

TCB Pay LTD ("Payment Facilitator" or "Agent of the Payee") and its Sponsor Bank(s) ("Bank") collectively "we", "us" or "our" will provide \_\_\_\_\_, with offices located at \_\_\_\_\_ ("Sub-Merchant", "you" or "your") with certain Card processing services. Capitalized terms used in this Agreement are referred to in Exhibit 1. By entering into this Sub-Merchant Processing Agreement (the "Agreement"), you agree to comply with the (1) Card Association Rules as they pertain to Card information you receive through the Payment Facilitator service and (2) Operating Procedures.

### Acceptance of Cards

You agree to comply with the Operating Procedures and all Card Association Rules, as such may be changed from time to time. You understand that we may be required to modify the Operating Procedures and the Agreement from time to time to comply with requirements imposed by the Card Associations.

In offering payment options to your customers, you may select any one of the following options: (i) Accept all types of Visa and MasterCard cards, including consumer credit and debit/check cards, and commercial credit and debit/check cards; (ii) Accept only Visa and MasterCard credit cards and commercial cards (If you select this option, you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards); or (iii) Accept only Visa and MasterCard consumer debit/check cards (If you select this option, you must accept all consumer debit/check card products (but not business debit/check cards) and refuse to accept any kind of credit cards). The acceptance options above apply only to domestic transactions.

If you choose to limit the types of Visa and MasterCard cards you accept, you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products).

For recurring transactions, you must obtain a written request or similar authentication from your customer for the goods and/or services to be charged to the customer's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made.

### Settlement

Upon our receipt of the Transaction Data for Card transactions, we will process the Transaction Data to facilitate the funds transfer from the various Card Associations or the Card sales. After we receive credit for such Transaction Data, subject to our other rights under this Agreement, we will provide provisional credit to your Settlement Account as an Agent of the Payee.

You must not submit transactions for payment until the goods are delivered shipped, or the services are performed. If the Cardholder disputes being charged for merchandise or services before receiving them, a Chargeback may result.

### Chargebacks

Chargebacks can be received for a few reasons. The following are some of the most common reasons for Chargebacks: (1) a refund is not issued to a customer upon the return or non-delivery of goods or services; (2) an authorization/approval code was required and not obtained; (3) the transaction was allegedly fraudulent; (4) the customer disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defence or counterclaim; or (5) The customer refuses to make payment for a Card sale because, in the customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner.

### Fees

Pursuant to the Merchant Application, you agree to pay the Payment Facilitator the fees associated with the provision of the services.

**Reserve**

You acknowledge that in addition to any other rights afforded us hereunder, we may establish a reserve account to satisfy your obligations or potential obligations under this Agreement (the "Reserve Account"), which may be funded by: (i) demand and receive immediate payment for such amounts; (ii) debit the account identified in the Settlement Account; (iii) withhold your settlement payments until all amounts are paid, (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the Reserve Account; and (v) pursue any remedies we may have at law or in equity.

The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. We may (but are not required to) apply funds in the Reserve Account toward and may set off any funds that would otherwise be payable to you against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve Account will not bear interest, and you will have no right or interest in the funds in the Reserve Account; provided that upon satisfaction of all your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents that we may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive the termination of this Agreement.

**Financial Information**

Upon request, you will provide us with financial statements. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

**Data Security and Privacy**

You represent to us that you do not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and you will not request access to such Card information from us. If you receive such Card information in connection with the processing services provided under this Agreement, you agree that you will not use it for any fraudulent purpose or in violation of any Card Association Rules, including but not limited to Payment Card Industry Data Security Standards ("PCI DSS") or applicable law. If at any time you believe that Card information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must ensure your compliance and that of any third-party service provider utilized by you, with all security standards and guidelines that are applicable to you and published from time to time by Visa, MasterCard or any other Card Association, including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS ("Payment Application Data Security Standards") (collectively, the "Security Guidelines"). If any Card Association requires an audit of you due to a data security compromise event or suspected event, you agree to cooperate with such an audit. You may not use any Card information other than for the sole purpose of completing the transaction authorized by the customer for which the information was provided to you, or as specifically allowed by Card Rules, Association Operating Procedures or required by law.

**Term; Events of Default**

The initial term of this Agreement shall commence upon the date of execution hereof and shall thereafter automatically continue until terminated by either party upon the provision of thirty (30) days' notice to the other party.

If any of the following events shall occur (each an "Event of Default"):

- i. a material adverse change in your business, financial condition, business procedures, prospects, products, or services; or
- ii. any assignment or transfer of voting control of you or your parent; or

- iii. a sale of all or a substantial portion of your assets; or
- iv. irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, of any Card Association, or any other entity, or an actual or suspected data security breach, or
- v. any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or any of your conditions, covenants, obligations or representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
- vi. you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- vii. a violation by you of any applicable law or Card Association rule or our reasonable belief that termination of this Agreement or suspension of services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of your requirement to comply with all applicable laws.

