



MEDFUSION MERCHANT AGREEMENT

DECEMBER 8, 2015

This **Medfusion Merchant Agreement** (the "MMA"), is a legal agreement between MEDFUSION, INC. ("Provider", "we", "us", "our") having its principal office at 5501 Dillard Drive, Cary, NC 27518, on behalf of itself and its affiliates and suppliers, and as an agent of Member Bank, and you as the merchant ("Merchant", "you", "your") which applied for Services, identified in the Medfusion Pay Medical Practice Merchant Application ("Merchant Application") as the Merchant. By applying for the Services and signing the Merchant Application, Merchant agrees to be bound by all the terms of this MMA, including any and all rules, regulations, addendums, exhibits, schedules or other agreements attached hereto or incorporated herein by reference, including, without limitation, the Merchant Application, the Glossary, the AUP, the Pricing Schedule, and the Side Letter Agreement (if any). Any and all such rules, documents and agreements will be applied and enforced in harmony with and in conjunction with each other to the end that Provider realizes fully upon its rights and remedies in each; and, to the extent conflicts exist between any such rules, documents or agreements, including conflicts relative to the meanings/use of terms, they will be resolved in favor of Provider for the purpose of achieving the full realization of Provider's rights and remedies as aforesaid.

1. **Services and Fees.** In exchange for us providing the Services to you, you agree to pay to Provider the fees Provider charges to or assesses against Merchants for using the Services in accordance with Section 10 of this MMA. The MMA incorporates by reference all policies, notices, and other content that appear on our website at www.Medfusion.com ("Website"). The Website's terms of service and privacy statement apply to your use of the Services. You also agree to be bound by the MMA until such time as the MMA is terminated and all obligations of Merchant to Provider under the MMA have been fulfilled. You agree that the Services provided under the MMA are commercial in nature, and do not constitute a consumer purpose transaction.
2. **Additional Services.** In the future, Provider may offer one or more additional service enhancements or add-on services to the Services, such as mobile payment options, electronic statement delivery, enhanced payment methods using point of sale terminals, or prepayment of patient bills (collectively, the "Add-on Services"). Merchant may opt into one or more Add-on Services once they are made available by requesting the Add-on Services from Provider, being approved for use of the Add-on Services by Provider, agreeing to be bound by any additional terms and conditions which may be required by Provider to provide the Add-on Services, and to pay any additional fees (if any) associated with the Add-on Services. Merchant's agreement to opt into any one or more of the Add-on Services may be evidenced by a confirmatory letter from Provider explaining the particular Add-on Service which Merchant has opted to use, and containing any supplemental terms and conditions to this MMA which are required by Provider to use the particular Add-on Service or a description of where such terms and conditions may be found on the Website (such supplemental terms and conditions, if any, the "Supplemental Terms"). Merchant, by continuing its use the Services and any Add-on Services agrees to be bound by the MMA as amended by the Supplemental Terms, which Supplemental Terms shall be a part of and incorporated into the MMA.



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3. **Bank Rules and Operating Regulations.** Merchant acknowledges receipt and review of the Bank Rules, available at [https://www.little.com/images/uploads/Bank_Rules_and_Regs_-_1_2012_\(2\).pdf](https://www.little.com/images/uploads/Bank_Rules_and_Regs_-_1_2012_(2).pdf). Merchant agrees to fully comply with, and to ensure that all staff comply with, all of the terms and obligations in the then current Bank Rules, as changed or updated by Member Bank from time to time, at Member Bank's sole reasonable discretion with notice in accordance with Member Bank's standard operating procedures. Without limiting the foregoing, Merchant agrees that it will fully comply, with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Networks, including but not limited to PCI, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Operating Regulations. Should any such rules, requirements or Operating Regulations not be publicly available or otherwise made available to the Merchant, such unavailability shall not alter or limit Merchant's obligation to comply with any such rules, requirements or Operating Regulations. Notwithstanding Provider's assistance in understanding the Operating Regulations, Merchant expressly acknowledges and agrees that it is assuming the risk of the Merchant's compliance with all provisions of the Operating Regulations, regardless of whether the Merchant has possession of those provisions. Both MasterCard and VISA make excerpts of their respective rules and requirements available on their internet sites.

4. **Compliance with Law, Card Network and NACHA Rules.** You agree to comply with all laws and regulations applicable to you, your business, and the Services. By using the Services, you represent and warrant that: (a) you are not located in a country that is subject to a U.S. governmental embargo, or that has been designated by the U.S. government as a "terrorist supporting" country; and (b) you are not listed on any U.S. government list of prohibited or restricted parties. You further agree to comply with the MMA and all Provider policies, procedures and instructions. You further agree to comply with all rules and Operating Regulations issued from time to time by: the Networks (i.e. VISA, MasterCard, American Express, JCB, Discover, etc.), including but not limited to the Payment Card Industry Data Security Standards ("PCI DSS") and Payment Application Data Security Standard ("PA-DSS"); and the National Automated Clearing House Association ("NACHA"), which applies to transactions processed using Automatic Clearing House ("ACH"). The Operating Regulations are incorporated into this MMA by reference as if they were fully set forth in this MMA. The Operating Regulations may be viewed at:
 - http://www.mastercard.com/us/merchant/security/sdp_program.html
 - <http://mastercard.com/us/merchant/support/rules.html>
 - <http://usa.visa.com/merchants/operations/index.html>
 - http://usa.visa.com/merchants/risk_management/cisp.html
 - https://www209.americanexpress.com/merchant/services/en_US/merchant-regulations
 - <https://www.pcisecuritystandards.org>
 - <https://www.nacha.org/rules>
 - <http://www.pcicomplianceguide.org/pcifaqs.php>.



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You also agree not to request an ACH or Transaction that violates the laws of the United States, which include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control ("OFAC").

5. **Eligibility.** The Services are available only in the United States (but not Puerto Rico, the U.S. Virgin Islands, and the other U.S territories and possessions). To be eligible to use the Services, you: must not be domiciled, reside, or have a principle place of business outside the US; must not be engaged in any illegal activity or any activity reasonably likely to cause notoriety, harm or damage the reputation of Provider, our sponsor banks, card or payment network (such as VISA, MC, American Express, Discover, NACHA); must not be listed on a VISA Terminated Merchant File, MasterCard MATCH, or any other third party or governmental prohibited merchant or individual lists; and must comply with our Acceptable Use Policy ("AUP"), which is available on the Website, incorporated herein by reference. You may only use the Services for the business and purpose described by you in your Merchant Application.
6. **Personal Guarantee.** As described in the Merchant Application, we may require one or more personal guaranties in the form of the Medfusion Pay Personal Guaranty Agreement ("Guaranty") attached the Merchant Application. Failure to provide any personal guarantee as required by us will be grounds for us terminating or suspending your use of the Services.
7. **Verification; Credit Checks.** Provider's decision to enter into this MMA and continuing to provide the Services to Merchant is conditioned on Merchant's continued financial stability, and Merchant and Principal(s) jointly and severally hereby authorize us to conduct any necessary identity and consumer credit checks at any time to determine Merchant and Principal(s)' creditworthiness. Late payments, non-payment and other defaults by Merchant under the MMA or defaults on Merchant's Account may be reflected in Merchant's business and/or Principal(s)' personal or individual credit report. Merchant and Principal(s) jointly and severally agree and authorize us (directly or through third parties) to make any inquiries we consider necessary to verify Merchant's or Principal(s)' identity, account information or to determine Merchant or Guarantor's current and ongoing creditworthiness. This may include asking Merchant or Principal(s) to confirm ownership of Merchant's or Principal(s)' email address, mobile/phone numbers, bank accounts, or by verifying Merchant or Principal(s)' information against third party databases (including by obtaining Merchant or Principal(s)' individual and business credit report, personal profile or other information from one or more third party databases). Merchant and Principal(s) further agree and authorize us to share credit reports and any other information we have on Merchant or Principal(s) with any third party, to the extent such parties provide or facilitate Services to Merchant or us. Additionally, Merchant and Principal(s) agree that Merchant and Principal(s)' bank and the consumer reporting agencies may release any and all individual and business credit and financial information to us. Merchant and Principal(s) further authorize us to disclose any information obtained from any source (including credit reports) to any governmental, administrative or regulatory entity, our respective vendors and Affiliates for fraud or verification purposes or to comply with Applicable Law or investigation, including, without



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limitation, the U.S.A. Patriot Act. Merchant and Principal(s) acknowledge and agree that we may request that Merchant and Principal(s) provide additional information at any time, including but not limited to: a copy of a government issued ID (such as a passport or driver's license); business license; taxpayer ID number; financial or bank statements; or personal or business tax returns, and Merchant and Principal(s) agree to provide such information to us upon our request.

- 8. Participating Sponsor Banks; Merchant MMAs.** We will require that you enter into separate and direct Merchant Services Agreement for Sub-merchants with one or more of our sponsor banks if required under the Operating Regulations or agreements with any third party payment processor ("TPP") we use to process your transactions. Currently the Operating Regulations and our agreement with our TPP require you to enter into such an agreement if your processing volume exceeds \$100,000 in the dollar volume in Visa and/or MasterCard transactions in any 12 month period. We will notify you if this occurs ("Threshold Notice"). Upon our notification to you of this occurrence, you agree to be bound by the Merchant Services Agreement for Sub-merchants set forth in Exhibit A to this MMA ("Sub-merchant Agreement") as if you had executed the Sub-merchant Agreement as of the date of our Threshold Notice. In certain circumstances, new pricing terms, including but not limited to card processing rates and fees may apply. You agree that our sponsor bank and all parties to a Sub-merchant Agreement may rely on the information you provided in your Merchant Application, as updated from time to time, for approval and underwriting of your Sub-merchant Agreement. Terms of the Sub-merchant Agreement will govern your use of the specific services contemplated under the Sub-merchant Agreement. Furthermore, you must abide by the applicable Operating Regulations as they pertain to the Sub-merchant Agreement. Notwithstanding our assistance in understanding the Operating Regulations you expressly acknowledge and agree that you are assuming the risk of compliance with all provisions of the Operating Regulations regardless of whether you have possession of those provisions.

