

MERCHANT SERVICES AGREEMENT

1. GENERAL

Forte Payment Systems, Inc. ("FORTE") and its affiliates provide transaction processing services including but not limited to Automated Clearing House ("ACH"), Credit and Debit Card processing, account verification and customer identification (collectively and individually, as applicable, the "Services") to FORTE's customers ("Merchant(s)") engaged in the business of selling goods or services. The Merchant Services Agreement ("Agreement") consists of these Terms and Conditions and all attachments hereto, including but not limited to all applicable appendices, addendums and the Merchant Services Application and is made by and between FORTE and Merchant. Under the terms of the Agreement, Merchant will be furnished with the products and services described in the Agreement and attached Appendices, which are selected by Merchant and approved by FORTE. For any terms herein that are specifically applicable to any particular product or service offered by FORTE, only the terms and conditions that apply to the specific Service(s) requested by Merchant at any given time shall apply.

2. USE LICENSE.

2.1 FORTE hereby grants to Merchant a non-exclusive and nontransferable license to access and use the Services contracted for under this Agreement and Merchant hereby accepts such license and agrees to utilize and access the selected Services in accordance with the practices and procedures established by FORTE.

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

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

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

2.5 Customer authorizes FORTE to collect, store and process Merchant data subject to the terms of this Agreement and all applicable Rules and Regulations.

3. OWNERSHIP

3.1 All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to FORTE's products and

services (the "Proprietary Property"), are and will remain the sole and exclusive property of FORTE, whether or not specifically recognized or perfected under applicable law.

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

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

4. TRANSACTION PROCESSING SERVICES.

4.1 Accepting Transactions. FORTE shall accept Transactions on a 24-hour basis. Transactions received after the designated cut-off time will be included in the next day's processing. FORTE is responsible only for processing Transactions that are received by FORTE in the proper format, pre-approved by FORTE and on a timely basis. Merchant understands and agrees that FORTE may rely solely on identifying numbers provided by Merchant to determine the bank and account in question for each Transaction even if the numbers identify a bank or account holder that differs from the one Merchant has identified by name.

4.2 Processing Limits. FORTE may impose a cap on the number or dollar amount of Transactions it will process for Merchant. These limits may be changed by FORTE from time to time, upon notice to Merchant or, at FORTE's sole discretion, upon a written request by Merchant. If Merchant exceeds the established limits, FORTE may temporarily suspend Transaction processing or temporarily hold the funds that are in excess of the established limits.

4.3 Receiving Reports and Transaction Result Files. Merchant is responsible for communicating with FORTE's system to receive daily reports, settlement files and/or transaction results. FORTE is under no obligation to transmit this data to Merchant.

4.4 Modifying Transactions.

4.4.1 At Merchant's request, FORTE will make reasonable efforts to reverse, modify, or delete a

Transaction after it has been submitted by Merchant prior to being submitted to the applicable Transaction Network. All requests must be made by an individual pre-authorized by Merchant to make such requests, and delivered to FORTE.

4.4.2 Merchant agrees that FORTE will not be held responsible for any losses, directly or indirectly, incurred by Merchant or other third parties as a result of FORTE's inability to accomplish the requested modification or deletion before the Transaction has been submitted to the applicable Transaction Network. Further, Merchant acknowledges that once a Transaction is submitted to the applicable Transaction Network, it cannot be modified or deleted.

4.5 Rejecting, Delaying or Returning Transactions.

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

4.6 Reserve.

4.6.1 FORTE may require a security deposit or "Reserve" to process Transactions for Merchant. The Reserve may be used by FORTE to offset any returned items, chargebacks, fees/fines, billing or other Merchant obligations to FORTE that FORTE is unable to collect from Merchant. Should FORTE determine that a Reserve is required, FORTE will provide Merchant reasonable notice. Merchant understands that such funds are not the property of Merchant until released to Merchant's account and as such, FORTE shall make withdrawals from the reserve funds at such times and in such amounts as may be necessary to fulfill Merchant's obligations under this Agreement. Merchant also understands and agrees that FORTE shall not be responsible to Merchant for any interest on such funds. The Reserve amount may be revised based on periodic review of Merchant's financial condition, Transaction volumes, transaction amounts and return ratios resulting in a greater or lesser Reserve amount.

