



CONFIDENTIAL

**FIRST AMENDMENT TO
MERCHANT PROCESSING APPLICATION AND AGREEMENT**

This First Amendment (the "Amendment") to the Merchant Processing Application and Agreement ("MPA") is made and entered into as of _____ ("Effective Date"), by and between TD Bank, N.A. ("Bank") and _____ ("Merchant", "you" or "your"). Merchant and Bank may be collectively referred to herein as the "Parties" or individually as a "Party." Capitalized terms not defined in this Amendment have the meanings given to them in the MPA. Details outlined within the Amendment take precedence over any contradictory details contained within the MPA as well as the General Terms & Conditions.

RECITALS

WHEREAS, Merchant and Bank have entered into, or are entering into in conjunction with this amendment, the MPA;

WHEREAS, Merchant and Bank desire to amend the MPA in accordance with the terms and conditions of this Amendment;

NOW THEREFORE, in consideration of the mutual covenants set forth below, Bank and Merchant hereby agree as follows:

AGREEMENT

1. No Personal Guarantee

Notwithstanding any provision of the MPA to the contrary, the Parties agree and acknowledge that the MPA shall not require any personal guarantee. Any reference to a personal guarantee or personal guarantee shall be given no effect. Any signatory to the MPA signs only in their official capacity of the legal entity, Merchant or Bank as applicable, and not in their personal capacity.

2. Amendment to Part I: Confirmation Page, Your Responsibilities, Paragraph b

Your Responsibilities, Paragraph (b) of the MPA, Part I: Confirmation Page, is hereby deleted and replaced in its entirety with the following new Paragraph (b):

b) Intentionally Omitted.

3. Amendment to Part II: General Terms & Conditions, Section 2.2

Section 2.2 of the MPA, Part II: General Terms & Conditions, is hereby amended to address a scrivener's error by inserting the word "have" such that the first sentence reads as follows:

If you have otherwise been approved for accepting American Express or WEX, your American Express and WEX transactions will be processed through and funded by American Express or WEX as applicable .

4. Amendment to Part II: General Terms and Conditions, Section 4.3.

CONFIDENTIAL

Section 4.3 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 4.3:

4.3 Advertising. To the extent required by and in accordance with the Card Organization Rules, you shall display Card service marks, as provided by us, to inform the public which Cards shall be honored at your place(s) of business. Your right to use or display Card service marks is solely as authorized by us and shall continue while this Agreement remains in effect or until you are notified by us or a Card Organization to cease their use and display. Subject to our authorization, you may use Card service marks on promotional, printed or broadcast materials only to indicate that Cards are accepted for payment, and you shall not indicate, directly or indirectly, that any Card Organization endorses any of your goods or services.

5. Amendment to Part II: General Terms and Conditions, Section 15.1

Section 15.1 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 15.1:

15.1 You shall safeguard all confidential information we supply or otherwise make accessible to you (including the terms of this Agreement) using a reasonable degree of care. You shall only use our confidential information for the purposes of this Agreement and shall not disclose our confidential information to any Person, except as we may agree in advance and in writing or as required by Applicable Law. If you are required to disclose our confidential information pursuant to Applicable Law, you will only disclose information to the extent and for the purposes of such required disclosure, and you shall, to the extent practicable and legally permissible, first notify us of the pending disclosure and permit us to seek an appropriate protective or confidential treatment order. Unless prohibited by Applicable Law, at our request you shall return to us or destroy all of our confidential information in your possession or control.

6. Amendment to Part II: General Terms Conditions, Section 19.4.

Section 19.4 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 19.4:

19.4 Intentionally Omitted.

7. Amendment to Part II: General Terms Conditions, Section 19.9.

Section 19.9 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 19.9:

19.9 In addition to other termination rights set forth herein, this Agreement also may be terminated upon 90 days prior written notice from either party to the other party, in the terminating party's sole discretion, with or without cause.