Upon our notification to you that you will be bound by the Sub-merchant Agreement, you agree upon the request of Acquirer or Provider to take any actions which may be reasonably required by Acquirer or Provider to further evidence your agreement to be bound by the terms of the Sub-merchant Agreement, including, without limitation, electronically authenticating or executing a separate Sub-merchant Agreement substantially similar to the Sub-merchant Agreement. Your failure or refusal to further evidence your consent to the Sub-merchant Agreement as requested by Acquirer or Provider shall not be considered or deemed to be a repudiation or refusal of your agreement to already be bound by the Sub-merchant Agreement pursuant to this Section 8 of the MMA.

In furtherance of Merchant's agreement to be bound by the Sub-merchant Agreement under the circumstances described in this Section 8, Merchant hereby appoints Provider and each of Provider's authorized representatives as Provider may from time to time designate, as agents and attorneys-in-fact for Merchant, to sign and endorse in the name of Merchant, to complete any missing information in the Sub-merchant Agreement, or to take other actions necessary or desirable in the reasonable discretion of Provider to effect the provisions and carry out the intent of this Section 8. Merchant



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hereby ratifies and approves all acts of such agents and attorneys-in-fact and neither Provider nor any other such attorneys-in-fact will be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law. The foregoing power, being coupled with an interest, is irrevocable so long as the MMA is in force.

9. **Merchant Application; Updating Your Information.** Merchant and Principal must complete a Merchant Application and be approved by our underwriting department prior to your use of the Services. Once approved, we will establish an account for you to use the Services ("Merchant Account"). You agree that the information you provided in the Merchant Application (or otherwise requested by Provider as part of an application or investigation process) is true, accurate and complete. On an ongoing basis, you agree to update us with the current address of your business, all "Doing Business As" (DBA) names used by you, list of principles, owners or officers, home addresses, personal and business telephone, URL (web address), email addresses, and a complete description of goods sold and services provided by the business. If the scope or nature of your business or the type of products or services you offer changes, you agree to notify us prior to a change. You are liable to us for all losses and expenses incurred by us arising out of your failure to report any changes to us. Provider reserves the right to immediately terminate this MMA or suspend your access to the Services in the event of a change in information you previously provided to us. From time to time we may request that you certify to us that all the information you provided in the Merchant Application (or otherwise provided to be requested by Provider as part of an application or investigation process) remains true, accurate and complete. You agree to provide us with such certification or updated information upon our request.
10. **Pricing and Payment.** Merchant hereby agrees to pay Provider the fees that are assessed by Provider against Merchant or are posted against your Merchant Account from time to time by Provider in accordance with the terms of the MMA. Such fees are immediately due and payable at the time they are posted or assessed against you. A description of the fees charged by Provider for using the Services is contained in your Merchant Application and is made available to you on the Website and is incorporated herein by reference ("Pricing Schedule"). You may view the Pricing Schedule on our website. In the event of any conflict between the amount of any fees shown in the Pricing Schedule and your Merchant Application, the Merchant Application shall control. Fees described in the Pricing Schedule are cumulative and may be in addition to fees assessed against you by the Networks. All fees due in connection with the Services are non-refundable, whether such fees are set-up fees, transaction fees, monthly subscription fees or other fees. You agree to immediately pay to us all fees set forth in your Merchant Application, the Pricing Schedule and/or other provisions of this MMA or any other agreements you may have with Provider. You agree that you will also be responsible for any Chargebacks and any fees, fines or penalties assessed to us or to you by any card or the Networks as a consequence of your use or misuse of the Services. You agree that we may collect fees and other amounts owed under this MMA including, but not limited to, by offsetting or otherwise netting against the proceeds of your processing activity; by debiting your Merchant Account, Reserve Account or any other account you may have at any financial institution, or by recouping such amounts



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from amounts owed to you under this MMA; or exercising any other legal rights and remedies we may have under law or equity. You agree that you if you fail to pay us the amounts owed to us under the MMA in a timely manner, you will be responsible for all costs and expenses of collection against you arising out of, or related to, any Event of Default under the MMA or our efforts to collect fees or other amounts owed to us by you under the MMA. In the event of a late payment, we reserve the right to assess a late payment fee, plus a finance charge equal to one and one-half percent (1.5%) per month on the unpaid amount, or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of a late payment fee and finance charges will not excuse or cure any breach or default for late payment.

The fees set forth in your Merchant Application or in this MMA (including the Pricing Schedule) are subject to change upon at least thirty (30) days prior notice to you. In the event that we increase our fees, Merchant may, within thirty (30) days of receipt of notice of the increase in fees, and upon 90 days prior written notice to Provider, terminate this MMA. Upon Provider's receipt of Merchant's notice to terminate as provided in the immediately preceding sentence, Merchant and Provider shall have thirty (30) days to come to a mutually agreeable resolution to Provider's increase in fees, and in the event a resolution is reached, or Provider waives or rescinds the change in fees, Merchant shall not have a right to terminate this MMA, and the MMA shall continue in full force and effect notwithstanding Merchant's delivery to Provider of Merchant's intent to terminate the MMA. Notwithstanding the foregoing, Merchant shall have no right to terminate this MMA if the increase in fees is solely related to an increase in the fees imposed on Provider by Acquirer or the Networks in connection with our providing the Services to you. You agree that your continued use of the Services for thirty (30) days after receipt of notice of the fee change without sending us written notice of termination constitutes an acceptance to such change in fees. You agree to pay the Termination Fee if you decide to terminate the MMA in accordance with this Section of the MMA.

If you wish to dispute payment to, or collection by Provider of any fee, you must provide written notice of such dispute within 60 days after you received a statement containing the charge. If you fail to dispute any matters contained in any statement within this sixty (60) day period, then all matters contained in the statement shall be deemed to be true and correct absent any manifest error.

11. **Merchant Suppliers.** Merchant may use one or more Merchant Suppliers in connection with the Services and/or the processing of some or all of its Transactions. In no event shall Merchant use a Merchant Supplier unless such Merchant Supplier is compliant with PCI and/or the Payment Application Data Security Standard ("PA-DSS"), depending on the type of Merchant Supplier, as required by the Operating Regulations. Merchant acknowledges and agrees that Merchant shall cause its Merchant Suppliers to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc.). Merchant shall cause its Merchant Suppliers to cooperate with Provider in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such Merchant Supplier. Merchant shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps,



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registrations, and certifications. Merchant shall bear all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of any Merchant Supplier(s) for a particular purpose and for determining the extent of such Merchant Supplier's compliance with the Operating Regulations, and any other Applicable Law. Merchant expressly agrees that Provider or Acquirer shall not in any event be liable to Merchant or any third party for any actions or inactions of any Merchant Supplier used by Merchant, even if Provider or Acquirer introduced and/or recommended the use of such Merchant Supplier to Merchant, or never objected to the use of such Merchant Supplier, and Merchant hereby expressly assumes all such liability.

12. **Confidentiality; Cardholder Information.** You acknowledge that we will be providing you with certain confidential information, including but not limited to, this MMA and information relating to the finances, systems, methods, techniques, programs, devices and operations of us and/or the Associations. You shall not disclose any such confidential information to any person or entity (other than to those employees and your Suppliers who participate directly in the performance of this MMA and need access to such information). Notwithstanding the foregoing, upon written notice to us, you may share any information provided by us and/or relevant to the Services: (a) in response to subpoenas, warrants, court orders or other legal processes; (b) in response to requests from law enforcement agencies or government entities; (c) to comply with the Operating Regulations; and/or (d) in the proper performance of the Services. Merchant shall not disclose, sell, purchase, provide, or exchange Cardholder name, address, account number or other information to any third party (including any Guarantor) other than to Provider, Acquirer or an Association for the purpose of completing a sales transaction unless specifically permitted by the Operating Regulations. Merchant represents and warrants that neither it, nor its Merchant Suppliers shall retain or store any portion of the magnetic-stripe data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Operating Regulations, and/or this MMA.
13. **Term.** This MMA is binding on Merchant on the earlier of the date that you deposit a transaction with us, or the date Merchant executes the Merchant Application (by signature, electronic authentication, or otherwise). In connection with your agreement to be bound by the MMA, you agree to pay the Implementation Fee described in the Pricing Schedule. This MMA will be binding on Provider on the date Provider: (a) completes its assessment of the financial stability of Merchant and Provider as more particularly described in Section 7 above; (b) obtains affirmative consent of any required personal guarantor under Section 6 above by having any such personal guarantors execute the Guaranty (by signature, electronic authentication, or otherwise); (c) accepts Merchant's use of the Services by issuing Merchant a Merchant Account; and (d) is in a position to begin providing the Services. The Initial Term shall commence once both Merchant and Provider are bound by the MMA. Merchant shall take all necessary steps to convert Merchant's information technology and payment systems for use of the Services within ninety (90) days after signing the Merchant Application. Provider may provide reasonable assistance to Merchant regarding such conversion, however any fees or expenses incurred by Merchant in connection with such conversion shall remain Merchant's sole and exclusive obligation. Except as hereafter provided, unless either party gives written notice



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to the other party at least ninety (90) days prior to the expiration of any term, the MMA shall be automatically extended for an additional term of at least 12 months or greater as negotiated between the parties. All obligations of Merchant and any Guarantor incurred or existing under this MMA as of the date of termination, shall survive such termination.

14. **Per Transaction and Monthly Processing Limits; Monthly Transaction Minimums.** We will establish processing limits and assign a maximum dollar amount per Transaction and/or an aggregate maximum dollar amount per calendar month (or any other time period we designate) that you may process using the Services. You may request an increase in your per Transaction limit or your aggregate processing volume by submitting a request to us. Any increase shall be at our sole discretion, and we reserve the right to reverse and decrease any maximum amounts previously authorized. Any increase granted by us may be conditional upon and require the establishment of a Reserve Account (defined below).

You agree that during the term of this MMA you will process at least 100 Transactions during each monthly period of the term. You agree to pay to Provider for each monthly period of this MMA a minimum of 100 per Transaction fees as described in the Pricing Schedule regardless of whether the total number of actual Transactions processed by Provider for your Merchant Account during that monthly period is greater or fewer than 100 Transactions. Additionally, you agree to pay the minimum transaction fees during the term of this MMA regardless of whether the Services are being provided by Provider.

