



**Merchant Services
Payment Card Program**

Merchant Agreement

December 2019 version

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Introduction

Allowing your customers to make purchases with credit, debit and prepaid cards increases your sales, and enhances customer satisfaction. Thank you for selecting Bank of Hawaii to help you make payment card options available to your customers.

The types and brands of payment cards available, and the rules for accepting them, are constantly changing. This Agreement provides you with basic information needed to understand the benefits you will receive through card acceptance, and the responsibilities that you and Bank of Hawaii are taking on. Please read it carefully, and contact us if you have any questions.

When we change the services we make available, or when the rules for accepting and processing cards change, we will make you aware of them through paper or electronic notices that become a part of this Agreement. Please keep copies of those notices with this brochure, so that your records are complete and up-to-date.

You are required to follow the rules set by the Card Organization that owns or markets the card brands you choose to accept, such as Visa, Mastercard or Discover. The amount you will have to pay to accept transactions is also set, in part, by each Card Organization. Pricing and rules will differ based on the type of Card presented (such as debit, credit or purchasing cards) and your type of business, such as a hotel, restaurant or internet retailer.

Prices and Card Organization rules (and any future changes) may be sent to you in paper form, or posted on Card Organization or Bankoh internet web-sites. You are primarily responsible for making sure that you stay up-to-date on this information.

Consumers are always concerned about the security of their financial information, and merchants play a key role in safeguarding card transaction data. You must stay informed about the evolving data security requirements imposed by Visa, Mastercard, and other Card Organizations, and assure that the point-of-sale or stand-alone terminals you use for card transactions fully comply with the current standards.

Please take the time to read this Merchant Agreement carefully. Knowing its contents can help you maximize the benefits of card acceptance, while reducing its risks.

We're available to answer your questions, or to tell you more about the products and services we offer. For questions about card acceptance, chargebacks, and other processing procedures, please call our toll-free service line at (800) 279-4195. If you have other questions, or to learn about other products and services, please contact your Merchant Services Representative.

Mahalo nui loa for selecting Bank of Hawaii Merchant Services.

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Card Program Merchant Agreement

This Agreement is between Bank of Hawaii and you, the Merchant. It covers your participation in Bankoh's payment card program, which allows you to accept payments made with Cards branded with marks owned by Visa, Mastercard, American Express, Discover and other Card Organizations. This Agreement describes the responsibilities that you and Bankoh promise to perform, the rights you and Bankoh have, and allocates risks between you, Bankoh, the Issuers and the Card Organizations.

1. Defining terms used in this Agreement

When you see these capitalized words in this Agreement, they mean:

The "Agreement" is this document, as well as any amendments or supplements which are added to it now or in the future. If you ask to add products or services, such as gift card issuance, check processing, wireless transaction processing, internet website processing or Clover® terminal processing, there will be a supplemental agreement provided and, unless it specifically says otherwise, it will automatically become part of this Agreement. The application you submitted to obtain Card acceptance services is also part of the Agreement.

"Bankoh" is Bank of Hawaii and, if appropriate, any affiliate or Service Provider.

"Card" means the plastic card or other Card Organization-authorized identifier or device used to make payment transactions. Cards may access a loan account (credit cards) or previously deposited funds (like debit cards, gift cards, and general purpose pre-paid cards) to pay a merchant. With some services you and your customers may choose to use, like TransArmor®, Android Pay® and Apple Pay®, a code generated by the service replaces the original Card.

"Cardholder" is a person or company, like a corporation or partnership, which has been issued a Card.

"Card Organization" is a company such as Visa, Mastercard, Discover or American Express, which either issues Cards itself, or authorizes banks and other companies to issue Cards bearing their brands.

The "Card Program" is Bankoh's framework for accepting payment Card Transactions (including related functions like Chargebacks, Credits and settlement of transactions).

A "Card Transaction" is a communication intended to transfer, recover, adjust, authorize or otherwise affect a movement of funds between a Cardholder and a merchant. Card Transactions include (but are not limited to) Sales Transaction Records, Credit Transaction Records and Chargebacks.

"Chargeback" or "Charge Back" is the reversal of a previously submitted Sales Transaction Record. Chargebacks are usually initiated by the Card's Issuer because of

a dispute about a Card Transaction, such as whether the Cardholder authorized the transaction.

"Chip Card" is a Card that contains an integrated circuit (often called a 'chip') that provides a higher level of protection from counterfeiting and unauthorized use by more securely storing and transmitting Card data to your point-of-sale terminal. All Cards meeting the EMV standard adopted by the major Card Organizations are Chip Cards.

"Credit Transaction Record" is a paper or electronic transaction record you submit to Bankoh because you are making a refund or price adjustment that is to be credited to the Cardholder's account. In the past, this was called a "credit voucher".

"Discover" means the Card Organization known as the Discover Global Network. At the time this Agreement was written, Cards offered through the Discover Global Network included Discover®, Diners Club International®, PULSE® debit, BCcard®, DinaCard™, elo™, JCB®, and UnionPay®.

"E-mail" is an electronic message transmitted over a communications network. It is not limited to messages sent over the Internet or using a specific protocol, as long as both the sender and recipient agree on the transmission method to be used, and are reasonably able to view the message in the English language.

"First Data" or "FDMS" means First Data Merchant Services, Inc., Bankoh's Service Provider, which provides transaction processing and some of the other services that Bankoh offers to you.

An "Issuer" is a Card Organization or a financial institution that creates and distributes Cards for use by Cardholders.

"PCI-DSS" means the Payment Card Industry Data Security Standards, a framework developed to facilitate a robust payment card data security process – including prevention, detection and appropriate reaction to security incidents.

"PIN" is the personal identification number or code entered by a Cardholder to prove that he or she is authorizing a Card Transaction.

"PINless" is a form of authorization that does not use either a signature or PIN to authenticate Card Transaction, such as a code transmitted by an application on the Cardholder's mobile phone.

"Sales Transaction Record" is a paper or electronic record generated at the point-of-sale, documenting a purchase of goods or services by a Cardholder from you through the use of a Card. In the past, this was called a "sales draft".

"Selected Brands" are those brands of Cards that you have elected to accept or which Bankoh has authorized you to accept.

"Service Provider" is a third party either you or Bankoh use to carry out obligations under this Agreement.

"Settlement Account" is the checking account you maintain at Bankoh for the purpose of receiving credits and debits related to Card Transactions.

“You” or “Merchant” means the person or business entity listed as the merchant on the application submitted to Bankoh to set up your Card Program participation.

2. The Card Program

2.1 Overview

a. By submitting an application to Bankoh and receiving its approval, you are permitted to accept Selected Brands of Cards held by your customers for payment of product and service purchases. Your acceptance of Cards will be governed by the terms of this Agreement (including any amendments and appendices) and the Card Organizations' rules.

b. Bankoh provides the mechanism for submitting Transactions for settlement, customer service to you, and facilitation of any disputes which arise over payment of a Sales Transaction Record or issuance of a Credit Transaction Record.

c. With most Cards, Bankoh will credit your Settlement Account and then collect the amount due from the Card Issuer. For a few other Cards (for example, some bearing the American Express brand), the Sales Transaction Record is submitted through Bankoh to the Card's Issuer, which then sends payment directly to you.

d. This Agreement may change when, for example, Bankoh makes new services available, or Card Organizations require a change to the prices you pay to accept Cards bearing their brands. Please refer to Section 13.4 for information about how changes will be communicated to you and accepted.

2.2 Card Organization Rules and Resources

a. Card Organizations publish extensive rules that govern transactions made with their brands of cards, and these rules change frequently. You are responsible for assuring that your acceptance of Card Transactions complies with the current and applicable Card Organization rules. Although this Agreement describes some of the rules in a general way, you cannot solely rely on what is written in this Agreement to determine what you need to do to comply with the Card Organization rules.

b. You should familiarize yourself with the Card Organization Rules. Visa, Mastercard and American Express make their merchant rules publicly available, and these are currently available over the Internet at:

usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf (Visa);

www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf (Mastercard); and

www.americanexpress.com/merchantopguide (American Express)

Bankoh will provide you with other Card Organization rules upon request, and will also respond to your questions about Card Organization rules.

c. The Card Organizations also have merchant guides and other explanatory information about acceptance of their Cards that may assist you in complying with their rules. Many of them may be found at:

usa.visa.com/support/merchant/library.html (Visa);

www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html (Mastercard)

www.discoverglobalnetwork.com/en-us/partner-with-us/business-owners (Discover); and

2.3 Exclusivity; Factoring Prohibited

a. The fees offered by Bankoh are based on your promise to use Bankoh to submit all Transactions made with Cards bearing the Selected Brands. Laws and Card Organization rules may allow merchants to choose which types of cards (such as debit or credit cards) they will accept, and what network a debit transaction will be routed on. But that does not allow you to route some Card Transactions to Bankoh, and other Card Transactions to another processor.

b. You will not pledge or otherwise create a lien on any Card Transactions in exchange for a loan or advanced payment from a third party, a practice called 'factoring', 'merchant cash advances' or 'credit card receivables financing'. Neither you nor any factor or lender you deal with shall attempt to instruct Bankoh to pay over proceeds of Sales Transaction Records that are submitted to Bankoh for processing. You understand and agree that the rights of Bankoh under this Agreement to a security interest in Card Transactions created under the Card Program are intended to be superior to any lien which you purport to give any third party as security for a loan or other financing arrangement.

3. Confidentiality and Information Security

3.1 Confidentiality

a. All Cardholder information, all Card Program documents provided to you by Bankoh (such as this Agreement, price lists, instructions, lists of compromised cards, security procedures, non-public Card Organization publications, and the contents of non-public web-sites which you are granted access to), and all information which you provide to Bankoh and reasonably identify as confidential and proprietary shall be kept confidential by the recipient. The confidential information shall not be disclosed to any employee, agent or contractor of the recipient unless they both reasonably need to know it in order to carry out the recipient's obligations under this Agreement, and are under the same duty to maintain the confidentiality of the information.

b. The restrictions on disclosure in this Section do not apply where the information (i) becomes publicly known through no wrongful act of the recipient; (ii) is received from a third party who does not have any obligation to keep it confidential; (iii) is independently developed by the recipient; (iv) is approved for release by the provider; or (v) is required to be disclosed by court order or governmental agency demand, as

long as the recipient promptly notifies the provider when it receives an order or demand (unless notification is prohibited by law), so action can be taken to invalidate or modify the scope of the order or demand.

c. Bankoh is authorized to share your confidential information and Card Transaction information with the Card Organizations in connection with administration of their respective Card programs. Card Organizations may use the information to, for example, operate their Card programs, promote their networks and Cards, perform analytics and create reports, and communicate with you.

