must be serviced, processed, and handled by Multi Service Corporation and by no other party. Merchant agrees that they will not enter into or attempt to enter into any agreement with any other party to allow such other party to service, process, or handle transactions generated by use of a DESC AIR Card. This exclusion does not restrict Merchant from establishing relationships with other aviation providers to process cards other than the DESC AIR Card. If Multi Service Corporation, in its sole discretion, makes an exception to a requirement of processing a transaction, it does not negate any clause in these Operating Procedures for any other transactions. The DESC AIR Card is used for two (2) types of purchases: Contract and Non-Contract. A Contract transaction is one (1) in which Merchant or Merchant's fuel supplier has a term contract directly with DESC. For this type of transaction, Multi Service Corporation serves as the processor and provides the information to DESC so their agency, the Defense Finance and Account Services division of the U.S. Federal Government (“DFAS”) may reimburse Merchant or fuel supplier directly. For Non-Contract sales, Multi Service Aviation processes and reimburses Merchant for the transaction in accordance with the terms and conditions in these Operating Procedures and relevant card acceptance merchant agreement. In both types of transactions, all Rules and Regulations and terms and conditions in these Operating Procedures must be followed in order to obtain reimbursement. Merchants are not authorized to charge any service fee to the cardholder.
- 2. PAYMENT SCHEDULES** Merchant will be reimbursed for transactions in accordance with the terms and conditions as agreed in the relevant card processing merchant agreement. Multi Service Corporation and Multi Service Aviation will have the right to offset outstanding amounts owed by Merchant on Merchant's DESC AIR Card customer or merchant account against any sums payable to Merchant by Multi Service Corporation or Multi Service Aviation under any contract, agreement, or arrangement. For payment inquiries on Non-Contract sales, please contact AIR Card Support at the numbers listed above. For payment inquiries on Non-Contract sales, please contact AIR Card Support at the numbers listed above. For payment inquiries on Contract sales (if applicable to you), please contact your representative at the appropriate government entity.

- 3. TAIL NUMBER (AIRCRAFT REGISTRATION) VERIFICATION .** If a tail number is embossed on the DESC AIR Card, verify that it corresponds to that of the aircraft for which the purchase is being made. If a suspicious situation arises, please contact AIR Card Support before any further action is taken. The tail number associated with the purchase must be included with all transactions submitted for processing.
- 4. ANY AIRCRAFT CARDS.** Upon request, Multi Service Corporation does issue cards embossed with “ANY ACFT.” If “ANY ACFT” appears on the DESC AIR Card, positively identify the customer as being an employee of the U.S. Government. Please record the aircraft tail number/side number or Navy Identification Code/Serial number (no greater than ten (10) characters) on the invoice or input it into the electronic point of sale processing system.