15. **Settlement of Transactions.** Provider will accept all valid transactions processed by you under the terms of this MMA and shall present the same to the appropriate financial institution for collection against your customer's or payor's account. Transactions will begin by sending payment data to a TPP selected by us for your transactions (based on cost, volume, technical interoperability, business type and other factors) who will send it to a Member Bank (TPP and its associated Member Bank are referred to collectively herein as the "Acquirer"). Unless otherwise agreed to in writing by us, you shall electronically deliver to us and in a format acceptable to us all credit vouchers and sales Transaction Data within two (2) business days after the applicable Transaction date (or such shorter period as determined by the applicable Association), except (a) in the case of a delayed merchandise delivery, when the sales Transaction Data shall be delivered within two (2) business days of the merchandise delivery or (b) as specified otherwise in the Operating Regulations. You agree that you shall deliver sales Transaction Data to us at least every business day. As of the date of this MMA, our only TPP is Vanitv, LLC, whose designated Member Bank is Fifth Third Bank, an Ohio Banking Corporation, located in Cincinnati, OH 45263, who may be contacted at 1-877-534-2264. For payments by bank transfer, we initiate the payment process by providing payment information to the Acquirer through ACH. You hereby authorize Provider to submit all valid transactions to and receive settlement from the Networks and ACH on behalf of you, and you additionally authorize us and the Acquirer to hold, receive, disburse and settle funds on your behalf. Your authorization permits us and the Acquirer to generate a paper draft or electronic funds transfer to process each payment



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transaction that is authorized by you. Subject to this MMA, you also authorize Provider and the Acquirer to debit or credit any Card or other payment method we accept. Settlement of all transactions is subject to this MMA, our agreement with the applicable Acquirer, and the Operating Regulations. Acquirer may provisionally credit to you the value of a processed Transaction but reserves the right to adjust amounts credited to you to reflect the value of Chargebacks, fees, penalties, late submission charges, the difference in currency exchange if the Chargeback amount is greater than the original sale, issuer claims and items for which Provider did not receive final payment for any reason. We may refuse to accept any transaction or revoke our prior acceptance or settlement of a transaction for any reason, including but not limited to the following circumstances: (a) the transaction giving rise to a transaction receipt was not made in compliance with all the terms and conditions of this MMA; (b) a customer or payor disputes his liability for any reason, including but not limited to those chargeback rights enumerated in the Operating Regulations; (c) a transaction giving rise to a receipt was not directly between you and a Cardholder or payor; or (d) a transaction is outside the parameters indicated on the Merchant Application. You agree to pay for any amount previously credited to you and not accepted or later revoked by Provider.

16. **Bank Account.** Merchant will establish and maintain a checking account ("Bank Account") at a federally insured depository institution of your choice to facilitate payment of fees to Provider and the transfer of amounts due to you from your Merchant Account. The Bank Account must be linked to your Merchant Account. The Bank Account must be accessible such that we and Acquirer or their agents can access the Bank Account through the ACH system. You irrevocably authorize Provider and Acquirer to immediately debit your Bank Account for any amounts owed by you under this MMA, and for the amount of all fraudulent transactions, any negative balance in your Merchant Account, for current and past due fees, payment equipment rentals/purchases, fines, penalties, or any amounts you owe us under this MMA. You agree that neither Provider nor Acquirer shall incur any liability for any loss, costs, or fees incurred by you that are the result of such debits by us or Acquirer. We will take reasonable steps to verify your Bank Account information, for example, by requiring you to provide us a cancelled check or by debiting and credit micro-deposits into your Bank Account, including on a recurring basis. You agree that you will not change your Bank Account without our prior consent, which will not be unreasonably withheld. If you do not obtain such prior consent, Provider may immediately terminate this MMA. Merchant agrees that prior to Provider providing the Services to Merchant, Merchant will instruct Provider how to make deposits to Merchant's Bank Account (e.g. through a cancelled check showing the routing number and account number of Merchant's Bank Account or letter of instruction from Merchant's bank instructing Provider how to deposit funds into Merchant's Bank Account), and any deposit by Provider of Settlement Funds or other amounts owed by Provider to Merchant under this MMA pursuant to such instructions shall fully satisfy any payment obligations that Provider or Acquirer may owe to Merchant under this MMA.
17. **Reserve Account; Security Interest.** The Reserve Account shall be funded on three (3) days' notice to Merchant, or, in the cases of suspected fraud or an Event of Default or suspected or known financial loss to Member Bank or any of its Affiliates, the Reserve Account may be funded



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immediately, pursuant to the terms and conditions set forth in this Section 17. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time. You must establish the Reserve Account so that it may be used solely to pay amounts owed to us or Member Bank under this MMA.

The Reserve Account may be funded by all or any combination of the following, at our option: (a) one or more debits to your Bank Account or any other accounts held by your bank or any of its Affiliates, at any financial institution maintained in the name of Merchant or any Guarantor; (b) any payments otherwise due to you; (c) your delivery to us of a letter of credit; or (d) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this MMA by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of the MMA or for such longer period of time as is consistent with our liability for your Card transactions and Chargebacks in accordance with the Operating Regulations. We will hold funds pursuant to this Section 17 in a master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges and other amounts due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

To secure repayment of any fees or other amounts owed to us under the MMA, you hereby grant to us a security interest in and to the Reserve Account and all amounts owed to you pursuant to this MMA. You agree that we may file one or more financing statements against you to perfect our security interest in the Reserve Account and will execute any other MMAs required by us or the financial institution maintaining the Reserve Account to further perfect our security interest in the Reserve Account, such as an account control MMA.

18. **Chargebacks.** Your customers may sometimes dispute transactions, which may lead to a payment transaction being reversed or returned, otherwise known as a "Chargeback." Provider does not decide what transactions constitute a Chargeback and Provider does not control the ultimate resolution of a Chargeback. Sometimes your customer may be able to successfully charge back a transaction even though you have provided your goods or services and are otherwise entitled to payment from your customer. You are responsible for all Chargebacks and will be liable to us for the total amount of any sale for which a customer disputes the validity of the sale, plus any applicable Chargeback fees imposed by us or a third party. You authorize us to offset from incoming transactions and to debit your Merchant Account, Bank Account, and/or the Reserve Account to recover any Chargeback plus any applicable Chargeback fees imposed by us or a third party. You agree to fully cooperate with us in complying with the Operating Regulations regarding Chargebacks, including any request for documentation. We may suspend the Services and stop releasing funds represented by



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payment transactions to you until you reimburse us for all unpaid Chargebacks. You must not re-enter or reprocess any payment transaction that has been charged back.

19. **Excessive Chargebacks.** Excessive Chargebacks are a breach of this MMA and cause for, at our option, suspension of Services, termination of this MMA, and assessment of an additional Excess Chargeback fee. "Excessive Chargebacks" means for any one of your terminal identification numbers or Merchant Account Numbers: (a) any number of Chargebacks in excess of one (1) in any monthly period; (b) any Chargebacks in any monthly period which exceed a Chargeback to Transaction Ratio of 1/100 (one percent) ; (c) ACH returns and/or retrieval requests in excess of 1% of the average monthly dollar amount of transactions or returns in excess of 3% of the average monthly dollar amount of transactions; (d) processing a transaction above the processing limits or amounts approved by us; or (e) processing any transaction that violates the AUP, MedFusion Policies or is otherwise prohibited by the MMA. You authorize us, upon the occurrence of Excessive Chargeback, to take additional actions we may deem necessary, including, but not limited to, termination or suspension of Services or creation or maintenance of a Reserve Account in accordance with this MMA. You acknowledge and agree that Provider may be required to report your name to law enforcement, or one or more card or payment associations for inclusion into VISA Terminated Merchant File, MasterCard MATCH, or any other prohibited merchant list in the event of fraud, Chargebacks, Excessive Chargebacks, or if we terminate your access to Services. You agree to such reporting and waive any claims, which you may raise against Provider as a result of such reporting. Provider, at its sole discretion may report incidents of fraud, counterfeit paper, unauthorized transactions, Chargebacks, Excessive Chargebacks or highly suspect activity to law enforcement and any other third party, including but not limited to the card or payment networks.
20. **Collection of Data, Risk Monitoring; Unusual or Suspicious Transactions.** As a payment facilitator, we collect, analyze and relay information generated in connection with payments by your customers and payors to you as Merchant. You authorize us to provide this information to Acquirer in order for the Acquirer to facilitate payments from your customers to you through the Networks, or the ACH, as applicable. Acquirer may disclose Transaction Data and information about you to any member of any Association and any such member of any Association may use such information properly process Transactions through the Networks in accordance with the Operating Regulations, perform analytics and create reports, and for any other lawful purposes, including for marketing purposes. Any member of any Association may use information collected by Provider in the course of providing the Services under this MMA (including account set up information and through monitoring of your Transactions) in connection with Card marketing and administrative purposes. In an effort to manage our risk, we will monitor your Transactions, your Transaction Data and processing activity for high-risk processing practices, compliance with our AUP or for fraudulent Transactions. If we believe there is suspicious or unusual activity, we may temporarily suspend your access to Services or move your Settlement Funds into a Reserve Account. Suspicious or unusual activity includes, but is not limited to: changes in your average transaction amount or processing pattern; monthly percentage of different transaction types; or Excessive Chargebacks. You agree that your



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activity will remain consistent with approved processing limits. Provider may require additional documentation if you exceed your approved processing limits and you agree to promptly provide such documentation upon request. You agree that Provider may, in its sole discretion, elect not to process Transactions over your approved aggregate processing volume or per transactions limits, and/or to close your Merchant Account for cause in the event of over-limit or Excessive Chargebacks. You further agree that Provider may, in its sole discretion, suspend the disbursement of Settlement Funds to you for any reasonable period of time required to investigate suspicious or unusual deposit or processing activity and that such suspension may subject you to additional suspension fees. If a Transaction is subject to an investigation, Provider will conduct a review and either clear or cancel the Transaction. If a Transaction is cleared, Provider will provide notice to you. Otherwise, Provider will cancel the Transaction and Settlement Funds may be returned. Provider will have no liability for any losses, either direct or indirect, which you may attribute to any suspension of fund disbursement. In the event of Transaction(s) suspension or Chargeback arising from suspicious or unusual transaction(s), you agree that you may be charged a security-processing fee in the amount of one hundred dollars (\$100) for each suspended transaction or Chargeback from unusual or suspicious activity, and, if the suspended transactions or Chargebacks from unusual or suspicious activity exceed \$3,000, an additional investigative fee of one-hundred dollars (\$100) may be assessed for each such transaction or Chargeback. If we suspend a batch transaction, you acknowledge that your customer's product or service must be delivered just as if you have been paid. Further, if a batch or a transaction is suspended, you acknowledge that fees associated with the transactions will be charged including applicable security processing and investigative fees.