3.2 Compliance with Security Requirements

a. You and your Service Providers will process, store and destroy all Cardholder information you receive in strict compliance with both applicable privacy and data protection laws, as well as the then-current Card Organization data security requirements for the brand of Card used. Card Organizations will change their data security requirements as threats are identified or technology changes. If the then-current data security requirements impose duties that are greater than either those required by law or which are described in this Agreement, then you must comply with the Card Organization's data security requirements.

b. The core of the Visa, Mastercard, Discover (JCB, China UnionPay and BC Card) and American Express data security requirements is PCI-DSS and its related standards for PIN Entry Devices called PCI PTS, payment computer applications called PCI PA-DSS, and point-to-point encryption. The principles of PCI-DSS are:

PCI Data Security Standard – High Level Overview¹

| | |
|--|--|
| Build and Maintain a Secure Network and Systems | 1. Install and maintain a firewall configuration to protect cardholder data 2. Do not use vendor-supplied defaults for system passwords and other security parameters |
| Protect Cardholder Data | 3. Protect stored cardholder data 4. Encrypt transmission of cardholder data across open, public networks |
| Maintain a Vulnerability Management Program | 5. Use and regularly update anti-virus software or programs 6. Develop and maintain secure systems and applications |

¹ Source: PCI Security Standards Council, Payment Card Industry (PCI) Data Security Standard, v3.2.1, May, 2018.

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|---|--|
| Implement Strong Access Control Measures | 7. Restrict access to cardholder data by business need to know 8. Assign a unique ID to each person with computer access 9. Restrict physical access to cardholder data |
| Regularly Monitor and Test Networks | 10. Track and monitor all access to network resources and cardholder data 11. Regularly test security systems and processes |
| Maintain an Information Security Policy | 12. Maintain a policy that addresses information security for all employees and contractors |

Detailed information on the PCI-DSS standard is available on the Internet at www.pcisecuritystandards.org. You shall, at minimum, comply with the current version of PCI-DSS applicable to your size and type of business at all times. At the time this Agreement was written, PCI-DSS compliance included, but was not limited to:

- (i) Your PCI-DSS compliance must be validated at least annually by:
 - (A) completion of a self-assessment questionnaire and submission to your designated security assessor or, if required by an applicable Card Organization's guidelines: (1) an annual onsite review and an Annual Report on Compliance by a qualified security assessor or (2) other specified compliance review and certification steps; and
 - (B) if applicable, a System Perimeter Scan performed on your externally-facing internet (IP) addresses by an approved scanning vendor, or any other security testing specified by an applicable Card Organization's guidelines.

Further information about which validation requirements apply is available through the websites listed in Subsection 3.2(d) below, or through your Bankoh Merchant Services Representative.
- (ii) PCI-DSS compliance shall be validated by the PCI qualified security assessor of your choice. From time-to-time, Bankoh may arrange to make PCI-DSS validation services available to you through a PCI approved security assessor, but you are not obligated to use that service.

A list of security assessors that have been qualified by the PCI Security Standards Council appears at:

www.pcisecuritystandards.org/assessors_and_solutions/qualified_security_assessors
- (iii) You must also demonstrate PCI-DSS compliance to Bankoh. Bankoh may require you to register with and submit evidence of PCI-DSS compliance through an online portal designated by Bankoh to demonstrate your PCI-DSS compliance.

c. Because the effectiveness of your internet security efforts depends on the unique configuration of your hardware and software; your internal controls; the physical security of your locations; your complete responses to the security assessor's inquiries; and your prompt implementation of the resulting recommendations, **Bankoh will not warrant nor represent that your compliance with the PCI-DSS standard or use of a PCI qualified security assessor will prevent loss or theft of data, nor limit unauthorized access to your computer systems.**

d. Card Organizations may impose data security standards that are higher than those of PCI-DSS for certain types of merchants, such as those conducting sales over the Internet. The additional requirements and related information published by Visa, Mastercard, American Express and Discover are currently located on the Internet at:

www.visa.com/cisp (Visa);

www.mastercard.com/sdp (Mastercard);

www.americanexpress.com/datasecurity (American Express); and

www.discovernetwork.com/fraudsecurity/disc.html (Discover)

Please contact us if you want to learn about other Card Organizations' requirements.

Card Organizations frequently update their data security standards, and it is your responsibility to both stay informed about the current requirements and to maintain the compliance of your Card-related operations with them.

e. In addition to complying with both the then-current PCI-DSS standard and any additional security requirements imposed by applicable Card Organizations, you shall not:

- (i) Retain Card Validation Codes (typically, three-digit values printed in the signature panel of most Cards, or a four-digit code appearing on the front of an American Express Card);
- (ii) Retain a Card's full magnetic stripe data, chip card data, card verification number, the Cardholder's PIN or any address verification data after the Card Transaction is authorized by the card issuing bank;
- (iii) Store or transmit any Cardholder information without encrypting it;
- (iv) Store any Cardholder information for longer than is necessary to process any purchase returns, Chargebacks or transaction disputes;
- (v) Keep any Cardholder information, whether in paper or electronic form, in an area that is not both secure and can only be accessed by trusted personnel; or
- (vi) Maintain a connection between the Internet and any computer storing or processing Cardholder information that is not protected by a properly configured firewall, as well as virus detection and prevention software meeting Card Organization data security standards.

f. You are responsible for providing acceptable proof of that all Cardholder information has been properly destroyed in the event that you discontinue operations, or your Service Provider is either terminated or otherwise ceases providing services to you.

g. Bankoh may assess a fee for administering the Card Organization data security requirements. Bankoh may also assess a monthly non-compliance fee if you fail to demonstrate PCI-DSS compliance. Fees will be listed in Bankoh's pricing schedule. You will pay any costs reasonably incurred by Bankoh or your Service Provider in investigating or validating your compliance with the applicable data security standards.

3.3 Security Breach Response

a. **If you know or suspect that Cardholder information has been accessed by any unauthorized person, you must immediately contain and limit the unauthorized access, contact Bankoh (in all cases within 24 hours of discovery), and cooperate in any investigation that results.** Containment of the unauthorized access may include, but is not limited to, stopping access and alteration of compromised equipment (preventing log-ons, password changes, and access as a ROOT user/administrator); keeping the compromised equipment "on" to preserve potential evidence in the equipment's memory; and physically disconnecting the compromised equipment from the network by unplugging the data connection cable.

b. If reasonably requested by Bankoh, or any Card Organization whose Cardholder information may have been improperly accessed, a forensic examination by a Card Organization-approved Incident Response Assessor shall be conducted at your expense. You, your employees and Service Providers shall promptly, fully and completely comply with all reasonable requests by the Incident Response Assessor.

c. You shall promptly notify all affected customers to the extent required by applicable state and federal financial privacy laws, at your expense.

d. In addition to any other duties and remedies described in this Agreement, if you, your Service Provider or any person under your control fails to make required notifications, to preserve evidence, or to initiate or cooperate in a forensic examination, Bankoh may (but is not required to) elect to take whatever actions it deems appropriate to remedy your noncompliance and you will immediately pay for all expenses incurred upon demand.

3.4 Duties of Service Providers

a. The data security and breach response standards in Sections 3.2 and 3.3 above also apply to any Service Provider that you may use to store, process or transmit Cardholder information. You must have a written agreement with each of your Service Providers that receives Cardholder information, confirming that the Service Provider is aware of and will comply with the then-current PCI-DSS and the other requirements in Section 3.2, and is strictly responsible for the security of Cardholder information it receives. The written agreement must be promptly provided to Bankoh upon request.

b. In addition to the requirements for Service Providers in Section 4.8, you must:

- (i) Notify Bankoh of any Service Provider that engages in, or proposes to engage in, the storing, processing or transmitting of Cardholder information on your behalf, regardless of the manner or duration of such activities.
- (ii) Ensure that all Service Providers are (A) registered with the applicable Card Organizations; and (B) comply with all applicable Card Organization rules and data security standards.

c. You are strictly liable for any loss of Cardholder information which occurs while it is in the possession of your Service Provider. You shall cooperate with Bankoh in protecting the interests of Bankoh, Cardholders, Issuers and the Card Organizations if Cardholder information is lost or improperly accessed while in the custody of a Service Provider. This may include assigning your recovery rights against the Service Provider to Bankoh or a person designated by Bankoh. It is your responsibility to make sure that your Service Provider has both the obligation and ability to protect Cardholder information, and to pay you (by carrying cyberliability and other insurance) if Cardholder information is lost or improperly accessed.

4. Sales, Returns and Chargebacks

4.1 Advertising Card Acceptance

a. Your use of Card brands (such as Visa, Mastercard, American Express or Discover) licensed to you by the Card Organizations will strictly comply with their rules and any advertising guidelines they provide. You shall not advertise or imply that Bankoh or a Card Organization endorses your goods and services.

b. You will prominently display the identity of all Selected Brands accepted at your place of business and in your advertisements, if Card payment is otherwise mentioned. You shall not advertise that you accept all of a Card Organization's types of Cards (for example, credit and debit cards) if you restrict the types of Cards you will accept pursuant to Section 4.2(a).

c. You will promptly remove and either destroy or return all promotional materials bearing a Card Organization's brands, whether provided by Bankoh or not, upon termination of this Agreement, your decision not to accept that brand of Card, or upon demand of the Card Organization.

4.2 Card Acceptance and Allowable Card Transactions

a. Card Organization rules specify whether merchants are allowed to discriminate between types of payment cards; what fees they may charge customers for using a Card; and what limits they may place on Card acceptance. You shall comply with the current Card Organization acceptance requirements for each of the Selected Brands. These include, but are not limited to:

- (i) Limits and required notices when you choose not to accept all types of a Card Organization's Cards, such as where you elect to only accept credit cards or debit cards.

- (ii) Restrictions on when you are allowed to ask a Cardholder to provide an identification card or additional identifying information (such as an address, telephone number or drivers' license number) to complete a transaction.
- (iii) Limits and required notices when you set minimum or maximum amounts for purchase transactions using Cards.
- (iv) Registration requirements, limits, fee caps and required cardholder notices when you choose to impose "convenience", "checkout", "surcharge" or other fees on Card Transactions.
- (v) Prohibitions on discriminating against Cards issued by a specific bank, or which bear the brand of your competitor.
- (vi) Requiring compliance with the customer's choice if more than one payment method (for example, signature debit and PIN-based debit) is available through the Card presented.

b. Except where the applicable Card Organization expressly permits a particular type of transaction to be processed without signature, PIN or PINless authentication (for example, certain Chip Card transactions), each Card Transaction submitted to Bankoh must be authenticated by a signature, PIN, PINless or other authorized method.