8. Amendment to Part II: General Terms Conditions, Section 29.1.

CONFIDENTIAL

Section 29.1 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 29.1:

29.1 In addition to, but not in lieu of any indemnification provision otherwise contained in this Agreement not pertaining to you, subject to the provisions and limitations of Section 768.28, Florida Statutes, as applicable and as the same may be amended from time to time, you agree to indemnify and hold us, our Affiliates and third party service providers harmless from and against losses, liability, damages, claims, penalties, costs, or expenses incurred arising from:(a) any breach or misrepresentation by you under this Agreement; (b) your or your employees' or your agents' unlawful, willful, negligent or fraudulent action or omission that is in any way related to this Agreement or the obligations of you or us hereunder; c your use of the Services, including any Software or Equipment provided under this Agreement; (d) any third party indemnifications or payments we are obligated to make as a result of any action or omission by you or your employees or your agents (including indemnification of any Card Organization or Issuer ; (e) your use of any Cardholder Information or other customer information obtained in connection with your use of the Services; (f the content or delivery of any marketing messages that you send or cause to be sent to any customer; or (g) any other persons authorized or unauthorized access and/or use of any Service, Software or Equipment, whether or not using your unique username, password, or other security features.

9. Amendment to Part II: General Terms and Conditions, Section 29.2

Section 29.2 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 29.2:

29.2 Intentionally Omitted.

10. Amendment to Part II: General Terms Conditions, Section 30.1

Section 30.1 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 30.1:

30.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to any conflict of laws provisions.

11. Amendment to Part II: General Terms Conditions, Section 30.2

Section 30.2 of the MPA, Part II: General Terms & Conditions, is hereby deleted and replaced in its entirety with the following new section 30.2:

30.2 Subject to the provisions and limitations of Section 768.28, Florida Statutes, as applicable and as the same may be amended from time to time, you shall be liable for and indemnify us and our affiliates, officers, directors, employees and agents against any and all attorney's fees, costs and expenses incurred by us in the enforcement of your obligations under this Agreement.

12. Amendment to Part II: General Terms Conditions, Section 31.1

CONFIDENTIAL

Section 31.1 of the MPA, Part II: General Terms & Conditions, is hereby amended to strike the word "faxed," such that the first sentence reads as follows:

Unless otherwise expressly stated in this Agreement, all notices hereunder shall be in writing and either hand delivered, sent by electronic mail, sent by overnight courier, or mailed first class (postage prepaid).

13. Amendment to Section 41.2.

Section 41.2 of the MPA, Part II: General Terms & Conditions, is hereby amended by deleting the following defined terms:

Guarantor: means any party who signs on the Personal Guarantee signature line(s) of the Application. See section 29.2.

Personal Guarantee: See section 29.2.

Personal Guarantee: see section 29.2. This term may also be referred to as Personal Guaranty.

14. Authority.

The Parties represent and warrant that the execution, delivery and performance of this Amendment does not: (i) violate, or result in the breach of, any provision of their respective organizational documents; ii conflict with, or result in the breach of, require consent under, or constitute a default under, any contract by which each respective Party is bound, or (iii) violate any Applicable Law or Card Organization Rules applicable to each respective Party, and (iv) upon execution, will constitute a legal binding obligation upon each Party. Each Party further represents that the person signing this Amendment on behalf of the Party is an Authorized Representative. For clarity, the person signing this Amendment on behalf of Bank is not a Sales Representative, is not subject to the restriction on the Merchant application that states "NO SALES REPRESENTATIVE IS AUTHORIZED TO ACCEPT OR AGREE TO ANY ALTERATIONS TO THIS AGREEMENT," and is authorized to accept and agree to alterations of the MPA.

15. Entire Agreement.

Except as specifically amended hereby, the MPA, and all terms contained therein, remains in full force and effect. The MPA, as amended by this Amendment, constitutes the entire understanding of the parties with respect to the subject matter hereof. If an inconsistency exists between the terms of the MPA and the terms of this Amendment, the terms of this Amendment shall prevail with respect to such inconsistency.

16. Governing Law.

CONFIDENTIAL

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to any conflict of laws provisions.

17. Captions.

The captions in this Amendment are for convenience only and will not be considered a part of or affect the construction or interpretation of any provision of this Amendment.

18. Counterparts.

This Amendment may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one agreement.

By signing below, I certify I have read and agree to the terms of this Amendment.

Merchant's Authorized Representative

TD Bank, N.A.

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____