21. **Acceptable Use Policy; Other Medfusion Policies.** The AUP and any updates thereto, apply to your use of the Services. The AUP, and any updates we make, will restrict you from using our Services in connection with certain types of prohibited products and services. If you are engaged in any of the prohibited activities described in our AUP, you are not eligible (or will become ineligible) to use our Services. From time to time, Provider may publish additional guidelines, policies and rules (collectively "Medfusion Policies") on the Website governing your use of the Services. To the extent Medfusion Policies apply to you, you agree to use the Services in a manner consistent with such policies and to provide any information we deem necessary to verify your compliance with said policies.
22. **Notices to Provider.** All notices, requests, demands and other communications to be delivered by Merchant to Provider hereunder, unless specified otherwise, regarding any legal, fee increase, billing or payment dispute shall be in writing and shall be delivered by nationally recognized overnight carrier, registered or certified mail, postage prepaid, to Provider at 5501 Dillard Drive, Cary, NC 27518, Attention: Finance Department. All other notices, requests, demands and other communications to be delivered to Provider hereunder, unless specified otherwise, shall be in writing and shall be delivered by email, facsimile, statement message, nationally recognized overnight carrier, or registered or certified mail, postage prepaid, to Provider at the Provider address provided on Merchant Application, Attention President/Owner, or to such other address or to such other person



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as Provider shall have last designated by notice to the Merchant. Notices to Provider by Merchant shall be deemed given upon receipt.

23. **Electronic Notices to Merchant** By signing the MMA, you agree and affirmatively consent to receive electronically all communications, documents, notices and disclosures (collectively, "Communications") that we provide in connection with your Merchant Account and your use of the Service. Communications include but are not limited to: (a) agreements and policies, such as the MMA, the Pricing Schedule, the AUP and our Privacy Statement, including updates thereto; (b) annual disclosures; (c) transaction receipts or confirmations; (d) communication in relation to delinquent accounts (which may also be by phone, and may be made by Provider or by anyone on its behalf, including a third party collection agent); (e) Merchant Account statements and history; and (f) federal and state tax statements. We will provide these Communications to you by emailing them to you at the primary email address listed in your Merchant Application, by emailing you a link or instructions how to access them on a website, or (if permitted by law) by posting them on the Website. Communications are considered received by you within 24 hours of the time they are emailed to you or posted to our Website. You further agree that your electronic signature has the same effect as your manual, physical signature.

In order to access and retain electronic Communications, you will need the following computer hardware and software: (1) a computer with an Internet connection; (2) a modern web browser that includes 128-bit encryption, such as the current version of Chrome (www.google.com/chrome), Internet Explorer (www.microsoft.com/ie), Mozilla Firefox (www.mozilla.com), or Apple Safari (www.apple.com/safari); (3) Adobe Acrobat Reader version 8.0 and above to open documents in PDF format; (4) a valid email address (your primary email address registered with Merchant); and (5) sufficient storage space to save past Communications or an installed printer to print them. By signing the MMA, you are confirming that you have access to the necessary equipment and are able to receive, open, and print or download a copy of any Communications for your records. It is important for you to retain copies of Communications because they may not be accessible in your Merchant Account or on the Website at a later date.

You may withdraw your consent to receive Communications electronically by notifying us in accordance with Section 22 above. If you withdraw your consent to receive Communications electronically, Provider may deny your registration for a Merchant Account, restrict or close your Merchant Account, or charge you additional fees for paper copies. After you consent to receive Communications electronically, you may withdraw your consent to receive IRS Form 1099-K electronically by contacting us as described above. You will continue to receive all your other Communications electronically, but we will send your Form 1099-Ks to you by U.S. mail.

It is your responsibility to keep your primary email address up to date. You understand and agree that if Provider sends you an electronic Communication but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are



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otherwise unable to receive electronic Communications, Provider will be deemed to have provided the Communication to you. Please note that if you use a spam filter that blocks or re-routes emails from senders not listed in your email address book, you must add Provider to your email address book so that you will be able to receive the Communications we send to you.

24. **Inactive Accounts; Unclaimed Property.** If there is no activity in your Merchant Account (including access or payment transactions) for the period of time set forth in the applicable unclaimed property laws or twenty-four (24) months, whichever is less, and you have a credit, we may notify you by sending an email to your registered email address. We may also notify you by U.S. mail. We will give you the option of keeping your Merchant Account open, withdrawing the funds, or requesting a check. If you do not respond to our notice within the time period specified in the notice, we may close your Merchant Account and the Bank will escheat your funds (less a processing fee) in accordance with Applicable Law. You agree to pay an Escheat Research Fee if your account is deemed abandoned. At our sole discretion, we may suspend your access to the Services in the event your Merchant Account has been inactive for six (6) months or longer.
25. **Reporting and Account Reconciliation.** You should make archival copies of your Merchant Account data regularly. Except as required by law, you are solely responsible for (a) compiling and retaining permanent records of all transactions and other data, and (b) reconciling all transaction information associated with your Merchant Account. If you believe that there is an error or unauthorized transaction activity associated with your Merchant Account, please contact Provider Immediately. We will attempt to correct processing errors that we discover by instructing the Member Bank to debit or credit your Merchant Account. Provider will only correct transactions that are processed incorrectly if and when you notify us of such an error in a timely fashion.
26. **Processing of American Express Transactions.** If you apply for and are approved by Provider to accept American Express Transactions, Merchant agrees to be responsible for and comply with the provisions set forth in Schedule 3 attached hereto and made a part hereof, and Acquirer's merchant requirements for American Express Transactions available at www.vantiv.com/amexmerchantrequirements ("Amex Merchant Requirements"). Provider or Acquirer may terminate your rights to accept American Express cards if you breach any of the provisions contained in Schedule 3. You may be converted from accepting American Express Transactions under this MMA to a direct American Express Card acceptance relationship with American Express if and when you have either (i) greater than \$1,000,000 in American Express Charge volume in a rolling twelve (12) month prior or (ii) greater than \$1,000,000 in American Express Charge volume in any three (3) consecutive months (hereinafter "High CV Merchant"). Upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by the Merchant for American Express Card acceptance. You may elect to opt out of accepting American Express Cards at any time without directly or indirectly affecting your rights to accept other payment products by notifying Provider who will, in turn, notify Acquirer. Acquirer and Provider have the right to immediately



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terminate your ability to accept American Express Cards for cause, fraudulent or other activity, or upon American Express' request. You may not accept, bill or collect from any American Express Cardholder for any purchase or payment on the American Express Card unless Chargeback has been exercised, you have fully paid for such Charge, and you are otherwise in compliance with all terms and conditions of the MMA. Upon termination of this MMA or termination of your rights to accept American Express Cards (whether by Provider, Acquirer, American Express or otherwise), you must remove any and all American Express Marks from your Establishments and wherever else the American Express Marks are displayed.

27. **Privacy.** Your privacy is important to us. Provider's Privacy Statement is available at: <http://medfusion.com/portal/privacy.html>. By accepting this MMA, you confirm that you have read, understood and accepted our Privacy Statement.
28. **Data Security (PCI Compliance); Payor/Cardholder Personal Information.** The card networks (such as VISA, MasterCard) and the payment networks (such as NACHA) have similar standards for protecting sensitive payment information and cardholder or payor data. For example, the Payment Cards Industry Data Security Standards ("PCI DSS") defines the requirements that all entities that store, process or transmit payment card data must comply with. The Cardholder Information Security Program ("CISP") defines the requirements for participants in the Visa Network to securely protect and transmit cardholder data. Merchant must ensure data security policies and processes are in place to protect cardholder and payor payment and personal data in compliance with PCI DSS CISP and NACHA security requirements. You must keep all systems and media containing account, customer, or transaction information (physical or electronic, including but not limited to account numbers and card imprints) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for receipts maintained in accordance with this MMA, and the Operating Regulations). Further, you must take all steps reasonably necessary to ensure cardholder or payor payment information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. You agree that in the event of a Data Incident, you agree to immediately notify us and provide us with detailed information relating to the Data Incident. You may not require cardholders to provide any PII as a condition of honoring a card unless such PII is required for delivery of the goods or services or you have reason to believe that the person presenting a card may not be the actual cardholder. You agree pay the PCI Non-Compliance Fee if you fail to protect data in compliance with PCI DSS and NACHA security requirements as described herein.
29. **Your Insolvency; Bankruptcy.** You must immediately notify us of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against you. You will include us 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, and failure to do so will be cause for immediate termination or any other action available to us under this MMA, the Operating Regulations or other Applicable Law. You acknowledge that



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this MMA constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy, without our expressed written consent.