- (i) For signature-based transactions, you will obtain the Cardholder's signature on a paper Sales Transaction Record or an approved signature capture device, and will compare it with the signature on the Card.
- (ii) For PIN-based transactions, you will capture the PIN on an approved keypad and transmit it to Bankoh in an encrypted form for authorization.

c. You must accept non-traditional Cards (such as a reduced-size plastic Card; a radio-frequency readable Card (sometimes called a contactless card); or a mobile device running Android Pay or Apple Pay) if the Card meets all current Card Organization technical requirements and you have a point-of-sale terminal that is physically capable of reading the Card.

d. Unless required or specifically authorized by the applicable Card Organization rules, you will not split a single purchase into two or more Card Transactions, or attempt to obtain multiple authorizations for a single purchase. You will include all taxes, tips and other amounts to be paid by the Cardholder for the purchase in the transaction amount. You shall only submit each Sales Transaction Record or Credit Transaction Record to Bankoh once, unless re-presentment is specifically required or allowed by the applicable Card Organization rules.

e. You are responsible for assuring that the Card used in a transaction is not stolen, expired or counterfeit by inspecting it to assure that it has been signed, has the Card Organization's hologram or other anti-counterfeiting device present, the expiration date has not passed, and that there is no evidence of tampering such as a re-embossed cardholder name or account number.

f. You will not submit any Sales Transaction Record you or your employees know or should have known through the exercise of reasonable care (for example, by comparing the Cardholder signature on the Card with the signature on the Sales Transaction Record) to be fraudulent or not authorized by the Cardholder.

g. You may not include any language on your signage, invoice or Sales Transaction Record that indicates Cardholder is giving up his or her right to dispute the transaction under Card Organization procedures or applicable law.

h. Except where either a Card Organization has eliminated the requirement, or you and Bankoh have established an alternative arrangement such as a floor limit in writing, each Card Transaction must be submitted to Bankoh for authorization, and an authorization received before completing a sale or making a refund.

i. Unless you have been authorized to participate in a Card Organization's cash-back program, you may not pay, refund or rebate cash, travelers checks, scrip, pre-paid general-use debit cards or other cash equivalents to a Cardholder in connection with any Card payment for the purchase of goods or services.

(i) You may not operate a scrip dispensing terminal that generates Transactions which will be submitted to Bankoh for processing.

(ii) You may issue gift certificates or gift cards redeemable for products and services at your locations if you comply with all applicable laws and Card Organization rules.

j. You will not accept any other form of payment from a Cardholder for charges which have already been included on a Sales Transaction Record.

k. You will not submit any Card Transaction which would have the effect of refinancing a Cardholder's existing obligation to you, including transactions arising from the dishonor of a Cardholder's personal check.

l. You shall not submit any Sales Transaction Record (i) that was not originated as a direct result of your business (a practice known as 'Laundering' of Sales Transaction Records), or (ii) for a transaction which violates applicable state, territorial or federal law. You shall not, under any circumstances, accept a Card payment in connection with a gambling transaction. In addition to all other remedies available to it, Bankoh may terminate your right to process transactions immediately and without prior notice for violation of this Subsection 4.2(l).

m. You shall not submit any Credit Transaction Record (refund or adjustment) which does not directly offset a Sales Transaction Record previously submitted to Bankoh.

n. If you have multiple locations, you must identify on each Sales Transaction Record and Credit Transaction Record the specific location where the transaction occurred, using the unique location number assigned by Bankoh.

o. You shall not submit a Sales Transaction Record (1) in connection with the sale of your furnishings, fixtures or trade equipment (such as in a 'going out of business' sale), or (2) for a type of transaction (such as sales over the telephone or internet) which has not been disclosed to and approved by Bankoh (see Section 4.3, below).

p. Bankoh has the exclusive right to process and settle all Sales Transaction Records, and you will not attempt to collect the amount of any Sales Transaction Record from a Cardholder except as expressly authorized by Bankoh.

4.3 Internet, Telephone, Mail and Recurring transactions

a. You shall not, under any circumstances, submit a Sales Transaction Record generated by a mail, telephone, or Internet transaction without first receiving the written consent of Bankoh, which may require the signing of a supplemental agreement and compliance with additional security requirements.

b. Any web site which you use to solicit or accept Card Transactions must conform to Card Organization requirements. This includes displaying your consumer data privacy policy, the security method used to transmit Cardholder information, and the address of your primary location. Cardholder information may only be transmitted using an encryption method accepted by the applicable Card Organization

c. All Card Transactions must be submitted to Bankoh for authorization, and the card expiration date and the card verification value number must be obtained, along with any other information required by the applicable Card Organization. Where available, you are encouraged to use the Card Organizations' address verification service to avoid accepting fraudulent Card Transactions.

c. If you accept a recurring consumer payment, you must obtain a written authorization from the Cardholder before any related Sales Transaction Records may be submitted. The written authorization must contain the transaction amount(s) that will be charged, the frequency of the recurring charges, and the duration of time the authorization is effective.

d. You will strictly comply with all federal and state laws and regulations concerning the solicitation and acceptance of payments by internet, telephone or mail.

e. Sales Transaction Records generated by transactions over the internet, telephone or by mail will only be accepted by Bankoh on a full recourse basis (that is, Bankoh may unconditionally Charge Back these drafts to you at any time), regardless of any authorization received from Bankoh.

4.4 Returns

a. You will have refund, exchange, return and price adjustment policy for all purchases made with a Selected Brand of Card that are no less favorable than for purchases made or with cash, checks, or any other payment method.

b. If you have an exchange or return policy, you will not refund cash upon the return of products or refusal of services covered by a Sales Transaction Record. You must issue a Credit Transaction Record, which will be submitted to Bankoh not later than the third banking day following such return or refusal.

c. If you restrict refunds for transactions using a Card, you must prominently post signage at the point of sale stating the policy, and prominently mark each receipt or paper Sales Transaction Record provided to the Cardholder with a short summary of

the policy, such as "No Refunds," "Exchange Only", or "In-store Credit Only" in no less than 1/4-inch letters.

4.5 Card Transaction Warranties

By submitting a Sales Transaction Record, a Credit Transaction Record or any other form of Card Transaction, you represent and warrant to Bankoh that:

- (i) No one but you have a right to, or an ownership interest in, the Sales Transaction Record or the purchase transaction which generated the Sales Transaction Record;
- (ii) Each Sales Transaction Record is a valid and enforceable obligation of the Cardholder in the stated amount, free of any dispute or offset, and you have no knowledge or notice of any occurrence that might impair the validity or collectability of each Sales Transaction Record;
- (iii) Each Sales Transaction Record and Credit Transaction Record relates to a good faith transaction made in your ordinary course of business;
- (iv) You are satisfied, upon reasonable diligence, that the customer using the Card is the authorized Cardholder; the Sales Transaction Record or Credit Transaction Record was authorized by the Cardholder; and that there was no fraud or other violation of law by either you or your customer;
- (v) The transaction and submission of the Sales Transaction Record or Credit Transaction Record complies in all respects to applicable laws, government regulations, and Card Organization rules;
- (vi) You are not relying on any authorization obtained from Bankoh as evidence of the Cardholder's identity;
- (vii) The Sales Transaction Record or Credit Transaction Record was not previously submitted in any form to Bankoh, unless resubmission is expressly permitted as part of the Charge Bank process;
- (viii) The Sales Transaction Record or Credit Transaction Record does not represent a transaction between the Cardholder and someone other than you, an attempt to re-submit a Sales Transaction Record that was previously Charged Back, or the splitting of a sale transaction between Sales Transaction Records; and
- (ix) In the case of paper Sales Transaction Records and Credit Transaction Records, that your completion of any blank spaces on the form is in compliance with authority granted by the Cardholder, and no alteration was made after the Cardholder's signature was obtained.

4.6 Chargebacks

a. If a Cardholder disputes in any manner: (i) the signature or other authorization on a Sales Transaction Record or the manner in which Cardholder was induced to sign or authorize it, (ii) the sale, delivery or quality of the goods or services

purchased or, (iii) when applicable, asserts that the goods purchased have been returned or placed in return transit or that the services purchased have been refused, you agree that Bankoh may Charge Back any Sales Transaction Record relating to the disputed goods or services if permitted by the Card Organization rules, without making an independent determination that the Cardholder's claim is valid.

b. Bankoh may Charge Back the full amount of a Sales Transaction Record, without recourse, for the following reasons:

- (i) The Sales Transaction Record was obtained or submitted without complying with all provisions of this Agreement and the applicable Card Organization rules, or you have breached a warranty given with respect to the Sales Transaction Record, regardless of whether Bankoh issued an authorization to proceed with the transaction;
- (ii) The Cardholder alleges that the Sales Transaction Record was improperly or fraudulently obtained or submitted;
- (iii) The Cardholder disputes in any way the sale, delivery or quality of the goods and services covered by the Sales Transaction Record, or claims that the products or services purchased were not received, or were rejected or returned;
- (iv) The purchased goods or services are in any way illegal, or the transaction violated an applicable law or regulation;
- (v) The Card accepted by you was expired or otherwise invalid;
- (vi) The Sales Transaction Record lacks required data or a required signature/PIN/PINless authentication, regardless of whether authorization by Bankoh was obtained; and/or
- (vii) Your action or inaction (such as a delay in producing a copy of the Sales Transaction Record at the Cardholder's request) has resulted in Sales Transaction Records being subject to a Chargeback under Card Organization rules and regulations.

b. Bankoh has the right to debit the Settlement Account or any other account you maintain with Bankoh for the amount of any Sales Transaction Record subject to Chargeback.

c. You are prohibited from submitting Sales Transaction Records for transactions that have been the subject of a previous Chargeback, even if the Cardholder consents to such action by you and a new Sales Transaction Record is generated.

d. You waive notice of default, nonpayment, protest, notice of protest, demand for payment and all other demands or notices for Chargebacks and other assessments relating to this Agreement.

e. You consent to any extension or compromise made with any Cardholder or Issuer by Bankoh in regard to a disputed Card Transaction, and agree that any such

extension or compromise will not affect your obligations or Bankoh's rights under this Agreement.

4.7 Records

a. You will maintain complete records of all transactions relating to this Agreement, and Bankoh may examine these records at any reasonable time. You will retain copies of Sales Transaction Records and Credit Transaction Records in paper or retrievable electronic form for at least one year after they are submitted for processing and the purchased goods or services have been delivered.

b. You agree that Bankoh may verify any Card Transaction with your customers if necessary to determine if you have submitted fraudulent transactions, or for Chargeback investigation purposes.

c. You must deliver a copy of any Sales Transaction Record or Credit Transaction Record to Bankoh within three (3) business days after receipt of Bankoh's request.

4.8 Service Providers

a. You may designate a Service Provider as your agent for the handling of transactions and delivery of settlement data, provided that Bankoh approves and the Service Provider is registered with all Card Organizations that require it. Additional terms and provisions applicable to the use of Service Providers may be covered by a separate Supplemental Agreement mutually agreed to by you and Bankoh.

b. You understand that Bankoh's responsibility for a Card Transaction begins when it is received from your Service Provider, and ends when it is delivered to your Service Provider. Bankoh's obligation to settle with you for any Sales Transaction Record submitted through your Service Provider is contingent upon actual receipt of the Card Transaction by the Card Organization for further processing. You are responsible for any failure by the Service Provider to comply with Card Organization rules and procedures, as well as this Agreement.