4.6.2 The Reserve Account may be funded through any or all of the following: (a) Direct payment by Merchant; or (b) A percentage of the Transactions settled on Merchant's behalf.

4.6.3 The Reserve funds shall be held by FORTE for a minimum of ninety (90) calendar days beyond the date of the last item processed by FORTE on Merchant's behalf. In the event FORTE has reason to believe that (a) Merchant has acted in a fraudulent

manner; or (b) Merchant has not obtained proper authorization for one or more transactions; or (c) Merchant will not be able to meet its obligations to FORTE; or (d) that FORTE is at risk of incurring additional expenses/potential losses due to Merchant's actions, FORTE may extend the hold on Merchant's Reserve funds up to two (2) years from the last transaction activity date or the maximum time allowed by law. The Reserve Deposit will then be returned to Merchant less any fees and/or any other amounts owed to FORTE.

4.7 Funding Hold. Should FORTE observe any irregular Transaction or possible fraudulent activity on Merchant's account, or as required by law, FORTE reserves the right to place a funding hold on Merchant's processing account without prior written notice to Merchant.

5. PRICING AND PAYMENT.

Payment for all utilized products and services shall be in accordance with the fee schedule provided within this Agreement and as those fees may be amended by FORTE from time to time. Fees may be amended by FORTE with a minimum of 10 days' notice and such amended fees will become effective on the designated effective date, which shall be no less than ten (10) days' from the date of the written notice to Merchant. Continued use of the Services on and after the designated effective date shall be deemed acceptance of the amended fees.

5.1 Fees shall be immediately due and payable upon receipt of services unless otherwise agreed upon between the parties. Fees will be automatically debited from the designated bank account on or around the 10th day of each month for the prior month's activity unless agreed upon between the parties.

5.2 Failure to pay any amount due to FORTE within the time period or on the terms set forth in this section shall constitute a material breach of the Agreement by Merchant. FORTE shall assess a late fee of one and one-half percent (1½%) per month on all amounts due and payable after the monthly deadline. In addition to imposing such late fees, FORTE may elect to terminate Merchant's access to the Services in accordance with Section 19 below. Additionally, a \$25.00 fee shall be assessed for any return of a debit processed to the designated bank account.

5.3 FORTE shall have the right to offset against any amount payable by FORTE to Merchant under any provision of this Agreement, any amounts owed FORTE related to services provided to Merchant, including chargebacks or returns posted to Merchant's account, or any fees, fines or costs incurred damages sustained by FORTE as a result of Merchant's violation, breach or non-performance of its obligations under the Agreement.

5.4 In the event the funds in the designated account are insufficient to cover Merchant's obligations, Merchant

agrees to submit payment of amounts owing to FORTE upon demand and through alternative means. Unless otherwise agreed upon, FORTE may debit any alternative account maintained by Merchant for the amounts due and owing without further notice to or approval from Merchant.

6. TAXES.

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

7. REPRESENTATIONS AND WARRANTIES.

7.1 FORTE's Representations and Warranties.

FORTE represents and warrants to Merchant that:

7.1.1 FORTE's agreement to perform the Services hereunder does not violate any agreement or obligation between FORTE and any third party.

7.1.2 FORTE shall comply with all state and federal regulations regarding the proper treatment of nonpublic consumer information and shall handle Merchant's information and that of its customers with the level of care it does FORTE's own Confidential Information.