30. **Taxes.** You are responsible for all taxes and other charges imposed by any governmental authority. You are solely responsible for determining any and all taxes assessed or required to be collected, and/or paid by you in connection to your use of our Services. Provider may be required by law to report certain transactions that meet certain Internal Revenue Service ("IRS") requirements.
31. **Unenforceable Provision.** If any provision of the MMA is invalid or unenforceable under Applicable Law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under Applicable Law, and the remaining provisions will continue in full force and effect.
32. **Your Representation and Warranties.** Without limiting any other warranties under this MMA, you represent and warrant that: (a) you have the right, power, and ability to enter into the MMA; (b) that all information you provide to us is correct and accurate; (c) all transactions submitted by you are bona fide transactions; (d) you will fulfill all your obligations to your customers and will resolve any customer disputes or complaints directly; (e) you will not use the Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of the Services; and (f) your use of Services is and will be in compliance with the MMA. You further hereby represent and warrant that each payment transaction you present to us for processing is genuine and is not the result of any fraudulent transaction and is not being deposited on behalf of any business other than yours. You warrant that each transaction is the result of a bona fide purchase of goods or services by your customer in the total amount stated on a transaction or customer receipt. You agree to perform or will perform all of your obligations to your customer in connection with the transaction evidenced by a transaction (or customer) receipt. You agree to comply with all applicable procedures related to accepting credit or debit cards, and the card payment transaction itself shall not involve any element of credit for any other purposes other than as set forth in the MMA and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any payor or Cardholder under any Applicable Laws or Operating Regulations. You agree that any reversal of a transaction initiated by you represents a bona fide refund or adjustment on a payment transaction.
33. **Disclaimer of Warranties.** YOUR USE OF THE SERVICES, SOFTWARE, AND CONTENT IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS DESCRIBED IN THE MMA, THE SERVICES ARE PROVIDED "AS IS" TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. PROVIDER, ITS AFFILIATES, AND ITS THIRD PARTY PROVIDERS, LICENSORS, DISTRIBUTORS OR SUPPLIERS (COLLECTIVELY,"SUPPLIERS") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE SERVICES ARE FIT FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, DATA LOSS, NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR THE ACCURACY,



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RELIABILITY, QUALITY OR CONTENT IN OR LINKED TO THE SERVICES. PROVIDER AND ITS AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT THE SERVICES ARE SECURE, FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION. IF THE EXCLUSIONS FOR IMPLIED WARRANTIES DO NOT APPLY TO YOU, ANY IMPLIED WARRANTIES ARE LIMITED TO 60 DAYS FROM THE DATE OF PURCHASE OR DELIVERY OF THE SERVICES, WHICHEVER IS SOONER. PROVIDER, ITS AFFILIATES AND SUPPLIERS DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS OR LAWS OR REGULATIONS.

34. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF PROVIDER, ITS AFFILIATES AND SUPPLIERS FOR ALL CLAIMS RELATING TO THE MMA SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES DURING THE THREE (3) MONTHS PRIOR TO SUCH CLAIM. SUBJECT TO APPLICABLE LAW, PROVIDER, ITS AFFILIATES AND SUPPLIERS ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET PROVIDER SYSTEMS REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF PROVIDER AND ITS AFFILIATES AND SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MMA SETS FORTH THE ENTIRE LIABILITY OF PROVIDER, ITS AFFILIATES AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES AND ITS USE.
35. **Use of Services with Your Mobile Device.** Use of these Services may be available through a compatible mobile device and Internet access. You agree that you are solely responsible for these requirements, including any applicable changes, updates and fees as well as the terms of your MMA with your mobile device and telecommunications provider. PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED AS TO: THE AVAILABILITY OF TELECOMMUNICATION SERVICES FROM YOUR MOBILE OR INTERNET PROVIDER AND ACCESS TO THE SERVICES AT ANY TIME OR FROM ANY LOCATION; ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS OR SETTINGS CONNECTED WITH THE SERVICES.
36. **Indemnification.** You agree to indemnify and hold Provider, its Affiliates and Suppliers harmless from any and all claims, liability and expenses, including reasonable attorneys' fees and costs, arising out of your use of the Services or breach of the MMA, the business of Merchant or its customers, any sales transaction acquired by Provider, any noncompliance with the Operating Regulations by Merchant or its agents (including any Merchant Supplier), any fraud by any Merchant employee or



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agent, any Data Incident, any infiltration, hack, breach, or violation of the processing system of Merchant, its Merchant Supplier, or any other third party processor or system (collectively referred to as "Claims"). Provider reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any Claims. You agree to reasonably cooperate as requested by Provider in the defense of any Claims.

37. **Changes to the MMA.** Except as provided in this MMA, this MAA shall be modified or amended only by an instrument in writing signed by Provider and Merchant. Notwithstanding the foregoing, Provider may unilaterally modify or amend this MMA at any time upon notice to Merchant in accordance with Provider's standard operating procedures if such modification is required by Acquirer, or to ensure that the Services comply with the Operating Regulations. No delay or forbearance by Provider in exercising any of Provider's rights and remedies under this Agreement shall operate as a waiver of such rights and remedies, or constitute any "course of dealing" which alters the express written terms of this MMA.
38. **Termination, Effect of Termination.** Provider may terminate the MMA or suspend Services at any time without notice with or without cause. You agree that incidental to such termination or suspension of the services by us, we may instruct the Member Bank to suspend access to your Merchant Account (including the funds in your Bank Account) if you (a) have violated the terms of the MMA, (b) pose an unacceptable credit or fraud risk to us, or (c) provide any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct. Upon termination for any reason, you will: (a) immediately cease requesting electronic authorizations and will cease transmitting transaction receipts to us; (b) immediately stop using the Services; (c) cease use of all card or other payment network signage; and (d) any outstanding payments will become due. Any termination of the MMA shall not affect Provider's rights under this MMA, including but not limited to any amounts due to Provider. All sections of the MMA that by their nature should survive termination or expiration will remain in effect after termination, including without limitation, accrued rights to payments, indemnification, confidentiality, warranty disclaimer and limitations of liability, even if the MMA is terminated. All of Merchant's obligations under the MMA, which arise or are incurred prior to the effective date of termination, shall survive the expiration or termination of the MMA. Provider will not be liable to you for compensation, reimbursement, or damages in connection with any termination or suspension of the Services. Provider reserves the right (but has no obligation) to delete all of your information and Merchant Account data stored on our servers. Provider shall not be liable to you or any third party for termination of access to the Services, deletion of your information or Merchant Account data, or export of your information or Merchant Account data. Finally, you will be required to pay the Termination Fee as set forth in the Pricing Schedule.
39. **Merchant's Right to Terminate.** You may terminate the MMA by providing written notice to us at least 90 days prior to the date when the MMA would otherwise expire. When you close your Merchant Account, any pending transactions will be cancelled. Any funds that the Merchant Bank is holding in custody for you at the time of closure, less any amounts owed to us under the MMA, will be paid out



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to you, assuming all payout-related authentication requirements have been fulfilled. If an investigation is pending at the time you close your Merchant Account, the Member Bank may hold your funds as described herein. If you are later determined to be entitled to some or all of the funds in dispute, the Member Bank will release those funds to you. Upon your termination of the MMA by you, you agree to pay to us the Termination Fee as set forth in the Pricing Schedule.

40. **Termination for Merchant Misconduct.** The Administrative Account Closure Fee described in the Pricing Schedule will be charged to you if we terminate the MMA because: (a) we have reason to believe that fraudulent transactions or other activity prohibited by the MMA is occurring; (b) such termination action is necessary to prevent loss to us, (c) you appear on any card or payment network or other fraud, prohibited, or security reporting list; or (d) any Event of Default occurs which continues past any applicable cure period.
41. **Export Restrictions.** You acknowledge that the Services, including the mobile application, and the underlying software may include U.S. technical data subject to restrictions under export control laws and regulations administered by the United States government. You agree that you will comply with these laws and regulations, and will not export or re-export any part of the Services, in violation of these laws and regulations, directly or indirectly.
42. **Force Majeure.** Any delay in or failure of performance by Provider under the MMA will not be considered a breach of the MMA and will be excused to the extent caused by any Force Majeure Event.
43. **No Assignment.** The MMA is binding on Merchant and Provider and Merchant and Provider's heirs, successors and assigns. You agree that you will not assign this MMA to any third party, nor any payments due, and all indebtedness arising from charges will be for bona fide sales of goods or services (or both) and free of any liens, claims, and encumbrances other than ordinary sales taxes; provided, however, you may sell and assign future transaction receivables to Provider, Provider's Affiliates, and any other cash advance funding source that works with Provider or Provider's Affiliates. Provider shall have the right to assign this MMA or any right to payment thereunder to any third party at any time.
44. **Disputes.** ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THE SERVICES OR THE MMA WILL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT, except that either party may: 1) assert claims in small claims court if the parties claims qualify or 2) assert claims limited strictly to collection of past due amounts and any interest or cost of collection (including attorney's fees) permitted by law or the MMA. The Federal Arbitration Act governs the interpretation and enforcement of this provision; the arbitrator shall apply North Carolina law to all other matters. Notwithstanding anything to the contrary, any party to the arbitration may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction. WE EACH AGREE THAT ANY AND ALL DISPUTES WHETHER PURSUED IN COURT OR ARBITRATION MUST BE



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BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. BY ENTERING INTO THE MMA, YOU AGREE THAT YOU AND PROVIDER ARE EACH WAIVING THE RIGHT TO FILE A LAWSUIT AND THE RIGHT TO A TRIAL BY JURY. IN ADDITION, YOU AGREE TO WAIVE THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR LITIGATE ON A CLASS-WIDE BASIS. YOU AGREE THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THESE RIGHTS. To begin an arbitration proceeding, send a letter requesting arbitration and describing your claim to Provider, in care of our registered agent Corporation Service Company, 2711 Centerville Road, Wilmington, DE 19808. Arbitration will be conducted by the American Arbitration Association (AAA) before a single AAA arbitrator under the AAA's rules, which are available at www.adr.org or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees and costs will be governed by the AAA's rules, but if you are unable to pay any of them, Provider will pay them for you. In addition, Provider will reimburse all such fees and costs for claims totaling less than \$75,000 unless the arbitrator determines the claims are frivolous. Likewise, Medfusion will not seek its attorneys' fees or costs in arbitration unless the arbitrator determines your claims or defenses are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location. The decision of the arbitrator shall be final and not appealable, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. This Section shall survive expiration, termination or recession of the MMA. MEDFUSION AND MERCHANT AGREE TO ARBITRATE ALL DISPUTES BETWEEN THE PARTIES AS PROVIDED ABOVE, EXCEPT, MEDFUSION AND MERCHANT MAY CHOOSE TO PURSUE A CLAIM IN COURT AND NOT BY ARBITRATION IF MERCHANT FAILS TO TIMELY PAY AMOUNTS DUE. Provider may assign Merchant's Merchant Account for collection, and the collection agency may pursue claims limited strictly to the collection of the past due amounts and any interest or cost of collection permitted by law or the MMA in any court of competent jurisdiction. For the purposes of bringing a claim in small claims court, the proceedings shall be held in the county and state in which the Merchant's primary offices are located.