Upon the occurrence of (1) an Event of Default specified in subsections (iv), (vi), or (vii), we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice, all amounts payable hereunder shall be due and payable on demand.

Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us are intended to survive the termination of this Agreement.

If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all our rights and remedies under applicable law, and this Agreement.

The Card Associations often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Associations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated because of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard or Discover Network. Furthermore, you agree to waive and hold us harmless from and against all claims that you may have as a result of such reporting.

In the event we provide notice to you of an increase in the fees for Services, you may terminate this Agreement without further cause or penalty by providing us 30 days advance written notice of termination. You must terminate within 30 days after we provide notice of the fee increase. However, maintaining your account with us or your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

We may terminate this Agreement at any time and for any or no reason upon the provision of thirty (30) days prior notice. We may also temporarily suspend or delay payments to you during our investigation of any issue and/or designate an amount of funds that we must maintain to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks arising

under this Agreement or other amounts that may be owing to us under this Agreement.

**Warranties; Exclusion of Consequential Damages; Limitation on Liability**

This Agreement and any addenda is an agreement for services and except as expressly provided in this Agreement, and any addenda, we and our affiliates disclaim all representations or warranties, express or implied, made to the Sub-Merchant or any other person, including without limitation, any warranties regarding the quality, suitability, merchantability, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any services or any goods provided incidental to the Services provided under this Agreement.

Notwithstanding anything in this Agreement and any addenda to the contrary, in no event shall we or our affiliates be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

Notwithstanding anything in this Agreement and any addenda to the contrary, we and our affiliates' cumulative liability, in the aggregate (inclusive of any and all claims made by Sub-Merchant against us and/or our affiliates, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement any addenda) and regardless of the form of action or legal theory shall not exceed the lesser of (i) \$100,000; or (ii) the amount of fees received by us pursuant to any addenda attached and incorporated herein for services performed in the immediately preceding 12 months.

**Confidentiality**

Each party acknowledges and agrees that any information the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this Agreement, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors, representatives, and Affiliates to whom disclosure is reasonably necessary for the furtherance of the performance of this Agreement). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party or (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide the disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedies. If in the absence of a protective order or other remedy or waiver of the terms of this section, if receiving party determines in its sole discretion that it is required by law, regulation, legal process, or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party unless prohibited by law or court order.

**Visa and MasterCard Disclosure**

Member Bank Name: Fifth Third Bank, N.A Mailing Address: 38 Fountain Square Plaza, Cincinnati, OH 45263, Phone Number: 1 (800) 972-3030.

**Important Member Bank Responsibilities**

- The Bank is the only entity approved to extend acceptance of Card Association products directly to a Merchant.

- The Bank must be a principal (signer) to the Merchant Agreement.
- The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply, but this information may be provided to you by Processor.
- The Bank is responsible for and must provide settlement funds to the Merchant.
- The Bank is responsible for all funds held in reserve.

**Important Merchant Responsibilities**

- Ensure compliance with cardholder data security and storage requirements.
- Maintain fraud and chargebacks below Card Association thresholds.
- Review and understand the terms of the Merchant Agreement.
- Comply with Card Association rules.
- Retain a signed copy of this Disclosure Page.

**Merchant Resources**

The Associations make excerpts of their Operating Regulations available online, including via:

- <https://www.mastercard.us/en-us/business/overview/support/rules.html>;
- <https://usa.visa.com/support/consumer/visa-rules.html>;
- <https://www.americanexpress.com/merchantopguide>;
- [https://www.discoverglobalnetwork.com/content/dam/discover/en\\_us/dgn/pdfs/MITImplementation-Guide.pdf](https://www.discoverglobalnetwork.com/content/dam/discover/en_us/dgn/pdfs/MITImplementation-Guide.pdf).

Each applicable Association's complete Operating Regulations are incorporated by reference into this Agreement and will control with respect to any conflict in terms between this Agreement and such Operating Regulation. You will not discriminate against Cards or Issuers (e.g., limited acceptance options) except in full compliance with the Operating Regulations, and will comply with all Operating Regulations, applicable laws, and regulations related to its business operations, PCI-DSS obligations, the use of an Association's marks, and each transaction acquired hereunder. You expressly agree to accept Cards and protect, utilize, or restrict transaction data, including the magnetic stripe and CVV2, in accordance with the terms of this Agreement, applicable law or regulation, and the Operating Regulations, and will cooperate with any audit requested by an Association until such an audit is completed.

In addition to complying with each Association's obligations or prohibitions related to the acceptance, disbursement, or resubmission of a transaction, you may not submit any illegal, fraudulent, or unauthorized transaction and shall only submit transactions for the sale of its own goods or services, and not any other person or company, and may not receive payment on behalf of or, unless authorized by law, redirect payments to any other party. You covenant that you are not a third-party beneficiary under any agreement with an Association, however, an Association may be a third-party beneficiary of this Agreement and shall have the rights, but not any obligation, necessary to fully enforce the terms of this Agreement against you.