7.1.3 To the best of FORTE's knowledge, none of its products or services violates any Laws.

7.2 Merchant's Representations and Warranties.

Merchant represents and warrants to FORTE that:

7.2.1 Merchant's agreement to license FORTE's products and services and to engage FORTE to perform the Services hereunder does not violate any agreement or obligation between Merchant and any third party.

7.2.2 To the best of Merchant's knowledge, neither any information delivered by Merchant to FORTE in support of the Agreement nor Merchant's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

7.2.3 None of the activities for which Merchant has engaged the services of FORTE shall violate any Laws. Neither Merchant nor any of its affiliates will use the FORTE products and/or services for any unlawful, fraudulent, libelous, defamatory, threatening, abusive or otherwise objectionable usage of any kind, including without limitation any transmissions constituting or

encouraging conduct that would constitute a criminal offense, give rise to civil liability.

7.2.4 When executed and delivered by Merchant, the Agreement with FORTE will constitute the legal, valid, and binding obligation of Merchant, enforceable in accordance with its terms.

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

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

8. CONFIDENTIALITY.

8.1 Merchant's Confidentiality. Merchant acknowledges that the products, services and information relating to FORTE's products and services (including without limitation these Terms and Conditions) contain confidential and proprietary information developed by, acquired by, or licensed to FORTE (the "FORTE Confidential Information"). Merchant will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither Merchant nor any of its affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, the Confidential Information to any individual or entity, except to those of Merchant's employees or affiliates who require access for Merchant's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information. Merchant acknowledges that any unauthorized use or disclosure by it or any of its affiliates of the Confidential Information may cause irreparable damage to FORTE. As such, if FORTE becomes aware of Merchant's breach or threatened breach of this Section 12, FORTE may suspend any and all rights granted to Merchant under the Agreement and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to FORTE.

8.2 FORTE's Confidentiality. In performing its duties under this Agreement, FORTE will comply with all Laws relating to privacy and security of non-public consumer financial information.

8.3 Exceptions. This Section 8 will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party,

through no fault of the other party, (iii) is disclosed under force of law, governmental regulation or court order, (iv) is required to be disclosed by Acquirer or applicable Payment Association.

9. INDEMNIFICATION.

9.1 Merchant shall indemnify and hold harmless FORTE, its directors, officers, employees, affiliates, and agents from and against any third-party claim, action or liability including losses, damages, costs, expenses and reasonable attorneys' fees ("Claims") that may arise against FORTE as a result of Merchant's use of the Services. This indemnity includes but is not limited to Merchant's use of an Agent or any other third party sender or system; or any dispute between Merchant and its customer(s) or Receiver(s) not directly caused by FORTE's gross negligence or intentional misconduct.

9.2 Merchant shall indemnify FORTE for any losses, liabilities, costs or expenses FORTE or any third party suffers or incurs as a result of an incorrect account or other identification. All disputes between Merchant and its customer(s) and/or Receiver(s) relating to any Transaction will be settled by and between Merchant and its customer(s) and/or Receiver(s). All disputes between Merchant and a third party related to the processing of a transaction, unless directly caused by FORTE, will be settled by and between Merchant and the party processing the transaction. Merchant agrees that FORTE bears no responsibility or involvement in any such dispute.

9.3 Each party bears all responsibility for its own employees' actions while in that party's employ. Each party shall indemnify and hold harmless the other party and its officers, directors, employees, and agents, from and against any Claims that may arise against the indemnified party as a direct result of (i) the indemnifying party's failure to comply with applicable Laws or Rules; or (ii) the indemnifying party's gross negligence or willful misconduct. The indemnifying party shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided that the indemnified party shall have the right to participate in any such litigation insofar as its concerns Claims against it directly, including the right to select and retain counsel of its own choosing to represent its own interests and at its own expense.

9.4 No party shall have an obligation to defend or indemnify the other party if the indemnifying party is not notified promptly of the Claim and is materially prejudiced thereby.