45. **Choice of Law; Jurisdiction; Venue.** The MMA shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina without regard to conflicts of law provisions. You agree that all performances and transactions under the MMA will be deemed to have occurred in North Carolina and that your entry into and performance of the MMA will be deemed to be "transaction of business" within the State of North Carolina. The parties hereby consent and submit to service of process, personal jurisdiction, and venue in the state and federal courts in Raleigh, North Carolina or Wake County, North Carolina, and select such courts as the exclusive forum with respect to any action or proceeding arising out of or in any way relating to the MMA, and/or pertaining in any way to the relationship between Provider and Merchant. PROVIDER AND MERCHANT HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THE MMA OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED HEREBY. Any claim related to the MMA or the Service must be filed by you within one (1) year of occurrence.



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46. **General.** The MMA is a complete statement of the MMA between you and Provider and sets forth the entire agreement between the parties and the entire liability of Provider and its Suppliers and your exclusive remedy with respect to the Services. Each and every member of the Association is an intended third party beneficiary of the MMA permitting any such member only to enforce the MMA against the Merchant in connection with any Transactions accepted, rejected or otherwise submitted to or processed by such member of the Association, but no such member shall have any obligations to this MMA. Headings are included for convenience only, and shall not be considered in interpreting the MMA. As used in the MMA, the word "including" means "including but not limited to." The MMA does not limit any rights that Provider may have under trade secret, copyright, patent or other laws. **TIME IS OF THE ESSENCE RELATIVE TO MERCHANT'S PERFORMANCE UNDER THIS MMA.**
47. **Additional Rules.** Additional rules relating to acceptance of credit card payments are attached as Schedule 2 to this MMA and incorporated herein by reference. You agree to be bound by and abide by the rules attached hereto as Schedule 2.

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Schedule 1 Glossary of Terms (“Glossary”)

This **Glossary of Terms** (“Glossary”) is attached to and made part of the MMA. For the purposes of the MMA, capitalized terms and phrases will have the meaning given to them below or elsewhere in the MMA, as applicable; and if any terms or phrases are not defined in the MMA, such terms will have the meaning given to them in the Operating Regulations.

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

Advance Payment Charges means a Charge for which full payment is made in advance of Merchant providing the goods and/or services to the Cardholder.

Affiliate means any legally recognized business entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any legally recognized business entity, whether through ownership of voting securities, by contract, or otherwise. For avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits or earnings of any legally recognized business entity shall be deemed to constitute “control” of such legally recognized business entity.

American Express means American Express Travel Related Services Company, Inc., a New York corporation.

American Express Brand means the American Express name, trademarks, service marks, logos, and other proprietary designs and designations and the imagery owned by American Express or an American Express Affiliate and the goodwill associated with all of the foregoing and with all the goods and services now or in the future provided, marketed, offered or promoted by American Express or an American Express Affiliate.

Approval shall mean a message granting an Authorization in response to a request for Authorization from Merchant, consisting of an Approval or other indicator.

Applicable Law shall mean (i) any law, statute, regulation, ordinance or subordinate legislation in force from time to time to which Provider, Acquirer or Merchant or an Affiliate of either is subject, (ii) the common law as applicable to them from time to time, (iii) any court order, judgment, decree that is binding on them, and (iv) any directive, policy, rule, or order that is binding on them and that is made or given by a regulator or other government or government agency of any territory, or other national, federal, commonwealth, state, provincial or local jurisdiction.

Association means VISA, MasterCard, Discover, American Express or any member of any other Network, as the same are defined herein.

Authorization means the process by which Merchant obtains Approval for a Transaction in accordance with this MMA and the Operating Regulations.

Bank Rules means the Bank Card Merchant Rules and Regulations, as amended from time to time, which are incorporated into the MMA by reference.

Card shall mean American Express, MasterCard, VISA, Discover and other Network cards, account numbers assigned to a Cardholder or other forms of payment or account access devices accepted by Provider, for which pricing is set forth in the MMA.

MEDFUSION MERCHANT AGREEMENT

Schedule 1 Glossary of Terms (“Glossary”)

Card Number shall mean the unique identifying number that the Issuer assigns to a Card when it is issued.

Cardholder shall mean any Person authorized to use a Card or the accounts established in connection with a Card.

Cardholder Information shall mean any information about Cardholders and their Transactions, including, but not limited to, Transaction Data and Cardholder name, address, Card Numbers and CID Numbers.

Charge shall mean a payment or purchase made on a Card.

Charge Record a reproducible (both paper and electronic) record of a Charge that complies with the Operating Regulations and that contains the Card Number, Transaction date, dollar amount, Approval, Cardholder signature (if applicable), and other information.

Charge Volume.

Chargeback to Transaction Ratio shall mean a fraction, the numerator of which is the dollar amount of Chargebacks associated with a particular Merchant Account for any monthly period, and the denominator of which is the dollar amount of credit card transactions processed by Provider for the same Merchant Account during the same monthly period.

Credit shall mean the amount of the Charge that Merchant refunds to Cardholders for purchases or payments made on a Card.

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

Delayed Delivery Charge means a single purchase for which the Merchant must create and submit two separate Charge Records. The first Charge record is for the deposit or down payment and the second Charge Record is for the balance of the purchase.

Discover shall mean Discover Financial Services, LLC.

Establishments shall mean any or all of a Merchant’s and its Affiliates’ locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods a Merchant adopts in the future.

Event of Default means Merchant or Guarantor’s default under, breach, or failure to perform any material covenant, representation, warranty, term, condition or provision contained in the MMA.

Force Majeure Event shall mean errors in data provided by Merchant or others, labor disputes, fire, weather or other casualty, power outages, and funding delays, however caused, governmental orders or regulations, or any other cause, whether similar or dissimilar to the foregoing, beyond Provider’s or Acquirer’s reasonable control.

MEDFUSION MERCHANT AGREEMENT

Schedule 1 Glossary of Terms (“Glossary”)

Guarantor shall mean any individual who Provider requires to personally guarantee the obligations of Merchant before Provider agrees to provide or continue to provide the Services to Merchant. The term Guarantor includes such person’s heirs, successors and assigns.

Initial Term shall mean one year from the date Merchant and provider become bound by the MMA.

Issuer shall mean any person licensed by any member of an Association or their Affiliates to issue Cards and engage in the Card issuing business.

MasterCard shall mean MasterCard International, Incorporated

Member Bank shall mean a bank that member of the Networks, as applicable, that provides transaction processing and sponsorship services in connection with the MMA.

Merchant shall mean any person (including a government agency) that contracts with Provider, as permitted in the Operating Regulations, to obtain the Services. The term Merchant includes such Merchant’s heirs, successors and assigns.

Merchant Account Number shall mean any unique identification number issued by Provider and used to identify any particular Merchant Account.

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

MMA means the Medfusion Merchant Agreement, and each website, exhibit, schedule, and addendum attached thereto or incorporated therein referencing the MMA, as well as all documents and other materials incorporated by reference into the MMA, including, without limitation, the Merchant Application, the Glossary, the Pricing Schedule, the Sub-merchant Agreement, the Glossary, the AUP, and the Supplemental Terms (if any).

Network shall mean, collectively, the VISA, MasterCard, or Discover, American Express or other payment card networks associations or companies in which Provider participates and which is used to provide or facilitate the Services.

Operating Regulations means the Bank Rules, the by-laws, operating regulations and/or all other rules, guidelines, policies and procedures of the Networks, and all other applicable rules, regulations, policies and requirements of TPP, NACHA, Member Bank, Provider, providers, banks, institutions, organizations, associations, or networks which govern or affect any services provided under this MMA, and all state and federal laws, rules and regulations which govern or otherwise affect the activities of Provider, including, but not limited to, those of the NACHA and the Federal Trade Commission (“FTC”), as any or all of the foregoing may be amended and in effect from time to time. The Operating Regulations are fully incorporated into the MMA by reference.

Person shall mean both natural persons and any corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization, as required by context.

PII means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify a particular individual.

MEDFUSION MERCHANT AGREEMENT

Schedule 1 Glossary of Terms (“Glossary”)

PCI shall mean the Payment Card Industry Data Security Standard.

Provider means Medfusion, Inc. Provider is a Payment Service Provider (“PSP”) and/or a Payment Facilitator as defined in the Operating Regulations. Medfusion, Inc. provides payment services to Merchants for their United States locations, for the sale of goods and services by Merchants to cardholders through the use of Cards. The term “Provider” includes Provider’s successors and assigns.

Reserve Account means the account that Provider may require Merchant to establish pursuant to Section 17.

Settlement Funds shall mean any amounts owed to Merchant under the MMA after Provider has arranged for settlement of a Transaction through ACH, the Networks, or Acquirer as applicable.

Services shall mean any and all services described in this MMA, and provided by Provider to Merchant in support of Provider’s role as a Payment Service Provider (“PSP”) and/or Payment Facilitator, as defined in the Operating Regulations, together with any Add-on Services which Merchant uses, including settlement of Transactions on behalf of Merchant.

Submission shall mean the collection of Transaction Data that Merchant sends to Provider, Acquirer and the Networks.

Transaction shall mean a Charge or Credit completed by means of a Card.

Transaction Data shall mean all information required by any Network or any of the Operating Regulations evidencing one or more Transactions, including information obtained at the point of sale, information obtained or generated during Authorization and Submission, and any Chargeback.

VISA shall mean VISA U.S.A., Inc.

In using and applying the various terms, provisions and conditions in the MMA , the following will apply: (1) words in the neuter gender mean and include correlative words of the feminine and masculine genders and words importing the singular numbered meaning include the plural number or a collective reference, and vice versa; (2) as the context requires, “and” may have a joint meaning or a several meaning and “or” may have an inclusive meaning or an exclusive meaning; (3) the word “all” includes “any” and the word “any” includes “all”; (4) the words “include” or “including” will mean “without limitation”; (5) words importing persons include individuals and organizations; (6) the phrase “costs and expenses”, or variations thereof, will include fees of receivers or other similar officials, reasonable attorneys’ fees and fees of legal assistants, reasonable fees of accountants, appraisers and other professionals or experts, and the costs and expenses incurred by any of the foregoing, whether in the investigation, prosecution or defense of any matter or otherwise, and inclusive of fees, costs and expenses of the foregoing incurred in connection with and during the pendency of the reorganization, receivership, insolvency or bankruptcy of Merchant or any person obligated for payment of any of Merchant’s obligations to Provider under the MMA.