5. Settlement Account; Payments and Fees

5.1 Settlement Account

a. Unless you and Bankoh agree to other arrangements in writing, you are required to maintain a checking account for settlement purposes at Bankoh (the "Settlement Account").

b. Your Settlement Account must always have enough available funds on deposit to cover any Chargebacks, Credit Transaction Records, fees and other obligations under this Agreement.

c. You authorize Bankoh to charge or credit the Settlement Account without prior notice for any Sales Transaction Records, Credit Transaction Records, Chargebacks,

credits, deficiencies, overages, discounts, rental charges or other fees you owe Bankoh under this Agreement, even if the payment of a charge creates an overdraft in the Settlement Account.

d. If an overdraft exists, you agree to immediately correct the overdraft by depositing sufficient available funds into the Settlement Account. If charges cannot be collected due to insufficient funds in the Settlement Account, or if the Settlement Account is closed for any reason, you authorize Bankoh to charge any other account you may have with Bankoh without prior notice to you, and/or to issue an invoice for immediate payment of the balance due.

e. You will accept, as payment in full, a Settlement Account credit for the net amount of each Sales Transaction Record submitted, after Bankoh deducts those discount amounts, charges and fees attributable to the Sales Transaction Record.

f. Each month, Bankoh will provide a statement of Card Transactions processed, and fees and other amounts charged. The statement will identify the brand of Card that generated fee or other amount charged.

g. You shall promptly review each statement provided and notify Bankoh of any inquiry or dispute within 45 days of receipt. If you do not notify Bankoh within that time, Bankoh will not be responsible for either (1) any subsequent losses you suffer that could have been prevented by timely notice; or (2) any prior losses that could have been reduced or eliminated (for example, by issuing a Charge Back) if timely notice had been given.

5.2 Payment

a. Where Bankoh has promised to credit your Settlement Account and seek payment from the Card issuer, the net amount of all Sales Transaction Records transmitted and accepted in accordance with Bankoh's instructions and procedures will generally be credited to your Settlement Account on the next Bankoh business day.

b. Where an Issuer requires submission of Sales Transaction Records directly to it before payment is made, your Settlement Account will be credited upon receipt of those proceeds.

5.3 Fees

a. Depending on the Card accepted, a fee may be charged for each transaction authorization request you send to Bankoh.

b. Depending on the Card accepted and type of transaction, a merchant discount fee, flat fee, or both may apply for each Sales Transaction Record you submit and Bankoh processes. The merchant discount fee is calculated by applying a percentage to each Sales Transaction Record amount. The percentage may change, depending on the Card type and your Card activity.

c. You may also incur charges to set up your location(s) for acceptance of Cards, to assist you in balancing and reconciling transactions, and to make service calls

at your location(s) unless the call is required to repair malfunctions of Bank-provided equipment.

d. The merchant discount fee and other fees are disclosed on Bankoh's pricing schedule, which will be provided to you and updated periodically. The fees for custom services will be quoted upon request.

e. You irrevocably authorize Bankoh to charge the Settlement Account for all fees and charges relating to this Agreement.

f. Bankoh may immediately charge you without advance notice for any "pass-through" charges you incur, including, without limitation:

- (i) Communication lines fees and charges;
- (ii) Interchange charges, assessments, fines and penalties imposed by any Card Organization;
- (iii) Vendor fees and charges your designated agent or Service Provider charges to Bankoh;
- (iv) Charges for handling excessive Cardholder disputes and Chargebacks; and
- (v) Previously invoiced charges for terminal paper rolls, forms and other materials for use in the Card Program you have ordered from Bankoh's Service Provider under Section 10, including shipping and handling charges.

6. Account Holds; Right of Set-Off

a. If Bankoh, in its sole discretion, reasonably determines that Sales Transaction Records will be Charged Back, then Bankoh is authorized to place a hold on the Settlement Account (or any of your other accounts if there are insufficient collected funds) for the amount of the anticipated Chargebacks and related fees as estimated by Bankoh in its sole discretion, even if the amount is later determined to be in excess of the actual Chargebacks and fees.

b. Bankoh will notify you of any such holds, and you must then deposit any additional funds necessary to cover outstanding items.

c. Bankoh will not be liable for any dishonored checks resulting from a hold being placed on your deposit accounts under this Section.

d. Bankoh may, at its option and without limitation, exercise its right of set-off; hold any funds on deposit at Bankoh for a period of up to six months; and place a hold for 10 days on the amount of any Sales Transaction Record being processed upon the occurrence of any of the following:

- (i) Any breach of this Agreement;
- (ii) You become a debtor in any proceeding under any state or federal law relating to bankruptcy or other debtor relief;

- (iii) You transfer to another entity all or substantially all of your assets, or enter into an agreement to do so, whether by operation of law or otherwise;
- (iv) You stop accepting Cards and submitting Sales Transaction Records to Bankoh for 30 days, or otherwise substantially discontinue your business operations;
- (v) Bankoh, in its discretion, determines that there is a materially adverse change in your business or financial condition, or that your transactions or Sales Transaction Records involve circumstances that may cause excessive Chargebacks to Bankoh;
- (vi) You close your Settlement Account; or
- (vii) Insufficient collected funds are in the Settlement Account to fully cover debits authorized under this Agreement, and you have failed to comply with the additional deposit requirement in Section 5.1 (d).

7. Reserve Account

a. Bankoh may at any time establish a restricted, non-interest-bearing account in Bankoh's name as a "Reserve Account" on your behalf.

b. You irrevocably authorize Bankoh, at Bankoh's sole option, to establish and maintain this Reserve Account upon the occurrence of (i) any event giving Bankoh a right of set-off or termination, or (ii) upon your termination of the Agreement. Bankoh shall notify you of the amount which, in Bankoh's reasonable discretion, is necessary to mitigate the risk of loss caused by your action or inaction.

c. You must immediately deposit collected funds in the Reserve Account in the amount requested by Bankoh, and immediately deposit any additional amounts as Bankoh determines from time to time. In addition, Bankoh may place the proceeds of any Sales Transaction Record or other credit due to you into the Reserve Account.

d. This Reserve Account is subject to the same charges for Credit Transaction Records, fees, costs, and other amounts due Bankoh that may be charged against the Settlement Account.

8. Security Interest; Assessment of Financial Condition

a. Under this Agreement, Bankoh is making financial accommodations to you that, at times, will involve financing of Sales Transaction Records which have been submitted but have not been paid, and of debits such as Credit Transaction Records and Chargebacks. To secure all of your obligations to Bankoh under this Agreement, including, without limitation, your obligation to pay for or repurchase Sales Transaction Records, to cover Chargebacks and Credit Transaction Records, and to pay for any amounts assessed by Card Organizations for violations of their requirements, you grant to Bankoh a lien, security interest and right of set-off in and to any and all your property that now or in the future may be in the possession of Bankoh, and to all money and accounts now or in the future due to you from Bankoh, together with all proceeds of the foregoing.

e. Under Card Organization regulations, Bankoh is required to monitor your deposit activity related to this Agreement, and under federal banking regulations Bankoh is required to maintain records reflecting the current status of your financial condition. You and the individuals who are signers of the application related to this Agreement authorize Bankoh and any credit bureau or reporting agency contracted by Bankoh to investigate their credit condition from time to time for the purpose of administering this Agreement. They also agree that Bankoh may use any information in its possession to investigate their credit condition (including but not limited to deposit account balances and facts disclosed on any credit application submitted to Bankoh), that Bankoh may share their financial information with credit reporting agencies and others to the extent necessary to administer this Agreement, and also agree to promptly furnish Bankoh financial statements and information which Bankoh may request in connection with credit investigations.

9. Allocation of Risk; Indemnification; Time Limit on Claims

a. The acceptance of transactions using a Card is subject to risks of loss that are not found in other types of payment methods. Minimizing the risk of loss is heavily dependent on you and your Service Providers understanding and applying Card Organization rules, requirements and procedures in their day-to-day operations, which Bankoh cannot monitor or control. In order to keep the cost of Card acceptance competitive, the risk of loss is divided as follows:

- (i) All warranties made by Bankoh in this Agreement are in lieu of any and all other warranties, expressed or implied, about the products and services, including the warranty of merchantability and fitness for any particular purpose.**
- (ii) Bankoh shall not be liable for damages, including special, incidental, and consequential damages, arising out of or in connection with the actions or inactions of you, your Service Provider, Card Organizations, or any other party which Bankoh does not control.**
- (iii) Bankoh shall only be liable for your out-of-pocket expenses, and shall not be liable for any special, incidental, or consequential damages arising out of or in connection with Bankoh's failure to perform your obligations under this Agreement, unless caused by Bankoh's gross negligence or intentional misconduct.**
- (iv) To the extent that any actual damages caused by Bankoh were made worse by your own actions or inaction (called "failure to mitigate damages" or "comparative negligence"), then the amount which you may recover shall be reduced to that extent.**
- (v) The aggregate liability of Bankoh for all claims arising in any calendar year that you (or anyone acting on your behalf) make against Bankoh shall not exceed the larger of: (A) the average of fees you have paid to Bankoh**

during each of the preceding twenty-four months, multiplied by twelve; or (B) \$3,500.00.

b. To the fullest extent possible, your obligations in this Agreement shall extend to your officers, employees, agents and Service Providers. You shall be responsible for all actions or failures to act by your officers, employees, agents and Service Providers, regardless of whether those actions or inactions were expressly authorized or known to exist by you.

c. Unless a different timeframe is specified for claims arising from your use of a particular product or service, all lawsuits or demands for arbitration against Bankoh, its officers, directors, employees, agents and Service Providers must be filed within one (1) year of the date the claim accrues. You and Bankoh agree that any claim you file after the applicable claims date is barred.

d. You will indemnify and hold Bankoh, its officers, directors, employees, agents and Service Providers harmless from any losses, damages or costs, including reasonable attorney's fees, resulting from: (i) any claim by a Cardholder, the issuer of a Card or a Card Organization, whether asserted by way of defense, dispute, offset, counterclaim or separate complaint; (ii) your breach of any provision of this Agreement or any Card Organization rule or procedure; (iii) your breach of any covenant, warranty or condition, whether written or oral; (iv) the improper submission of any Card Transaction (specifically including any Sales Transaction Record or Credit Transaction Record); (v) your agreement with the Cardholder; or (vi) breach of contract, negligence, misconduct, fraud or dishonesty by you, your Service Provider, or any of your officers, employees or agents.

e. You agree to pay Bankoh all costs, fees and expenses, including reasonable attorney's fees, relating to your breach of any provision of this Agreement or applicable Card Organization rules, including, without limitation, those incurred in the collection of any amounts due. For the avoidance of doubt, the obligation to pay includes any amounts which Bankoh is assessed by a Card Organization (whether denominated as a 'compliance fee', 'audit charge' or other term) which are attributable to your actions or inactions, or those of your officers, employees or agents.