10. LIMITS OF LIABILITY.

10.1 Errors of Others. FORTE shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through

which Transactions may be originated or through which FORTE may receive or transmit information, and no such entity shall be deemed an agent of FORTE.

10.2 Limitation on Acquirer Liability. Merchant acknowledges that Acquirer is not liable for any action or failure to act by Merchant or FORTE, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Merchant by FORTE.

10.3 Damages.

10.3.1 Neither party shall be liable to the other or any third party for any special, consequential, incidental or punitive damages of any kind or nature incurred in relation to the Agreement whether or not (i) any claim for these damages is based on tort or contract; or (ii) the other party knew or should have known the likelihood of such damages occurring under the circumstances. Neither party shall assert any such claim against the other party or its subsidiaries or affiliated companies or their respective officers, directors, or employees.

10.3.2 FORTE's maximum liability hereunder for any claims whatsoever shall in no event exceed three (3) months' processing fees.

10.3.3 No claim may be brought by Merchant or any of its affiliates more than one (1) year after the accrual of the claim. The limitations of liability contained in this section shall apply without regard to whether other provisions of the Terms and Conditions have been breached or have proven ineffective.

11. COMPLIANCE WITH RULES, REGULATIONS AND LAWS. In performing its duties under this Agreement, each party agrees to comply with all applicable Laws, including but not limited to any applicable data security requirements. FORTE bears no responsibility for any lack of compliance with these Rules and Laws by Merchant or its Agent and directs Merchant to seek the counsel of outside legal assistance should Merchant have questions or concerns regarding compliance with such. Merchant agrees to cooperate and provide information requested by FORTE to facilitate FORTE's compliance with any applicable Law or Rule. Additionally, Merchant shall reimburse FORTE for any fines or loss of funds imposed on FORTE for any violation of applicable Rules or Laws by Merchant.

12. NOTICE OF ERRONEOUS OR UNAUTHORIZED TRANSFERS.

Merchant shall regularly and promptly review all Transactions and other communications from FORTE and shall notify FORTE upon discovery of any and all discrepancies between Merchant's records and those provided by FORTE, Acquirer, Payment Network or Merchant's bank, or with respect to any transfer that Merchant believes was made without proper authorization or in error. Merchant agrees to provide FORTE with

written notice of any discrepancy or failure immediately upon discovery, not to exceed five (5) business days. Failure to so provide notice shall be deemed an acceptance by Merchant and a waiver of any and all rights to dispute such failure or error. FORTE shall bear no liability and have no obligations to correct any errors resulting from Merchant's failure to comply with the duties and obligations stated herein.

13. FORTE SERVICE POLICY.

Merchant acknowledges and understands that FORTE does not warrant that the Services will be uninterrupted or error free and that FORTE may occasionally experience delays or outages due to disruptions that are not within FORTE's control. Any such interruption shall not be considered a breach of the Agreement by FORTE. FORTE shall use its best efforts to remedy any such interruption in service as quickly as possible.

14. USAGE.

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

14.2 Proper Usage. Merchant agrees to comply with the reasonable and acceptable use policies and Rules of any networks accessed by Merchant through FORTE's Services. FORTE reserves the right to deny access to, or close any account Merchant has with FORTE which, in FORTE's opinion, is causing or may cause, harm to or negatively affect a FORTE server or third party network accessed through FORTE. In the event of such an occurrence, FORTE shall make reasonable efforts to notify Merchant prior to taking any such action, but is not required to do so.

14.3 Use of Result Information. FORTE may track, review, compile, store and use any information received from a Payment Association regarding a Transaction.

15. AUDIT REQUIREMENTS.

FORTE shall maintain the right to randomly audit Merchant's account to ensure proper usage and updated information on the account. Merchant agrees to cooperate fully with FORTE in conducting such a review of Merchant, its account and/or use of the Services to verify that Merchant is using the services in compliance with

this Agreement and all applicable security standards and laws.