### Rules and Regulations

- 1. VALID CARD:** Merchant will accept all valid DESC AIR Cards when properly presented as payment from cardholders for authorized purchases. For all transactions occurring within the United States and Canada, Merchant is required to obtain an authorization code from Multi Service Corporation (see phone number above) to ensure the card is valid. For all non-United States or Canadian locations that accept DESC AIR Cards electronically, Merchant is required to obtain an authorization code from Multi Service Corporation (see phone number above) to ensure the card is valid. For locations outside the United States and Canada who are unable to submit an electronic invoice, authorization is not required.
- 2. COMPLETION OF INVOICE.** Merchant must complete every invoice in full. Non-fuel items may be entered on the same transaction with fuel. The invoice must be signed by the cardholder and the fuel operator in the space provided (except when the card is swiped at a self-service pump). The cardholder's copy of each invoice or fuel delivery ticket shall be delivered to the cardholder after the invoice or delivery ticket is completed. Applicable taxes must be separately stated (example, -FET, State Tax, VAT, GST, Sales Tax must each be reported on a separate line) as they are applied to individual product items. No more than one (1) fuel product may be on a single invoice.
  - a) For manual Merchants, imprint the DESC AIR Card onto the invoice or delivery ticket, or enter the full card number (all cards begin with 7896) and customer name in the space provided. When an authorization code is required (see above) be sure to enter the authorization code on each invoice. Submit invoice copies to Multi Service Corporation within fourteen (14) days after the purchase (as evidenced by the postmark date, faxed receipt date or e-mail receipt date) or Multi Service Corporation cannot guaranty payment to you or your credit card service provider. The minimum information required for transactions to be considered complete:**
    1. Merchant number or merchant identifying information
    2. ICAO
    3. Card number
    4. Tail number/side number or Navy unit identification code/serial number
    5. Contract number for contract sales
    6. Date and time of delivery
    7. Invoice date
    8. Product or detailed description of purchases (detail as separate line items) (if the purchase is for a Contract purchase, the CLIN (contract line item number) from the DESC contract is required)
    9. Contract fuel: net quantity of fuel in US Gallons rounded to whole numbers only
    10. Non-Contract fuel: net quantity of fuel in US gallons or liters with unit of measure clearly identified
    11. Price charged per unit
    12. Cost per unit for ground services and handling
    13. Pilot's signature and printed name
    14. Signature of fueling operator
    15. Customer name (e.g. unit or squadron name)
    16. Authorization code (see authorization code section)
    17. Invoice number and/or delivery ticket number
    18. Card expiration date
    19. Unit price multiplied by quantity must equal total per line item
    20. All units of measure and currency must be properly displayed
    21. Invoices must be submitted in the currency in which Merchant agreed to be paid
    22. All contract invoices must be submitted in whole US gallons and in appropriate currency
    23. Taxes applicable to each product or service purchased

- b) For electronic Merchants, the card must be swiped through an electronic magnetic card reader or entered manually on the electronic processing system provided by MSA or your fuel supplier for acceptance of the AIR Card. Electronic Merchants should settle transactions to your processing center by 11:59 p.m. U.S. Central Standard Time on the day the transaction took place.
3. **CHARGEBACKS AND REJECTED TRANSACTIONS.** For Non-Contract transactions, Merchant may not receive payment from Multi Service Aviation or may be subject to chargebacks or rejections for any invoices that do not comply with the regulations and instructions listed in these Operating Procedures. For Contract transactions, Merchant may have transactions rejected or payment delayed for any invoices that do not comply with the regulations and instructions in these Operating Procedures. The ultimate processing of Contract transactions is between Merchant and DESC so any rules and/or regulations required by DESC must also be followed. Furthermore, Multi Service Corporation may charge back or reject any transaction to Merchant where Merchant had previously billed the same transaction to the cardholder or Merchant fails to provide requested back-up information within three (3) United States business days. International Merchants have up to fourteen (14) days to submit requested back-up information. In the event that Multi Service Corporation receives an invoice that does not comply with these Operating Procedures, Multi Service Corporation may elect to bill the invoice and attempt to collect from the customer. If Multi Service Corporation, in its sole discretion, makes an exception to a requirement of processing a transaction, it does not negate any clause in these Operating Procedures for all other transactions.
4. **CASH PAYMENTS.** No Merchant shall receive any payments from cardholders with respect to charges made on the DESC AIR Card, and no cash advance shall be paid by Merchant to the cardholder for any DESC AIR Card transaction.
5. **REVISIONS.** Multi Service Corporation or Multi Service Aviation may revise these Operating Procedures and any revisions shall become effective seven (7) days after distributing the revisions to Merchant. Merchant shall be deemed to have agreed to this and any future revisions by continued participation in the AIR Card program after the effective date of the revisions.

MULTI SERVICE AVIATION CANNOT GUARANTY PAYMENT FOR INVOICES THAT FAIL TO MEET THESE REQUIREMENTS.

**[multiserviceaviation.com](http://multiserviceaviation.com)**

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