10. Materials and Equipment

10.1 Materials

You have the option of ordering terminal receipt paper, ink/ribbons, batteries, decals and other materials for use with the Card Program from Bankoh's Service Provider. You are solely responsible for assuring that all materials you purchase from sources other than Bankoh's Service Provider fully comply with all Card Organization requirements, and for any errors or losses that occur because of noncompliance.

10.2 Terminal Equipment

a. Imprinters, electronic terminals and related equipment for capturing and submitting Card Transactions (each a "Terminal") may be either rented through Bankoh,

or with Bankoh's prior consent, you may use your own electronic cash registers or other equipment for the capture and submission of transactions. (See Sections 10.3 and 10.4 for further information.) The provision of Clover® Terminals and service is governed by Appendix "C" and the "Clover Service Agreement with First Data", both of which are attached to this Agreement.

b. If you provide your own equipment, you are solely responsible for assuring that your hardware, software and network connections comply at all times with Card Organization security and processing standards. Bankoh will not be responsible for monitoring or checking equipment you provide to assure that it is kept up-to-date and in compliance with applicable law, regulations, and Card Organization requirements.

c. All Card Transactions must be captured and submitted by use of a Terminal, or through approved equipment you provide. If any Terminal or equipment you provide is defective, inoperative, or otherwise malfunctioning, you shall contact Bankoh and carefully comply with the contingency instructions and procedures that are provided.

10.3 Rental of Terminals through Bankoh

a. Bankoh will rent you the Terminals listed on the set-up sheet created for you, as modified from time to time. You agree to pay Bankoh the monthly rental fees and additional transaction fees indicated on your set-up sheet and Bankoh's pricing schedule, which may be changed as provided in Sections 5.3(d) and 13.4(b). Bankoh will charge all Terminal rent and fees to your Settlement Account. You shall pay for all costs associated with providing a suitable place of installation and the necessary electrical power and outlets for operating the Terminal.

b. The first month's rent will be charged as follows. If the date the Terminal is installed and ready for use at your designated location between the first and fifteenth day of the month, rent will be charged for the full month. Otherwise, rent shall start on the first day of the month following installation.

c. You shall protect the Terminal from damage and deterioration, other than normal wear and tear. Upon termination of this Agreement or your decision to discontinue use of the Terminal, you shall return the Terminal to Bankoh in the same operating order, repair, condition, and appearance as when received, less normal wear and tear. You shall bear the risk of damage from fire, the elements, or otherwise until the Terminal is returned to Bankoh.

d. You shall not affix or install any accessory or device on the Terminal which will impair the originally intended function or use of such Terminal, or which cannot be readily removed without causing material damage to such Terminal. You will not, without the prior written consent of Bankoh and subject to such limitations as Bankoh may impose, load any additional software into the Terminal or modify your operation in any way including but not limited to any software or modifications intended to allow the terminal to be used to access services which are not provided by Bankoh under this Agreement.

e. Each Terminal rented from Bankoh shall, at all times, be the sole and exclusive property of Bankoh. You shall only have the right to use it in the normal

operation of your Card acceptance business at the location of installation. You shall keep the Terminal free and clear from any claims, levies, liens, encumbrances or process adverse to Bankoh's ownership interest. Bankoh shall be permitted to display a notice of your ownership on each Terminal by means of a suitable stencil, label, or flag.

f. Bankoh shall, upon notification by you, repair or replace defective Terminal parts, or parts which have worn out through normal usage. You shall either make the Terminal available to Bankoh for inspection, maintenance, and replacement at the place where it is normally located, or shall ship it in the manner specified by Bankoh or FDMS for servicing, and shall make your records pertaining to the Terminal available to Bankoh for inspection upon request during your regular business hours.

g. You agree that Bankoh shall not be liable to you for, and you shall indemnify and hold Bankoh harmless with respect to, any claim from a third-party for any liability claim, loss, damage or expense of any kind or nature caused, directly or indirectly, by the inadequacy of any Terminal for your particular business purposes; any deficiency or defect in any Terminal which is not covered by Bankoh's repair obligation in Section 10.3(f); any interruption or loss of service due to utility; including but not limited to any loss of business or other special, incidental, or consequential damages whether or not resulting from any of the foregoing.

10.4 Equipment You Supply.

a. If you provide your own terminal equipment, you warrant that it has made your own independent evaluation and has assumed the risk with respect to: the condition of the equipment, the fitness or suitability of the equipment for your use, the compatibility between the equipment and any software operated by Bankoh or a Card Organization (including updates and enhancements) and the ability of any third-party to properly install, maintain, repair, refurbish, overhaul or replace the equipment. You will make independent arrangements for the installation, maintenance, repair, refurbishment, overhaul or replacement of the terminal equipment.

b. You shall provide all necessary programming data, codes or software (which, together with any updates or enhancements, are called "your Software") necessary for connecting with Bankoh's computer systems, and capturing and transmitting Card Transactions. You shall only use versions of your Software approved for use by the applicable Card Organizations, and shall not utilize any version of your Software which appears on listings of outdated and compromised software published by the Card Organizations.

c. To the extent that Bankoh personnel provide assistance or software to configure terminal equipment you have provided to properly capture and submit Card Transactions, it is provided as a courtesy and you assume all risks in connection with receipt of the assistance or software. The software remains the property of the Card Organization or other entity which provided it, and shall be deleted from your terminal equipment either upon termination of this Agreement or upon demand by Bankoh or the software's owner.

d. Bankoh shall not be liable to you for, and you shall indemnify and hold Bankoh harmless with respect to any claim from a Cardholder, Card Organization or

other third-party for any liability, claim, loss, damage, or expense of any kind or nature caused, directly or indirectly, by any terminal equipment you have provided and the installation or servicing thereof; the incompatibility of the terminal(s) with Bankoh's computer system; any interruption or loss of service, including but not limited to any loss of business or other special, incidental, or consequential damages whether or not resulting from any of the foregoing. Without limiting the foregoing, you agree to indemnify and hold Bankoh harmless with respect to penalties, reinstatement fees, retroactive monthly interchange adjustments or other charges imposed by a Card Organization as a result of your failure to meet interchange criteria due to equipment failure, communications interruption or other conditions related to use of terminal equipment you have provided.

11. Term and Termination

11.1 Initial Term and Renewal; Early Termination Fee

a. This Agreement is effective only upon acceptance by Bankoh. The initial term of this Agreement shall be three years from the date of acceptance, and the Agreement shall renew for one year periods until either party cancels the renewal by giving 30 days' advance written notice.

b. If you terminate this Agreement without cause (sometimes called "termination for convenience") before the end of the initial or any renewal term, then you shall pay Bankoh \$500.00. You agree that this is in addition to any other amounts payable under this Agreement, and is intended to partially compensate Bankoh for its added expenses and prospective loss of profit due to the early termination, and not as a penalty.

11.2 Termination

a. Either party may terminate this Agreement upon thirty (30) days' written notice if the other party has defaulted on a material obligation under this Agreement. If the other party cures its default within fifteen days of receiving the written notice, then the Agreement shall continue.

b. Bankoh may terminate this Agreement at any time after the initial term, for any reason whatsoever, effective upon giving you 90 days' written notice of termination.

c. Bankoh may terminate this Agreement immediately, without notice, at any time if:

- (i) It is discovered that you misrepresented any material fact in your application, or have been listed on a MATCH/ Terminated Merchant File maintained by any Card Organization participating in Bankoh's Card Program.
- (ii) You move your business from the location(s) of record without prior notice to and approval by Bankoh;

- (iii) Ownership of your business changes without advance notice to and approval by Bankoh;
- (iv) You accept Card payments for door-to-door, internet, mail or telephone sales without obtaining Bankoh's prior written approval;
- (v) You are determined to be in violation of the applicable Card Organization data security requirements, or disclose, allow or engage in business practices which allow disclosure of Cardholder information to an unauthorized person;
- (vi) Your sales generate customer disputes or Chargebacks which significantly exceed the number which is usual for similarly-situated merchants;
- (vii) Your financial condition is unsatisfactory, as Bankoh may determine in its sole discretion, as evidenced by among other things: insolvency proceedings, lien filings, garnishments, credit reports, or financial documents provided to Bankoh;
- (viii) You misrepresent or alter information contained in any submitted Card Transaction;
- (ix) You resue a Credit Transaction Record where no transaction had previously occurred;
- (x) You disburse cash in relation to a Card Transaction and do not have written authorization from Bankoh to do so;
- (xi) Your Sales Transaction Records relate to merchandise or sales methods not described in your Card Program application;
- (xii) You violate any federal or state law or regulation concerning the solicitation and acceptance of Card Transactions;
- (xiii) You are determined by a Card Organization to have engaged in actions or inaction which creates unreasonable risk of harm or loss of goodwill to the Card Organization; or
- (xiv) Any other event giving Bankoh a right of set-off under Section 6(d) or an obligation to report you to the Card Organizations for misconduct described under Section 11.3(b) occurs.

d. Nothing in this Agreement limits the rights of a Card Organization to terminate or restrict your ability to conduct Card Transactions for one or more of the Selected Brands of Cards. Bankoh may carry out any and all mandatory instructions received from a Card Organization to terminate or restrict your participation in a Card acceptance program without providing advance notice.

e. Upon any termination of this Agreement, you must immediately submit all Sales Transaction Records and Credit Transaction Records for Card sales completed prior to termination, and you authorize Bankoh to place the net amount of these Sales Transaction Records, plus the balance in the Settlement Account, up to an amount not exceeding the sum of the Sales Transaction Records submitted during the preceding 180

days, in a non-interest-bearing Reserve Account in Bankoh's name for a period not exceeding 180 days from the date of termination. This Reserve Account is subject to the same charges that may be assessed against the Settlement Account.

f. You agree that Bankoh will not be liable for any damages relating to Bankoh's termination of this Agreement, terminations and restrictions by Card Organizations, or the deposit of funds in the Reserve Account, if Bankoh follows the procedures set forth in this Agreement.

11.3 MATCH/Terminated Merchant File

a. MATCH Files (sometimes called Terminated Merchant Files) are databases used by Card Organizations, which list the business name and the identity of the principals of any merchant which has been terminated for cause from a Card acceptance program. The applicable Card Organizations will be informed if Bankoh terminates this Agreement for cause under Section 11.1(c).

b. In addition to termination for cause from a Card acceptance program, you and your principals may be placed on the MATCH File by a Card Organization for such reasons as:

- (i) Conviction for credit card fraud.
- (ii) Submitting Sales Transaction Records that were not authorized by Cardholders.
- (iii) Submitting Sales Transaction Records that were for sales generated by another business (known as laundering).
- (iv) Bankoh receiving an excessive number of Chargebacks due to your practices.
- (v) Bankoh identifies you, through an audit or investigation, as having excessive fraudulent activity.
- (vi) Bankoh reasonably concludes that serious violations of this Agreement or Card Organization rules will result in increased loss exposure to itself or the credit card community.
- (vii) You submit an excessive number of counterfeit sales.
- (viii) Bankoh learns from a Card Organization that you have been identified as having excessive fraudulent activity.
- (ix) Entering into a merchant agreement under a new name with the intent to circumvent the MATCH File.

c. You agree to indemnify and hold Bankoh harmless from all claims, actions, losses, defaults, damages and liabilities that relate to Bankoh's providing Card Organizations with information about you and your principals for possible inclusion on the MATCH File.