16. DISCLAIMER OF WARRANTIES.

Except as otherwise specifically provided herein, FORTE's products and services are provided hereunder "As Is" without warranty of any kind. Except as otherwise specifically provided herein, to the maximum extent permitted by law, FORTE expressly disclaims any and all warranties, conditions, representations, and guarantees with respect to the FORTE products and services, whether express or implied, arising by law, custom, prior oral or written statements, or otherwise, including without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement. No representation or other affirmation of fact, including, without limitation, statements regarding capacity, suitability for use or performance of the FORTE products or services, whether made by employees of FORTE or otherwise, which is not contained in these Terms and Conditions, shall be deemed to be a warranty by FORTE for any purpose, or give rise to any liability of FORTE whatsoever.

17. INVESTIGATIVE REPORT.

Merchant is on notice that an investigative or Consumer Report may be made in connection with the Agreement. Merchant authorizes FORTE or any Credit Bureau or any Credit Reporting Agency employed by FORTE or any of its agents to investigate the references given or any other statements or data obtained from Merchant, or any of its principals, in connection with the Agreement or for the purpose of obtaining services from FORTE. Subsequent Consumer Reports and inquiries may be required or used in conjunction with an update, renewal or extension of the Agreement.

18. VOLUME AND FINANCIAL RE-EVALUATION.

FORTE reserves the right to re-evaluate Merchant's financial position at its own discretion throughout the course of FORTE's business relationship with Merchant. Such re-evaluation may result in modification of the fee structure, reserve amount or termination of the Agreement between Merchant and FORTE.

19. TERM AND TERMINATION.

19.1 Term. The Agreement shall have an initial term of one (1) year from and after the Effective Date and shall automatically renew for successive one (1) year periods unless either party provides thirty (30) days' written notice of termination to the other party prior to the end of the current term. Merchant's account will be closed at the end of the then-current billing cycle.

19.2 Early Termination Fee. Merchant agrees and acknowledges that should the Agreement be terminated for any reason prior to the expiration of the initial term of

one (1) year, Merchant shall be assessed an early termination fee of \$99.00, payable to FORTE along with any and all other financial obligations due FORTE in connection with any transaction processed by FORTE on behalf of Merchant (whether before or after such termination). An exception to this early termination fee will be made should Merchant terminate without cause within the first 30 calendar days of the initial term.

19.3 Immediate Termination. FORTE may immediately terminate the Agreement without prior notice under the following conditions: (i) in the event Merchant is or becomes bankrupt or is unable to pay its debts as they become due; (ii) if FORTE reasonably determines that Merchant has violated any term, condition, covenant, or warranty of the Agreement or Terms and Conditions; (iii) FORTE determines that the type of business in which Merchant is engaged is or becomes an industry or business that FORTE is prohibited from providing its services to; (iv) if Merchant is using the Services for a purpose other than a permissible use; or (v) if FORTE is instructed to terminate by Financial Institution, Acquirer or Payment Association.

19.4 Payment by Agent. If Merchant's fees for the Services are paid by a third party, should the third party fail to make payment in accordance with the terms of its agreement with FORTE, FORTE may immediately suspend or terminate Merchant's access to the Services until payment is received or seek payment from Merchant directly in order to continue providing services to Merchant.

19.5 Post-termination Rights and Obligations. Upon the effective date of termination of the Agreement, Merchant's rights hereunder to use the Services shall cease, but Merchant's obligations in connection with any transaction processed by FORTE on behalf of Merchant (whether before or after such termination) shall survive termination. Promptly upon termination of the Agreement for any reason, Merchant shall return or destroy, as requested by FORTE, all materials pertaining to the Services, including all copies thereof.