You authorize the Payment Facilitator to conduct checks of your background, credit, or banking information, as necessary and agree that all information obtained under this Agreement may be shared with an Association. You acknowledge and agree that you are responsible for your employees' actions, you will notify the Payment Facilitator of any 3rd party that will have access to cardholder data, and you will immediately report all instances of a data breach to the Payment Facilitator immediately after it reasonably identifies an incident.

You acknowledge and agree that you may be converted from the OptBlue Program to a direct Card acceptance relationship with American Express if and when it becomes a High CV Merchant in accordance with the Operating Regulations. You further agree that, 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 you for Card acceptance.

The responsibilities above do not replace the terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Bank is the ultimate authority should the Merchant experience any problems.

**Compliance with Laws.** Each party agrees to comply with all laws, regulations, and Card Association Rules applicable to it and each is responsible for their own costs and compliance of such.

**Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail, and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

**Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing; all communications when hand-delivered or sent by mail, courier, email, or facsimile shall be deemed delivered immediately when the sender obtains a confirmation receipt for mail, courier, email, or facsimile, addressed as follows:

- i. if to the Sub-Merchant: at the address, email address or facsimile number as provided in the Merchant Application and/or updated during the Merchant Application account setup and management updates
- ii. if to the Payment Facilitator: at 433 Plaza Real Suite 275, Boca Raton, FL 33432 with an email address of [support@tcbpay.com](mailto:support@tcbpay.com)
- iii. if to the Bank: at the address provided above

Notice given in any other manner shall be effective when delivered by electronic means (i.e., any platform offered by the Payment Facilitator and used by the Sub-Merchant to access their account), including but not limited to email.

**Indemnification.** The parties agree to indemnify each other from and against any losses, actions, causes of action, claims, demands, costs, liabilities, expenses, damages, sanctions fines, legal fees or penalties arising from (i) a party's misrepresentation or breach of warranty, covenant, or any provision under this Agreement; or (ii) a party's employees'/agents' fraud, gross negligence, willful misconduct, or failure to comply with this Agreement and the Card Association Rules.

**Publicity.** No party shall make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).

**Applicable Law.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Nevada, without regard to its conflict-of-law provisions. Sub-Merchant consents and submits to the jurisdiction and venue of any state or federal court sitting in the State of Nevada with respect to any claim arising out of or relating to this Agreement.

**Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any previous agreements and understandings. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**Severability.** The parties intend every provision of this Agreement and any addenda to be severable. If any part of this Agreement and any addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in

good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

The parties here to have caused this Agreement to be executed by their duly authorized officers.

THIS AGREEMENT IS NOT BINDING UPON THE PARTIES UNTIL FULLY EXECUTED BY ALL PARTIES.

**Sub-Merchant**

**Payment Facilitator**

TCB Pay LTD

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**By**

**By**

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**Name**

**Name**

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**Title**

**Title**

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## **Exhibit 1**

### **Definitions**

**"Agent of the Payee"** is the intermediary that facilitates the receipt and settlement of payments to merchants, sub-merchants, or other payees, rather than facilitating the transaction of funds on behalf of a sender.

**"Affiliate"** is an entity that, directly or indirectly, (i) owns or controls a party to this agreement or (ii) is under common ownership or control with a party to this agreement.

**"Card"** is a valid credit or debit card in the form issued under license from Visa U.S.A., Inc. Visa International, Inc., Mastercard International Incorporated, American Express, Discover Network or any other valid credit or debit card accepted by agreement with the Payment Facilitator.

**"Card Association"** is any entity formed to administer card schemes, including but not limited to Visa U.S.A., Inc. Visa International, Inc., Mastercard International Incorporated, American Express, Discover Network and any other similar organizations or associations, and any successor organizations or associations to any of the foregoing.

**"Card Association Rules"** are the rules, regulations, releases, interpretations, and other requirements (whether contractual or otherwise) imposed or adopted by any Card Association.

**"Chargeback"** is a Card transaction dispute (or disputed portion) that is returned to us by the Issuer. Sub-Merchant is responsible for payment to the Payment Facilitator for all Chargebacks.

**"Operating Procedures"** mean our operating rules and regulations, provided separately, and incorporated herein by reference, as may be changed by us from time to time.

**"Reserve Account"** means an account established and funded at our request or on your behalf, pursuant to the Reserve section of the Agreement.

**"Retrieval Request"** is a request for information by a customer or Card Association relating to a claim or complaint concerning a Transaction.

**"Settlement Account"** is an account or account(s) at a financial institution designated by Sub-Merchant as the account to be debited and credited by Payment Facilitator or Bank\* for Card transactions, fees, Chargebacks, and other amounts due under the Agreement or in connection with the Agreement.

**"Transaction"** is a transaction conducted between a customer and Sub-Merchant utilizing a Card in which consideration is exchanged between the customer and Sub-Merchant.

**"Transaction Data"** is the written or electronic record of a Transaction.