12. Additional Requirements and Warranties

12.1 Changes in Operations, Location, or Ownership

You must provide Bankoh with 30 days' advance written notice of your intent to:

- a. Sell or offer to sell goods or services which differ, in any manner, from the goods or services described in your Card Program application or in the latest notice given to Bankoh under this Section, as applicable;
- b. Transfer or sell any substantial part (10 percent or more) of your assets;
- c. Change, add to or delete from the nature of your business in a manner that would make the current Merchant Category Code(s) maintained by Bankoh about your business inaccurate;
- d. Open, close or change your locations of conducting business; or
- e. Change your methods of selling or marketing the goods or services (including the trade name it uses) described in your Card Program application or in the latest notice given to Bankoh under this Section, as applicable.

12.2 Your Warranties; Audit

a. In addition to your transaction warranties in Section 4.5, you warrant to Bankoh that (i) all statements contained in your Card Program application are true and (ii) any documents reflecting your financial condition provided to Bankoh, which documents Bankoh may request from time to time at Bankoh's discretion, truly represent the condition of your business.

b. The accuracy of your Card Program application and any documents related to your financial condition are subject to review by Bankoh, notwithstanding Bankoh's approval of the application or course of dealing which indicates acceptance of the representations made by you.

c. All transactions relating to Sales Transaction Records, Credit Transaction Records, Chargebacks and adjustments are subject to audit and verification by Bankoh. In the event of any inaccuracies, Bankoh may immediately charge or credit the Settlement Account without notice to correct the inaccuracy.

13. Administering the Agreement

13.1 Relationship to Other Agreements

a. This Agreement is to be read in concert with the deposit account and other agreements which you have with Bankoh. In the event there is an irreconcilable difference between two agreements, then this Agreement shall control with respect to your capture and submission of Card Transactions.

b. Any addendum or appendix to this Agreement will be incorporated into this Agreement by reference.

c. A Guaranty or other document signed by your principals to secure performance of your obligations shall be treated as a supplement to this Agreement, and is incorporated into this Agreement by reference.

13.2 Time; Nonwaiver; Survival

a. Each term and condition of this Agreement, especially those provisions relating to time, is essential, and no acceptance by Bankoh of any delinquent or partial performance of your obligations will waive or impair any right Bankoh has under this Agreement.

b. If either Bankoh or you are unable to perform your obligations under this Agreement because of weather, labor disputes, telecommunications failures or other circumstances which would be beyond the control of a reasonable business person who is similarly situated, then the affected party will promptly notify the other party of the circumstance, and a reasonable amount of additional time to perform shall be provided. Nothing in this Subsection 13.2(b) excuses the affected party from paying any additional fees, penalties, or other costs imposed by third-parties because of the failure to perform.

c. No waiver, consent, or approval under this Agreement is effective unless in writing signed by Bankoh.

d. Any waiver of an existing default will not be deemed to waive any subsequent or continuing default.

e. All rights and obligations in existence at the time this Agreement terminates shall survive. In addition, Bankoh's rights and your obligations under Sections 3, 4.1(c), 4.6, 5-9, 10.3, 10.4, 11.2, 11.3 and 12.3(c) shall survive the termination of this Agreement.

13.3 Applicable Law; Severability

a. This Agreement is governed by Hawaii law.

b. Each party shall perform your obligations under this Agreement in full compliance with all applicable laws, government regulations, and Card Organization rules.

c. Wherever possible, each provision of this Agreement will be interpreted in such a manner as to be valid under applicable law, but if any provision is deemed invalid, the provision will only be ineffective to the extent of the invalidity without affecting the remaining provisions of this Agreement.

13.4 Supplements and Amendments

a. This Agreement also includes all terms and conditions contained in your Card Program application; any applications you signed to obtain additional products and services; any guaranty signed to support your participation in the Card Program; any supplemental agreements identified in your applications or delivered to you; any

operating manual, guides or instructions provided by Bankoh or your designated representatives; and all Card Organization rules and regulations, all of which are incorporated into this document by reference.

b. Unless expressly prohibited by a written agreement with you, Bankoh may change the prices and reimbursable expenses you must pay for Card acceptance and other services from time-to-time. If Bankoh elects to post pricing changes on the internet instead of mailing a paper copy to you, Bankoh shall send you notice of the website address(es) where the changes appear.

c. If the pricing change is mandated by a Card Organization, the change shall take effect on the date specified by the Card Organization. Other pricing changes will take effect thirty (30) days after the notice is sent to you, or the website address(es) where the changes are posted is disclosed to you.

d. With respect to terms other than pricing, Bankoh may unilaterally amend this Agreement, including any existing supplemental agreement, by sending notice of the amendment to you not less than ten (10) days before the change goes into effect.

e. Your use or continued use of any service covered by this Agreement after the effective date of an amendment sent or posted as required by this Subsection 13.4 will conclusively prove your acceptance of the terms and conditions described in the amendment.

f. Any change or amendment to this Agreement proposed by you must be agreed to in writing by Bankoh in order to be effective.

13.5 Notice

a. Any notice under this Agreement will be either hand-delivered, mailed or E-mailed to one of the addresses given for you on your Card Program application. Notices to Bankoh shall be mailed to:

Bank of Hawaii Merchant Services #270
Post Office Box 2900
Honolulu, Hawaii 96846

b. Notices directed to you or Bankoh will be deemed to be received (i) upon actual receipt or (ii) two days after either depositing the notice in the mail or sending it by E-mail, whichever is earlier.

c. Each party must promptly inform the other party in writing of any physical or E-mail address change.

13.6 Electronic Signatures

You and Bankoh agree that execution of applications, amendments and other documents related to this Agreement or the Card Program by the use of electronic signatures creates valid, binding contracts to the extent the form of presentment and electronic signature is permitted for business-to-business (non-consumer) transactions under the federal Electronic Signatures in Global and National Commerce Act (Public

Law 106-229 [2000]), the Hawaii Uniform Electronic Transactions Act (Chapter 489E, Hawaii Revised Statutes) or the Hawaii Uniform Commercial Code (Chapter 490, Hawaii Revised Statutes).

13.7 Miscellaneous

a. You may not assign this Agreement without the prior written consent of Bankoh.

b. This Agreement, as defined in Section 13.4(a), constitutes the entire agreement of the parties and will benefit and bind the parties and their respective successors and permitted assigns. Except as expressly provided, the Agreement is not intended to bind or benefit any third-party.

c. The term “you” includes all genders, all business organizations and both the singular and plural.



APPENDIX “A” - American Express® OptBlue® Addendum

This contract (the “OptBlue Addendum”) is between you, Bank of Hawaii, (“Bankoh”) and American Express Travel Related Services Company, Inc. (“American Express”). It is effective on the earliest of: (1) the date you sign the application for participation in the American Express OptBlue program; or (2) the date you process your first American Express Card Transaction under the OptBlue program. Any capitalized terms that are not defined in this Appendix shall have the meaning defined in the attached Bank of Hawaii Merchant Agreement (“Agreement”).

1. Definitions.

For purposes of this OptBlue Addendum only:

“American Express” includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing.

“Applicable Processing Law” means all applicable laws, regulations, rules and guidance pertaining to privacy, data Processing, data protection, data security, encryption, and confidentiality.

“Claim” means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including you or Bankoh) that American Express has the right to join, including any allegation involving a transaction using an American Express product or network or regarding an American Express policy or procedure.

“Covered Data” means, in any form, format or media, as provided by or on behalf of American Express or any of its affiliates, any: (a) confidential information under the Agreement, and (b) Personal Data that you Process in connection with this Agreement.

“Including” or “including” means “including, but not limited to”.

“Personal Data” means any information or data that is: (i) individually identifiable information from or about an identified or identifiable individual, or any information that is combined with such individually identifiable information, including information that can be used to authenticate that individual or access an account, or (ii) information protected as personal data under Applicable Processing Law.

“Process” means to obtain, have access to, organize, copy, alter, use, disclose, erase, destroy or any other form of processing.

“You” includes your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

A. Arbitration Agreement for Claims Involving American Express

In the event that you or Bankoh are not able to resolve a Claim, this OptBlue Addendum explains how Claims may be resolved through arbitration. You or Bankoh or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any party to resolve a Claim, the parties understand and agree that neither you nor Bankoh nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, you, Bankoh, and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under the OptBlue Addendum. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights you, Bankoh, or American Express would have in court may also not be available in arbitration.

1. Initiation of Arbitration.

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

2. Limitations on Arbitration.

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

3. Previously Filed Claims/No Waiver.

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

4. Arbitrator's Authority.

The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under the OptBlue Addendum. The arbitrator has no power or authority to alter this Agreement or any of its separate provisions, including this OptBlue Addendum.

5. Split Proceedings for Equitable Relief.

You, Bankoh, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This OptBlue Addendum shall be enforced by any court of competent jurisdiction.

6. Small Claims.

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

7. Governing Law/Arbitration Procedures/Entry of Judgment.

This OptBlue Addendum is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion

explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

8. Confidentiality.

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

9. Costs of Arbitration Proceedings.

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

10. Additional Arbitration Awards.

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

B. Data Security Obligations

1. Data Security Program.

At all times, you shall have a data security program that conforms to:

- a. **Requirements.** Maintain, monitor and enforce a comprehensive written data security program and only Process Covered Data in compliance with this Information Protection Contract Requirements document ("IPCR") and Applicable Processing Law, including: (a) security principles of "segregation of duties" and "least privilege" with respect to Covered Data, including a process by which employee and contractor user accounts may only be

created with proper leadership approval and are timely deleted, contain an auditable history of changes, and are subject to an annual review and remediation for excess access authorization; (b) retention policies applicable to Covered Data for all reports, logs, audit trails and other documentation that provides evidence of data security, systems, and audit processes and procedures; (c) policies applicable to Covered Data documenting the consequences for violations of data security policies; (d) deploying security patches to all systems that Process Covered Data as necessary to comply with this IPCR and Applicable Processing Law; and (e) securely returning or disposing of all Covered Data once you no longer need Covered Data, including upon termination of your Agreement, except if retention is required for you to comply with Applicable Processing Law, in which case this IPCR survives this Agreement and continues to apply.