20. AMENDMENT OR MODIFICATION OF TERMS.

Unless otherwise provided for in these Terms and Conditions, FORTE reserves the right to amend the terms of its agreement with Merchant upon at least ten (10) days written notice to Merchant. Merchant's continued use of the Services after the designated Effective Date shall indicate Merchant's acceptance of the new terms. These Terms and Conditions are subject to such modifications, changes, and additions as may be required, or deemed to be required by FORTE, by reason of any applicable Rule or Regulation.

21. ASSIGNMENT.

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

22. NOTICE.

Any notice required to be given by either party hereunder, excluding notice of changes in fees, shall be in writing and delivered personally to the other designated party, or sent by any commercially reasonable means of receipted delivery, addressed, to that party at the address most recently provided in writing. Either party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

23. GENERAL PROVISIONS.

23.1 Binding Agreement. The agreement between the parties hereto shall be binding on the parties only upon FORTE's approval of Merchant's signed or e-signed application.

23.2 Jurisdiction/Venue. The Agreement shall be governed by and construed in accordance with the internal laws of the state of Texas, and the parties consent to the jurisdiction and venue of the federal and state courts sitting in Collin County, Texas. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of the Agreement.

23.3 Force Majeure. Neither party shall be liable for, or be considered in breach of or default under the Agreement on account of any delay or failure to perform its obligations hereunder as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

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

23.5 Waiver. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

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

24. ELECTRONIC SIGNATURES.

Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Merchant Services Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) your electronic signature is associated with the Merchant Services Agreement and related documents, (2) you consent and intend to be bound by the Merchant Services Agreement and related documents, and (3) the Merchant Services Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Merchant Services Agreement and all related electronic documents shall be governed by the provisions of E-Sign.

APPENDIX A DEFINITIONS

Account Maintenance – A fee assessed to a Merchant for changing the settlement bank account from the existing bank account to a different bank account. This fee covers the costs associated with verifying the new account. The current fee amount, as well as periodic updates thereto, is provided at <http://www.forte.net/legal>.

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

Acquirer – A sponsoring financial institution or credit card processor that enters into an agreement which enables merchants or their Agent(s) to submit Transactions to a payment network.

Affiliate – A business entity effectively controlling or controlled by another or associated with others under common ownership or control.

Agent Any director, officer, employee, representative, affiliate, third-party vendor or any other person acting on behalf of the Merchant with the actual, implied or apparent authority of Merchant.

ACH Chargeback – Any ACH item which is returned designated with the following return codes: R05, R07, R10, R29 and R51. The current fee amount, as well as periodic updates thereto, is provided at <http://www.forte.net/legal>.

Business Banking Day – Monday through Friday excluding banking holidays.

Credit Entry – An ACH Transaction that is intended to deposit funds into a Receiver's (defined below) account which has been withdrawn from Merchant's Settlement Account (defined below).

Debit Entry – An ACH Transaction that is intended to withdraw funds from a Receiver's account for deposit into Merchant's Settlement Account (defined below).

Excessive Returns – Any merchant with more than the defined percentage of returns in a single billing cycle (calendar month), will be assessed an additional fee per returned item.

Laws – All international, national, regional and local regulations or laws which are applicable to the services provided herein.

NACHA – National Automated Clearing House Association responsible for establishing, revising and enforcing the Operating Rules for the ACH Network.

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

Originator – A Merchant who has contracted with FORTE to initiate ACH entries, on their behalf, to the ACH Network.

Payment Association – Any entity governing a payment network, including but not limited to VISA, M/C, Discover, American Express, NACHA, STAR, Pulse.

PCI-DSS – System security measures established by the various credit card companies, known as the Payment Card Industry Data Security Standards.

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

Recall – Similar to a Reversal (see below) but used for recovery of a transaction beyond the four banking day timeframe. The current fee amount, as well as periodic updates thereto, are provided at <http://www.forte.net/legal>.

Receivers – An entity or individual consumer that has an established account with a card issuer or financial institution upon which a Transaction is or may be acted upon.

Returned Entries – Any Transaction returned or rejected by FORTE, ODFI or RDFI.