MEDFUSION MERCHANT AGREEMENT

Schedule 2 Credit Card Acceptance Rules

Additional Credit Card Acceptance Requirements

Limited Acceptance. If appropriately indicated by you in the Merchant Application, you may be a limited-acceptance Merchant, which means that you have elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. You are solely responsible for the implementation of your decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of interaction (“POI”).

Responsibility for Transactions. You are responsible for ensuring that the Cardholder understands that you are responsible for the transaction, including goods or services that are the subject of the transaction, and for related customer service, dispute resolution, and performance of the terms and conditions of the transaction. You must prominently and unequivocally inform the Cardholder of your identity at all points of interaction so that the Cardholder readily can distinguish you from any other party (such as one of your suppliers).

Depositing Transactions. You shall only complete sales transactions produced as the direct result of bona fide sales made by you to a bona fide Cardholder. You must not deposit a transaction until one of the following occurs: (i) the transaction is completed; (ii) the goods or services are shipped or provided, except if the Cardholder has agreed to a delayed delivery transaction, an advance deposit transaction, or a prepayment for custom merchandise; (iii) the purchased service is performed; or (iv) Cardholder consent is obtained for a recurring transaction. For a delayed delivery transaction, you must not deposit the transaction for the balance before delivery of the goods or services.

Cardholder Identification. You may request but must not require a Cardholder to provide additional identification information as a condition of Card acceptance, unless such information is required to complete the transaction, such as for shipping purposes, or the Operating Regulations specifically permit or require such information to be collected. You may require the Cardholder’s ZIP or postal code to complete a MasterCard Cardholder-Activated Terminal transaction, or the Cardholders address and ZIP or postal code to complete a mail order, phone order, or e-commerce transaction.

Cardholder and Transaction Information. You shall not sell, purchase, provide, exchange or in any manner disclose account or transaction data, or personal information of or about a Cardholder to any third party other than to your agents for the purpose of assisting you in your business, or to Provider, Member Bank, the applicable Association or pursuant to a government request. This prohibition applies to Card imprints, TIDs carbon copies, mailing lists, tapes, database files, and all other media created or obtained as a result of a transaction.

Use of Association Marks. You are only permitted to use and display the trademarks of an Association (the “Marks”) in accordance with this MMA and the Operating Regulations. Each Association is the sole and exclusive owner of its Marks and Merchant shall not contest the ownership of the Marks for any reason. Any use of a Mark by you in advertising, acceptance decals, or signs, must be in accordance with the Operating Regulations, including the applicable Association’s reproduction, usage, and artwork requirements, as may be in effect from time to time. Your use or display of any Mark will terminate effective with the termination of this MMA, or upon notification by an Association to discontinue such use or display of its Marks. An Association may at any time, immediately and without advance notice, prohibit you from using any of its Marks for any reason. You may be required to supply Provider and/or Member Bank with samples of any materials or images bearing the Marks. You must indicate your acceptance of Visa, MasterCard, and any other applicable Card issuer, debit network and EBT network by making the applicable Marks clearly visible at the POI (e.g., the entrance, nearby window or door of your location, or on the first screen of an electronic POI). The Marks must not be displayed at any terminal that dispenses scrip. If applicable, Provider may require changes to your website or otherwise that it deems necessary or appropriate to ensure that you

remain in compliance with the Operating Regulations governing the use of the Marks. Each Association acceptance Mark must be displayed as a free-standing mark, meaning that they must not be displayed so as to suggest that any one Association Mark is either a secondary means of payment or exclusively linked to another brand.

Surcharges. Unless specifically permitted to by the applicable Operating Regulations, you will not directly or indirectly require any Cardholder to pay a surcharge or any part of any Merchant discount or any contemporaneous finance charge in connection with a transaction. You may provide a discount to your customers for cash payments. You are permitted to charge a fee (such as a bona fide commission, postage, expedited service or convenience fees, and the like) if the fee is imposed on all like transactions regardless of the form of payment used, or as the Operating Regulations expressly permit.

Return Policy. You will properly disclose to the Cardholder, at the time of the transaction, any limitation you have on accepting returned merchandise. You must ensure that your return and refund policies are clearly indicated to a Cardholder on the transaction receipt or on your website in accordance with the Operating Regulations.

Disputes with Cardholders. You must ensure that the Cardholder understands that you are responsible for the transaction, for any related customer service, dispute resolution, and performance of the terms and conditions of the transaction. All disputes between you and any Cardholder relating to any transaction will be settled between you and the Cardholder. You shall not require a Cardholder to waive his or her rights to dispute the transaction as a condition of the sale.

Employee Actions. You are responsible for your employees' actions while in your employ.

Agents. You agree to cause third parties acting as your agent ("Agents") to comply with the Operating Regulations. You are also responsible for demonstrating such compliance. The term "Agent" includes, but is not limited to, your software providers and/or equipment providers.

Additional Prohibited Transactions. You may not do any of the following: (i) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, expiration, signature or any other account-related data in plain view when mailed; (ii) for Visa transactions, request the Card Verification Value 2 data on any paper order form; (iii) enter into interchange a transaction that is illegal, a transaction that you should have known was illegal, or a transaction that is related to any illegal or prohibited activity, including but not limited to money laundering or financing of terrorist activities; (iv) submit for payment into interchange any transaction that may in the sole discretion of an Association, damage the goodwill of such Association or reflect negatively on the Association's brands or Marks; (v) add any tax to transactions, unless Applicable Law expressly requires that you impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (vi) request or use an account number for any purpose other than as payment for your goods or services; (vii) disburse funds in the form of travelers checks if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from you; (viii) disburse funds in the form of cash unless you are dispensing funds in the form of travelers checks, TravelMoney Cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney Cards, or foreign currency, plus any commission or fee charged by you), or you are participating in a cash back service; (ix) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to you, irrespective of Cardholder approval; or (x) accept a Visa consumer credit Card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store Cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

Certain Discounts. Unless otherwise provide for in the Operating Regulations, you may not offer a discount or other benefit to a Cardholder if the Cardholder uses a particular Association's Card at the POI, unless the discount or other benefit is available for all other Cards of the same product type, or is accessed (i) after the transaction has been completed (e.g., a credit on the billing statement or a rebate); or (ii) at the time of or after the transaction and is effected by a separate instrument and not by the Card (e.g., a coupon or a voucher). You must not promote at the POI a discount or other benefit for use of a particular Association's Card.

Minimum and Maximum Transaction Amounts. You may set a minimum transaction amount to accept a Card that provides access to a credit account, under the following conditions: (i) the minimum transaction amount does not differentiate between card issuers, (ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand, and (iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Unless otherwise set forth below or otherwise allowed by Applicable Law or the Operating Regulations, you may not establish a maximum sale amount as a condition for honoring Cards. You may establish a maximum sale amount as a condition for honoring Cards if you are a department, agency or instrumentality of the U.S. Government, you are a corporation owned or controlled by the U.S. Government, or your primary business is reflected by one of the following MCCs: 8220 (Colleges, Universities, Professional Schools and Junior Colleges), 8244 (Schools, Business and Secretarial), or 8249 (Schools, Trade and Vocational), provided that the maximum transaction amount does not differentiate between any Network and/or issuers. Any minimum or maximum transaction amount imposed in accordance with the requirements of this section must not be discriminatory between Card issuers or between Associations.

Prior Authorization. You are required to obtain an authorization prior to completing a transaction if such authorization is required by the Operating Regulations. For MasterCard authorization requirements, refer to the MasterCard Transaction Processing Rules.

Websites. If you accept EC transactions, your website must include your name (displayed as prominently as any other information depicted on the website, other than images of the products or services being offered for sale) and identify your name as the name that will appear on the Cardholder statement. If you accept Visa Cards, your website must display the Visa Brand Mark in accordance with the Visa Product Brand Standards and the Visa Brand Name must be used to indicate acceptance only when a visual representation of the Visa Brand Mark is not possible on the website. If you display the Verified by Visa Mark on your website, you must comply with the Visa Product Brand Standards. You must display at the point of payment choice either the (i) Visa Brand Mark in full color, if you accept all Visa Cards for payment, or (ii) Visa-approved signage representing the limited acceptance category you have selected.

Additional MasterCard Specific Requirements. You must not disparage MasterCard or any of MasterCard's products, programs, services, networks, or systems. Merchants that choose to accept debit MasterCard Cards must honor all valid debit MasterCard Cards without discrimination when properly presented for payment. You must maintain a policy that does not discriminate among customers seeking to make purchases with a debit MasterCard Card. Merchants that choose to accept credit MasterCard Cards must honor all credit MasterCard Cards without discrimination when properly presented for payment. You must maintain a policy that does not discriminate among customers seeking to make purchases with another Card.

You may request or encourage a customer to use a payment Card with an Association other than MasterCard or other form of payment or a Card of a different product type (e.g., traditional cards, premium cards, rewards cards) than the Card the consumer initially presents. Except where prohibited by law, you may do so by methods that include, but are not limited to:

- i. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an Association other than MasterCard or other particular form of payment;
- ii. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer, who initially presents a MasterCard, uses instead another payment card or another form of payment;
- iii. expressing a preference for the use of a particular payment card or form of payment;
- iv. promoting the use of a particular general purpose payment card with an Association other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that you will abide by the MasterCard trademark standards relating to the display of the MasterCard Marks); and
- v. communicating to customers the reasonably estimated or actual costs incurred by you when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

Association acceptance Marks, symbols, logos, or combinations thereof, may appear in the same material or image, with MasterCard's acceptance Marks, provided visual parity is maintained and no other Association acceptance Mark, symbol, or logo displayed is more prominent or likely to cause confusion concerning the acceptance of Cards.

Additional Association Rights & Requirements. An Association has the right to enforce any applicable provision of the Operating Regulations and to prohibit you or Provider from engaging in any conduct the Association deems could injure or could create a risk of injury to the Association, including injury to reputation, or that could adversely affect the integrity of the interchange system, an Association's confidential information, or both. You agree that you will not take any action that could interfere with or prevent an Association from exercising its rights.

An Association has the right to investigate, review, audit, or inspect a Merchant, including by inspecting the premises and auditing the books, records, and procedures a Merchant to ensure that you are complying with the applicable Operating Regulations and applicable brand and security standards and procedures. You agree to cooperate with any such investigation, review, audit or inspection.