- b. **Data Loss Prevention Program.** Maintain, monitor and enforce a data loss prevention automated program designed to detect and block data transfers of Covered Data consisting of U.S. social security numbers, Canadian social insurance number (or SIN), United Kingdom national insurance numbers, American Express card holder account numbers, or other American Express customer financial account information, if such transfers do not comply with this Agreement.
- c. **Standards.** If you Process Covered Data containing card holder or other financial account data under this Agreement, then you shall certify that your data security program complies with Payment Card Industry Data Security Standard ("PCI DSS"), ISO 22307 and ISO 27000. If you have executed a card acceptance agreement with American Express to accept American Express cards, and that agreement conflicts with the IPCR, then that agreement controls.

2. Safeguards and Security Incidents.

- a. **Safeguards.** You shall use your data security program to maintain, monitor and enforce reasonable organizational, administrative, technical and physical safeguards to protect the security, integrity, confidentiality and availability of Covered Data, including to protect against: (a) any anticipated threats or hazards, and (b) any accidental, unauthorized or unlawful Processing, loss, or other compromise of Covered Data (each, a "**Security Incident**"). You shall promptly remediate all Security Incidents.
- b. **Security Incident Notice to American Express.** In order to facilitate American Express's compliance with incident response program requirements under American Express's policies, procedures and practices, as well as under Applicable Processing Law, you shall provide American Express notice within 24 hours of any Security Incident by phone (1-888-732-3750 or 1-602537-3021) and in writing at EIRP@aexp.com. American Express acknowledges that you may have separate notification duties under Applicable Processing Law.

You shall not make any public or other announcements or admissions of liability regarding the Security Incident, to the extent affecting American Express or its card holders, customers, employees or individual contractors ("**AXP Individuals**"), without the prior written consent of American Express, and the provision of Security Incident notifications to AXP Individuals, and to applicable governmental authorities regarding such affected AXP Individuals, including the content, shall be at the reasonable discretion and reasonable direction of American Express. If you determine that you must provide any such AXP Individual or government notifications under Applicable Processing Law, you shall provide American Express with reasonable prior notice of such notifications (via methods above). Despite any Agreement confidentiality duty, American Express may disclose Security Incidents per Applicable Processing Law and to mitigate risks of fraud or other harm.

- c. **Response Protocol.** For the avoidance of doubt, you shall be responsible for reasonable costs to the extent caused by a Security Incident, including those incurred by American Express related to investigation, remediation, monitoring and notification.

3. Processing.

You shall Process Covered Data per American Express instructions.

4. Material Modifications.

You shall provide American Express with 90 days prior notice of a material modification to the process, method or means by which Covered Data is Processed (including any geographic change). If American Express reasonably determines and notifies you that such modification could materially degrade Covered Data security, then you shall not make such modification.

5. Data Transfers.

You shall encrypt Covered Data in compliance with Applicable Processing Law and in the following circumstances: (a) the Processing of Covered Data on any mobile device or mobile storage or removable media, including laptop computers, smart phones, USB devices ("thumb drives") and tapes/DVDs, and (b) electronic transfers of Covered Data outside of your network.

6. VTA.

If you host an Internet-facing and/or mobile application capable of Processing Covered Data, then you shall annually have a vulnerability threat assessment ("**VTA**") performed by a reputable vendor (from the then-current Payment Card Industry Council Approved Scanning Vendor list) and provide American Express with a summary attestation of the VTA including: (a) a definition of how the vulnerabilities are rated (e.g., high / medium /

low, serious / moderate / minimal), (b) evidence that the application has no open vulnerabilities at the high rating, and (c) the number of vulnerabilities at any below high ratings and evidence that such vulnerabilities have been promptly remediated.

7. Validation: Policies and Procedures, Third Party Assessments.

You shall document and promptly provide to American Express: (a) copies of any privacy, data Processing, data protection, data security, encryption and confidentiality-related (i) policies, procedures, and standards (including escalation procedures for non-compliance) and (ii) third party assessments, test results, audits or reviews (e.g., SSAE 16, SOC I, II and III, SysTrust, WebTrust, or perimeter certifications), or other equivalent evaluations in its possession or control; and (b) any other information requested by American Express to comply with Applicable Processing Law or American Express auditing requirements. Your perimeter test results may be limited to a summary of findings' testing scope, number and severity and remediation estimated dates. In addition, upon your written notice, American Express shall provide its summary findings to you of any material vulnerabilities uncovered in the scans that American Express may perform from time-to-time of your Internet-facing applications.

8. American Express Inspections.

In order to facilitate American Express's compliance with its internal policies, procedures and practices, as well as Applicable Processing Law, you shall reasonably cooperate with American Express, its designees and government authorities, in connection with inspections of you and your affiliates or subcontractors storing Covered Data, on-site or by phone, and with self-assessment security compliance reviews (including inspections and reviews for privacy, data Processing, data protection, data security, encryption or confidentiality-related compliance). On-site inspections will be performed upon reasonable advance notice during your regular business hours.

9. Training.

You shall provide privacy, data Processing, data protection, data security, encryption, and confidentiality awareness training annually to all individuals authorized by you to Process Covered Data. Training shall occur before such individuals Process Covered Data, and such individuals shall repeat such training annually. American Express may review your training materials (or a reasonable summary) upon reasonable advance notice to you.

10. Affiliates and Subcontractors.

If your subcontractors or affiliates ("**Contractors**") Process Covered Data on your behalf per American Express's express approval elsewhere in this Agreement, you shall: (a) either (i) ensure that each Contractor acts as a user under your written data security program, or (ii) ensure that each Contractor's written data security program complies with this IPCR via sufficient diligence and oversight; and (b) be responsible for the acts and omissions

of Contractors and all of your employees as if their acts and omissions were made by you.

APPENDIX “B” – Special Card Organization Rules

1. Additional Terms for Mastercard Acceptance

This Subsection applies if you choose to accept Mastercard branded Cards. To the extent that any of the requirements in this Subsection cannot be reconciled with other terms of this Agreement then, with respect to Mastercard Card Transactions, the requirements in this Subsection control.

a. Determining a Merchant's Location.

Except as otherwise provided in the Mastercard Standards, you may accept Card Transactions only at your locations that are within the United States or Asia/Pacific regions. For the purposes of this Subsection 12.2, “United States” refers to the 50 states and District of Columbia only, while “Asia/Pacific” refers to Palau and the U.S. Pacific Territories of Guam, the Commonwealth of the Northern Mariana Islands and American Samoa.

Your location determines what regional Mastercard rules you will have to follow, and what fees you will have to pay. Generally, your location is at an address in the Region where you conduct the business described in your Merchant application:

Merchant Location for Card-Present Transactions. When engaging in Card-present Transactions, your location's country is where the Transaction takes place.

Merchant Location for Card-Not-Present Transactions. When engaging in Card-not-present Transactions your location's country is where all of the following criteria are satisfied:

i. You conduct business locally. You conduct business activity and operations directly related to Transactions in the country. By way of example and not limitation, a post office box address, the location at which a server is stored, the address of a warehouse having no business-related functions, the Uniform Resource Locator (URL) of a website, or address of your law firm, vendor, or agent does not satisfy this requirement.

ii. You hold permits to operate locally. You holds all necessary permits required under applicable law or regulation to conduct your business activity and operations in the country as a domestic entity.

iii. You comply with local tax laws and regulations. You pay or will pay income tax on profits attributable to Transactions in the country (to the extent that taxes apply) and you are registered to collect (regardless of whether actually required to collect) indirect taxes, including but not limited to value-added tax (VAT), goods and services tax (GST), Programa de Integração Social

(PIS), Contribuição para o Financiamento da Seguridade Social (COFINS), sales tax, and any similar tax, in the country.

iv. You are subject to local consumer laws and courts. Except as otherwise permitted by applicable local consumer law, your Transaction terms and conditions state that you, as the contractual counterparty to the consumer, are subject to the laws and courts of the country.

Transactions at Terminals with No Fixed Location. A Transaction occurring at a Terminal with no fixed location (for example, aboard a train or ship) may be deemed to take place in the country where you operate a POS Terminal, or Bankoh is headquartered, or where the Transaction is processed.

b. Disclosure of Merchant Name and Location

You must prominently and clearly disclose to the Cardholder at each Point of Interaction:

i. Your name, so that the Cardholder can easily distinguish you from any other party, such as a supplier of products or services to you; and

ii. Your location (physical address), to enable the Cardholder to easily determine, among other things, whether the Transaction will be a Domestic Transaction or a Cross-border Transaction. Your location must be disclosed before the Cardholder is prompted to provide Card information.

Your name and country location, as disclosed to the Cardholder at the POI and on Transaction receipts, must be the same as what is provided in authorization and clearing Transaction messages.

c. Merchant Location Compliance and Decisions on Disputes

Mastercard reserves the right to request a written statement signed by one or more of your duly authorized senior executives or officers attesting:

i. That the country you designate to Bankoh for your location satisfies all of the criteria set forth in Subsection 12.2(a); and

ii. That the address disclosed to Cardholders and appearing in Transaction messages is a location in the specified country, and is an address from which you are conducting the business activity and operations governed by this Agreement.

Mastercard, at its sole discretion, has the right to make a final determination of the country where you are located. Any disagreement regarding your location's country may be referred to Mastercard for final resolution.

d. Card Acceptance Options.

You have the option to elect to accept Debit Mastercard Cards only, Other Mastercard Cards only, or both Debit Mastercard Cards and Other Mastercard Cards.

i. Accepting Mastercard Debit. If you request signage for the purpose of indicating your acceptance of Debit Mastercard Cards, you must display such signage for a minimum of three months. The signage may be requested at www.mastercardweacceptdebit.com. Bankoh will provide a complete list of the BINs that apply to Debit Mastercard Cards to you upon any form of reasonable request.

ii. The "Honor All Cards" Rule. *In the U.S. Region:* If you choose to accept Debit Mastercard Card, you must honor all valid Debit Mastercard Cards without discrimination when properly presented for payment. You must maintain a policy that does not discriminate among customers seeking to make purchases with a Debit Mastercard Card. The same principles apply if you choose to accept Other Mastercard Cards.

In the Asia/Pacific Region: You must honor all valid Cards without discrimination when properly presented for payment. You must maintain a policy that does not discriminate among customers seeking to make purchases with a Card. If you do not deal with the public at large (for example, as a private club) you will be considered to comply with this Rule if you honor all valid and properly presented Cards of Cardholders that have purchasing privileges.

iii. Changing Your Card Acceptance. If you were processing Mastercard Card transactions through Bankoh on or before January 1, 2004, you may choose to stop accepting Debit Mastercard Cards or Other Mastercard Cards by providing no less than 30 days' advance written notice to Bankoh. The applicable merchant discount rate for each option shall be provided by Bankoh upon your request.

e. Discrimination

In the Asia/Pacific Region, you must not engage in any acceptance practice that discriminates against or discourages the use of a Mastercard-branded Card in favor of any other acceptance brand.