Reversal – A request made to the RDFI within four days of effective entry date for return of a duplicate or erroneous entry that has already been introduced into the ACH system. The current fee amount, as well as periodic updates thereto, is provided at <http://www.forte.net/legal>.

Rules – The operational rules, policies and procedures established by each applicable Payment Association to govern all transactions and parties that participate in the associated Transaction Network.

Settlement Account – An account established and maintained by Merchant with a financial institution through which the following may occur: (a) deposit of funds for Debit Entries, or (b) the extraction of funds for

Credit Entries, Reserve funding or fee obligations unless otherwise agreed to by the parties.

Settlement Entry – A Debit or Credit Entry to Merchant’s Settlement Account which corresponds to the net amount owed Merchant by FORTE at the end of each Business Banking Day.

Transactions –Any transfer of data or information to FORTE in a format pre-approved by FORTE, including but not limited to payment, verification and authentication items.

WSUPP – Written Statement Under Penalty of Perjury – A written statement obtained by the RDFI from the consumer prior to initiating a return for an entry that the consumer claims is unauthorized, ineligible or improper or for which the authorization has been revoked. The current fee amount, as well as periodic updates thereto, is provided at <http://www.forte.net/legal>.

APPENDIX B U.S. CARD PROCESSING SERVICES

1. Certain Merchant Responsibilities.

1.1 Merchant agrees to participate, and to cause Merchant's Agent, to participate, in the Associations in compliance with, and subject to, the by-laws and Rules. Merchant also agrees to comply with all Laws. Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, MasterCard, Discover, and/or Other Networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. For purposes of this section, Agents include, but are not limited to, Merchant's software providers and/or equipment providers.

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

1.3 Merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Merchant to cardholders, and is expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales transactions which are produced as a result of sales made by any person or entity other than Merchant, or for purposes related to financing terrorist activities.

1.4 Merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation

owned or controlled by the U.S. government; or iii) Merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 – Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

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

2. Merchant Prohibitions.

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

3. Settlement.

Upon receipt of Merchant's sales data for card transactions through FORTE's Services, Acquirer will process

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

5.4 American Express Card Acceptance.

5.4.1 Merchant hereby acknowledges and agrees that for purposes of acceptance of American Express, the American Express Guide is hereby incorporated by reference into this Agreement. In addition, Merchant hereby authorizes FORTE and/or Acquirer to submit American Express transactions to, and receive settlement from, American Express on behalf of Merchant. Merchant must accept the American Express card as payment for goods and services (other than those goods and services prohibited under the American Express Guide) 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 Merchant's establishments under the Agreement. For the avoidance of doubt, "cardholder" as used in this Agreement shall include Card Members as defined in the American Express Guide.

5.4.2 Merchant hereby acknowledges and agrees that (i) FORTE or Acquirer may disclose American Express Transaction Data (which for purposes of this Section 5 shall have the same definition as "Transaction Data" in the American Express Guide), Merchant Data (as defined below), and other information about Merchant to American Express, (ii) American Express may use such information to perform its responsibilities in connection with the American Express Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purpose, including marketing purposes, and (iii) American Express may use the information obtained in this application at the time of setup to screen and/or monitor Merchant in connection with American Express Card marketing and

administrative purposes. If Merchant has provided a wireless phone number in connection with this Agreement, Merchant hereby agrees that it may be contacted at that number and the communications sent may include autodialed text messages or automated prerecorded calls. If Merchant has provided a fax number, Merchant hereby agrees that it may be sent fax communications. To opt out of American Express-related marketing communications, Merchant may contact FORTE customer service as described in this Agreement. For purposes of this Section 5, "Merchant Data" means names, postal and email addresses, tax ID numbers, names and social security numbers of the authorized signer of Merchant and similar identifying information about Merchant. For clarification, Merchant Data does not include American Express Transaction Data.