In the event of any inconsistency between any provision of the MMA and the Operating Regulations, the Operating Regulations will govern.

If you are undergoing a forensic investigation at the time this MMA is executed, you must fully cooperate with the investigation until it is completed.

This MMA may be terminated immediately, without notice, if: (i) in Acquirer's opinion, provision of a service to you or Provider may be a violation of the Operating Regulations or any laws, (ii) Acquirer believes that you have violated or are likely to violate the Operating Regulations or the laws, (iii) Acquirer determines you pose a financial or regulatory risk to Acquirer or an Association, (iv) Acquirer's agreement with Provider terminates, (v) any Association deregisters Provider, (vi) Acquirer ceases to be a member of the Associations or fails to have the required licenses, (vii) Acquirer is required to do so by any of the Associations, (viii) an Association believes that you are causing harm or loss of goodwill to such Association.

MEDFUSION MERCHANT AGREEMENT

Schedule 3—American Express Rules

American Express Program

General Merchant Requirements

1. **Card Acceptance.** Merchant must accept the American Express Card as payment for goods and services (other than those goods and services prohibited under Section 3.3, “Prohibited Uses of the Card” of the Amex Merchant Requirements) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of any and all Establishments under the MMA.

2. **Treatment of the American Express Brand.**

Except as expressly permitted by Applicable Law, Merchant must not:

- a. indicate or imply that it prefers, directly or indirectly, any charge, credit, debit, stored value, prepaid cards, smart cards, account access devices, or other payment cards, services or products over the American Express Card,
- b. try to dissuade and Cardholder from using the American Express Card,
- c. criticize or mischaracterize the American Express Card or any of American Express’ services or programs,
- d. try to persuade or prompt American Express Cardholders to use any method of payment (e.g., payment by check) other than payment by American Express Card,
- e. impose any restrictions, conditions, disadvantages or fees when the American Express Card is accepted that are not imposed equally on any payment by any charge, credit, debit, stored value, prepaid cards, smart cards, account access devices, or other payment cards, services or products, except for electronic funds transfer, or cash and check,
- f. suggest or require American Express Cardholders to waive their right to dispute any Transaction,
- g. engage in activities that harm the American Express business or the American Express Brand (or both),
- h. promote any payment method by any charge, credit, debit, stored value, prepaid cards, smart cards, account access devices, or other payment cards, services or products (except Merchant’s own private label card that Merchant issues for use solely at Merchant’s Establishments) more actively than Merchant promotes the American Express Card, or
- i. convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

Merchant may offer discounts or in-kind incentives from Merchant’s regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by Applicable Law): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant’s customers, (ii) the discount or in-kind incentive is offered to all of Merchant’s prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the

issuer or, except as expressly permitted by applicable state statute, or the Networks. The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this Section B., "Treatment of the American Express Brand".

3. **Treatment of the American Express Marks**

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the American Express Card and display the American Express Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any other charge, credit, debit, stored value, prepaid cards, smart cards, account access devices, or other payment cards, services or products. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the American Express Marks, nor (without prior written consent from Provider) indicate that American Express endorses Merchant's goods or services. Merchant shall only use the American Express Marks as permitted by the MMA and shall cease using the American Express Marks upon termination of the MMA.

4. **Treatment of American Express Card Member Information**

Any and all Cardholder Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Cardholder Information, nor use nor store it, other than to facilitate Transactions at Merchant's Establishments in accordance with the MMA.

5. **ARBITRATION AGREEMENT (as to Claims involving American Express).**

In the event that Merchant or Provider is not able to resolve a Claim against American Express, or a claim against Provider, Acquirer or any other entity that American Express has a right to join, this section explains how Claims may be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator.

If arbitration is elected by any party, neither Merchant nor Provider nor Acquirer nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, Provider, Acquirer, and American Express will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator's decisions are final and binding, and the arbitrator's final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights Merchant, Provider, Acquirer or American Express would have in court may also not be available in arbitration.

i. Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express selects the organization and Merchant selects the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in the federal judicial district where Merchant's headquarters is located or New York, NY, at Merchant's election.

ii. Limitations on Arbitration. If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between Merchant, Provider, Acquirer, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Provider, Acquirer or American Express and cannot be used in any other case except to enforce the award as between Merchant, Provider, Acquirer and American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that Merchant, Provider, Acquirer and American Express do not waive the right to appeal that decision.

iii. Previously Filed Claims/No Waiver. Merchant, Provider, Acquirer, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Provider, Acquirer, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement that was filed against American Express prior to the Effective Date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

iv. Arbitrator's Authority. The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this arbitration agreement.

v. Split Proceedings for Equitable Relief. Merchant, Provider, Acquirer, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an award of reasonable attorneys' fees and costs to be paid by the party against whom enforcement is ordered.

vi. Small Claims. American Express will not elect arbitration for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If Merchant's Claim is for \$10,000 or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal

provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where Merchant's headquarters or Merchant's assets are located.

viii. Confidentiality. The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a claim in court. American Express will be responsible for any additional arbitration fees. At Merchant's written request, American Express will consider in good faith making a temporary advance of Program Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrator's award will include: (1) any money to which Merchant is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.

xi. Definitions. For purposes of this Section 5 of this Schedule 3 to the MMA, only, (i) American Express includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) Merchant includes Merchant's Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against Provider, Acquirer, or any other entity that American Express has the right to join, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.

6. **Establishment Closing**

If a Merchant closes any of its Establishments, Merchant must follow these guidelines:

- Notify Provider immediately.
- Policies must be conveyed to the American Express Cardholder prior to completion of the Charge and printed on the copy of a receipt or Charge Record the American Express Cardholder signs. See Section 4.8, "Return and Cancellation Policies" of the American Express Merchant Requirements for additional information.
- If not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Charge Record and on websites and catalogs).
- Return and cancellation policies must be clearly disclosed at the time of sale.

For Advance Payment Charges or Delayed Delivery Charges, delivery of the goods or services which have already charged to the American Express Cardholder is required or Credit must be issued for any portion of the Charge for the goods or services not delivered.

**Exhibit A to
MEDFUSION MERCHANT AGREEMENT**

MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS ("Sub-merchant Agreement") is made among VANTIV, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank (collectively "Acquirer") and _____ ("Sub-merchant") in connection with the agreement between Sub-merchant and MedFusion, Inc. ("Provider"). Acquirer will provide Sub-merchant with certain payment processing services ("Services") in accordance with the terms of this Sub-merchant Agreement. In consideration of Sub-merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Associations"), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operating Regulations, or an Association or the Operating Regulations otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Sub-merchant Agreement, Sub-merchant has fulfilled such requirement. However, Acquirer understands that Sub-merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sub-merchant for all or part of Sub-merchant's obligations contained herein.

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

1. Certain Sub-merchant Responsibilities. Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant's agent ("Agents") to comply, with the Association's and other payment network's by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations"). Sub-merchant may review the VISA, MasterCard, and Discover websites for a copy of the Visa, MasterCard and Discover regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sub-merchant's software providers and/or equipment providers.

If appropriately indicated in Sub-merchant's agreement with Provider, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Regulations and Applicable Law as they may relate to limited acceptance. Sub-merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

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

2. Sub-merchant Prohibitions. Sub-merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless Applicable Law expressly requires that a Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

3. Settlement. Upon receipt of Sub-merchant's sales data for card transactions, Acquirer will process Sub-merchant's sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-merchant, either directly to the Sub-merchant-Owned Designated Account or through Provider to an account designated by Provider ("Provider Designated Account"), at Acquirer's discretion, for such card transactions. Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-merchant. Acquirer will debit the Provider

Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-merchant's designated demand deposit account ("Sub-merchant-Owned Designated Account") upon receipt of such account information from Sub-merchant or Provider, or if Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or Provider.

4. Term and Termination. This Sub-merchant Agreement shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Sub-merchant Agreement shall begin, and the terms of the Sub-merchant Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Sub-merchant Agreement by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Sub-merchant Agreement without notice if (a) Sub-merchant or Provider fails to pay any amount to Acquirer when due, (b) in Acquirer's opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations or any Laws, (c) Acquirer believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (d) Acquirer determines Sub-merchant poses a financial or regulatory risk to Acquirer or an Association, (e) Acquirer's agreement with Provider terminates, (f) any Association deregisters Provider, (g) Acquirer ceases to be a member of the Associations or fails to have the required licenses, or (h) Acquirer is required to do so by any of the Associations.

5. Limits of Liability. Sub-merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Sub-merchant Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS SUB-MERCHANT AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Sub-merchant Agreement. In the event that Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Sub-merchant Agreement, Sub-merchant shall proceed against Provider and not against Acquirer, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirer have any liability to Sub-merchant with respect to this Sub-merchant Agreement or the Services. Sub-merchant acknowledges Acquirer is only providing this Sub-merchant Agreement to assist in Provider's processing relationship with Sub-merchant, that Acquirer is not liable for any action or failure to act by Provider, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider. If Provider is unable to provide its services to Sub-merchant in connection with this Sub-merchant Agreement and Acquirer elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Sub-merchant Agreement will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sub-merchant, will govern Acquirer's relationship with Sub-merchant. If Provider subsequently provides its

services to Sub-merchant in connection with this Sub-merchant Agreement, Acquirer will cease to provide such services after receipt of notice from Provider and this Sub-merchant Agreement will govern Acquirer's relationship with Sub-merchant.

6. Miscellaneous. This Sub-merchant Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Sub-merchant Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Sub-merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Sub-merchant Agreement is for the benefit of, and may be enforced only by, Acquirer and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Sub-merchant Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Sub-merchant Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Sub-merchant Agreement will be construed as if such provision is not contained in the Sub-merchant Agreement "Member Bank" as used in this Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Sub-merchant Agreement. As of the commencement of this Sub-merchant Agreement, Member Bank shall be Fifth Third Bank, an Ohio Banking Corporation, located in Cincinnati, OH 45263. The Member Bank is a party to this Sub-merchant Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sub-merchant.

IN WITNESS WHEREOF, this Agreement has been executed by Sub-merchant's authorized officer as of the date set forth below.

SUB-MERCHANT: _____
By: _____
Name: _____
Title: _____
Date: _____
Address: _____