5.4.3 Merchant hereby agrees that, in the event that Merchant becomes a High Charge Volume Merchant (as defined below), Merchant will be converted from the American Express Program to a direct American Express Card acceptance relationship with American Express, and upon such conversion, (i) Merchant will be bound by American Express' then-current card acceptance agreement, and (ii) American Express will set pricing and other fees payable by Merchant for American Express Card acceptance. "High Charge Volume Merchant" for purposes of this Section 5 means an American Express Program Merchant with either (i) greater than \$1,000,000 in American Express charge volume in a rolling twelve (12) month period or (ii) greater than \$100,000 in American Express charge volume in any three (3) consecutive months. For clarification, if Merchant has multiple establishments, the American Express charge volume from all establishments shall be summed together when determining whether Merchant has exceeded the thresholds above.

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

5.4.5 Merchant hereby agrees that American Express shall have third party beneficiary rights, but not obligations, to enforce this Agreement as against merchant to the extent applicable to American Express processing. Merchant's termination of American Express card acceptance shall have no direct or indirect effect on Merchant's rights to accept other card brands. To

terminate American Express acceptance, Merchant may contact FORTE customer service as described in this Agreement.

5.4.6 Without limiting any other rights provided herein, FORTE and/or Acquirer shall have the right to immediately terminate Merchant's acceptance of American Express cards upon request of American Express. Merchant may not bill or collect from any American Express Card Member for any purchase or payment on the American Express card unless a chargeback has been exercise, Merchant has fully paid for such charge, and it otherwise has the right to do so. Merchant shall use the American Express brand and marks in accordance with the requirements set forth in the American Express Guide.

APPENDIX C
ACH PROCESSING SERVICES

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

2. Holding of Funds. The standard hold time of Merchant's funds for settlement of Debit transactions and origination of Credit transactions is three (3) Business Banking Days. Merchant may request a reduction of hold time on Debit and/or Credit Entries by submitting the applicable form provided by FORTE and supporting documents. FORTE may require separate security safeguards from Merchant to support such a reduction but is under no obligation to grant Merchant's request.

3. Settlement and Finality.

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

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

4. Transaction Authorization.

4.1 Receiver Authorization. Merchant shall obtain authorization from Receiver prior to originating a Transaction to Receiver's account.

4.2 Retention. Merchant shall retain proof of its customer's and/or Receiver's authorization for a period of not less than two (2) years for standard transactions and for a period of five (5) years for health-related

transactions from the authorization date or revocation of authorization date and shall provide such proof of authorization to FORTE upon request within five (5) business days of the request.

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

5. ACH Chargebacks.

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

5.2 Using limits established by NACHA as a standard for review, FORTE reserves the right to suspend and/or terminate Merchant's access to the Services should Merchant's chargeback ratio exceed allowable limits during the span of forty-two (42) consecutive Business Banking Days.

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

5.4 In compliance with the Rules, Merchant authorizes FORTE to provide to ODFI and NACHA Merchant's company and contact information as well as transaction details should Merchant's ACH chargeback ratio exceed the allowable limits.

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

6. NSF Fee Rebate Program. If Merchant is participating in FORTE's NSF Fee collection and rebate program, FORTE will attempt to electronically debit an NSF fee, allowable under the laws of Merchant's domiciliary state, from a designated Receiver upon any return of an ACH transaction from that Receiver either for Insufficient Funds (NSF) or Uncollected Funds. FORTE shall rebate Merchant a percentage of any such funds successfully collected from Receiver, as established on the MSA.

APPENDIX D
ACCOUNT VERIFICATION AND AUTHENTICATION SERVICES

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

2. Permissible Uses.

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

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

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

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

APPENDIX E
THIRD PARTY AGENT AUTHORIZATION

Merchant authorizes _____ (“Partner”) to act as an agent on its account with FORTE including but not limited to acting on behalf of Merchant to establish an account with FORTE and to originate and manage Transactions through that account.