You may apply a discount or other benefit at the Point of Interaction ("POI") upon presentation of a particular Mastercard Card for payment. Promotion of any such discount or other benefit at the POI is permitted provided such promotion does not result in discrimination against other Mastercard Card Programs. The determination of whether any promotion discriminates against other Card Programs is at the sole discretion of Mastercard.

In the U.S. Region and U.S. Territories within the Asia/Pacific Region, you may request or encourage a customer to use a payment card (i) bearing an acceptance brand other than Mastercard; (ii) other form of payment; or (iii) a Mastercard Card of a different type (for example, traditional cards, premium cards, or rewards cards) than the Mastercard Card the Cardholder initially presents. Except where prohibited by law, you may do so by methods that include, but are not limited to:

- A. Offering the Cardholder an immediate discount from your list, stated, or standard price; a rebate; a free or discounted product or service; or any other incentive or benefit if the Cardholder: (1) uses a particular payment card with an acceptance brand other than Mastercard; (2) tenders another particular form of payment (such as cash); (3) who initially presents a Mastercard-branded Card, instead uses another payment card or another form of payment;
- B. Expressing a preference for the use of a particular payment card or form of payment;
- C. Promoting the use of a particular general purpose payment card with an acceptance brand other than Mastercard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that you otherwise will abide by the Mastercard Standards relating to the display of the Marks including, but not limited to, the Mastercard Acceptance Mark); or
- D. Communicating to Cardholders the reasonably estimated or actual costs incurred by you when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

If your location is in the U.S. Region, you may not promote the use of a particular issuer's Mastercard-branded Card by offering a discount or other benefit at the Point of Interaction ("POI"), unless the discount or other benefit is available for all other Mastercard-branded Cards of the same product type. A discount or other benefit does not violate this requirement if it: (i) takes effect after the Card Transaction has been completed (for example, a credit on the billing statement or a rebate); or (ii) occurs at the time of or after the Transaction, and is effected by a separate instrument and not by the Card (for example, a coupon or a voucher).

g. Transaction Message Data

You must comply with the Transaction message data requirements set forth below.

i. Business Code (MCC) Information. You must ensure that you are identified in authorization and clearing Transaction messages with the Card acceptor business

code (MCC) that reflects your primary business. Any Transaction that includes the sale of products or services properly identified with one of the following MCCs must be identified with such MCC:

- Money Transfer (MCC 4829)
- Quasi Cash—Customer Financial Institution (MCC 6050)
- Quasi Cash—Merchant (MCC 6051)

Mastercard shall have the ultimate authority to specify the appropriate MCC if any dispute shall arise. (Note: For MCC descriptions, refer to Chapter 3 of the Mastercard Quick Reference Booklet.)

ii. Address Information. You must transmit the generally accepted location, city, and country of the Terminal or website as specified by Mastercard, substantially the same as it appears on any Transaction receipt provided.

h. Currency Conversion Registration

Prior to submitting Sales Transaction Records on which POI currency conversion has been performed, you must register your intent to do so with Bankoh and Mastercard. (Notes: POI currency conversion is also referred to as dynamic currency conversion, or DCC. For more information on POI currency conversion, including registration requirements, refer to Chapter 3 of the Mastercard Transaction Processing Rules manual.)

i. Use of the Mastercard Marks

Your use of a Mastercard-owned Mark in advertising, acceptance decals, or signs, must be in accordance with this Agreement and Mastercard's Standards, including reproduction, usage, and artwork Standards, as may be in effect from time to time. Your use or display of any Mastercard-owned Mark will terminate immediately upon termination of this Agreement, or upon notification by Mastercard to discontinue such use or display. The use or display of any Mark does not give you any ownership rights or interest in the Mark.

i. Display of the Acceptance Marks. All of your locations and card acceptance terminals must prominently display the appropriate Mastercard Acceptance Marks at the Point of Interaction ("POI"), wherever payment options are presented. An Acceptance Mark may also be displayed in advertising or other materials or images at the physical or electronic POI to indicate brand acceptance. No other Mastercard Marks or marks may be used for these purposes. You may be required to supply Bankoh with samples of any materials or images bearing the Acceptance Marks.

(Note: Refer to the Mastercard Branding Requirements at brand.mastercard.com for requirements on displaying the Acceptance Marks at parity with the marks, symbols, and logos of other payment options.)

ii. Location of Display. The Acceptance Marks must be clearly visible to the public at the POI. Specifically:

Face-to-face Transactions At physical Merchant locations, the preferred way to communicate acceptance is to display the Acceptance Marks on a main entry door or on a nearby window. If these locations are not available, the Acceptance Marks must be displayed so they are seen easily from the outside.

When a Cardholder-facing card acceptance terminal is present at your location that accepts Mastercard or Maestro or both, the appropriate Acceptance Marks must be displayed on the terminal at parity (in terms of size, frequency, and location) with all other acceptance marks of any type shown.

Unattended POS Terminals The Acceptance Marks must be displayed either on the card acceptance Terminal or on its screen, or in both locations.

Contactless-enabled card acceptance terminals. The Acceptance Marks must be displayed in accordance with the "Contactless POS Terminal Branding" section of the Mastercard Contactless Branding Standards, which may be found at brand.mastercard.com.

E-Commerce Transactions. The Acceptance Marks must be displayed in accordance with the requirements for digital Merchant locations and digital applications set forth in the Mastercard Branding Requirements at brand.mastercard.com.

Mail order, telephone order, or recurring payment Transactions. The Acceptance Marks must be displayed where payment options are presented.

Scrip-dispensing Terminals. The Acceptance Marks must not be displayed at any POS Terminal, ATM Terminal, or Bank Branch Terminal that dispenses scrip.

iii. Display with Other Marks. Other Card Brands' acceptance marks, symbols, logos, or combinations thereof may appear in the same material or image with the Mastercard Acceptance Marks, provided visual parity is maintained and no other acceptance mark, symbol, or logo displayed is more prominent or likely to cause confusion concerning the acceptance of Cards. Each Acceptance Mark must be displayed as a free-standing mark, meaning that an Acceptance Mark must not be displayed so as to suggest that it is either a secondary means of payment or exclusively linked to another acceptance brand.

j. Additional Cardholder Identification; Address Verification Service

i. You may request but must not require a Cardholder to provide additional identification information as a condition of Card acceptance, unless such information is required to complete the Transaction, such as for shipping purposes, or the Mastercard Standards specifically permit or require such information to be collected.

ii. Where a country or region supports use of the Mastercard Address Verification Service (AVS) for Mastercard POS Transactions, the Cardholder's ZIP or postal code may be required to complete a Cardholder-Activated Terminal (CAT) Transaction, or the Cardholder's address and ZIP or postal code may be required to complete a mail order, phone order, or e-commerce Transaction.

iii. *In the U.S. Region*, an automated fuel dispenser (MCC 5542) Merchant identified by Mastercard to be an Excessive Chargeback Merchant (ECM) must use the Mastercard Address Verification Service (AVS) to verify the Cardholder's ZIP code before completing a Cardholder-Activated Terminal (CAT) Level 2 Transaction. Your implementation of AVS must occur within 60 days of the initial ECM identification and continue until you are no longer identified as an ECM for three consecutive months.

k. Surcharging Cardholders

i. Global Rule. Except as provided below, you must not directly or indirectly require any Cardholder to pay a surcharge or any part of any Merchant discount or any contemporaneous finance charge in connection with a Transaction. You may provide a discount to your customers for cash payments. You are permitted to charge a fee (such as a bona fide commission, postage, expedited service or convenience fees, and the like) if the fee is imposed on all like transactions regardless of the form of payment used, or if Mastercard has given you expressed written permission to charge the fee.

For purposes of this Subsection:

A. A surcharge is any fee charged in connection with a Card Transaction that is not charged if another payment method is used.

B. The discount fee is any fee you pay to Bankoh in connection with the processing of your Transactions.

ii. Credit Card Exception. *In the U.S. Region and U.S. Territories*, the Global Rule above is modified as follows, with respect to Mastercard Credit Card Transactions. For all other Transactions, the Global Rule above applies. Solely for the purposes of this Credit Card Exception, the following terms have the meanings set forth below:

- A. "Cardholder" means the authorized user of a Mastercard Credit Card.
- B. "Competitive Credit Card Brand" includes any brand of Credit Card or electronic credit payment form of a nationally accepted payment network other than Mastercard, specifically including without limitation Visa, American Express, Discover, and PayPal.
- C. "Competitive Credit Card Brand Cost of Acceptance" is your average Merchant Discount Rate applicable to transactions on a Competitive Credit Card Brand at your locations for the preceding one or twelve months, at your option.
- D. "Credit Card" means a card or other device that may be used to defer payment of debt or incur debt and defer its payment.
- E. "Independent Consideration" means material value you receive specifically in exchange for your agreement to waive or otherwise restrict your rights to Surcharge transactions on a Competitive Credit Card Brand.
- F. "Mastercard Credit Card" means a Credit Card bearing the Mastercard brand.
- G. "Mastercard Credit Card Transaction" means a Transaction in which a Mastercard Credit Card is presented for payment and that is performed in accordance with the Standards.
- H. The "Maximum Surcharge Cap" shall be no less than the product of 1.8 times the sum of the system-wide average effective U.S. domestic Mastercard Credit Card interchange rate plus average network fees (defined to include network set fees to acquirers or merchants associated with the processing of a Transaction or with the acceptance of the network's brand) as published from time to time.
- I. "Merchant Discount Rate" is the fee, expressed as a percentage of the total transaction amount that you pay to Bankoh and any Service Provider you use for transacting on a Credit Card brand. For purposes of Brand-level and Product-level Surcharging, irrespective of whether the identified fees and costs are paid via the merchant discount or by check, withholding, offset, or otherwise, the Merchant Discount Rate shall include:
1. The interchange rate,
 2. Network set fees associated with the processing of a transaction;
 3. Network set fees associated with the acceptance of the network's brand;

4. Bankoh's processing fees associated with the processing of a transaction; and
5. Any other services for which Bankoh is paid via the mechanism of a per-transaction merchant discount fee.

Other than the fees listed in 1 through 4 above, the Merchant Discount Rate excludes any fees (such as the cost of rental of point-of-sale terminal equipment) that are invoiced separately or not paid via the mechanism of the per-transaction merchant discount fee.

J. "Surcharge" means any fee charged by you for use of a Card. If you are located in the U.S. Region or a U.S. Territory, you may only require a Mastercard Credit Card Cardholder to pay a Surcharge by choosing to apply either of the following Surcharge methods:

1. Brand-level Surcharge—The application of the same Surcharge to all Mastercard CreditCard Transactions, regardless of the Card's issuer.
2. Product-level Surcharge—The application of the same Surcharge to all MastercardCredit Card Transactions of the same product type, regardless of the Card's issuer.

Brand-level Surcharging. Solely for purposes of this Subsection on "Brand-level Surcharging," the following terms have these meanings:

1. "After accounting for any discounts or rebates offered by you at the Point of Interaction (POI)" means that the amount of the Surcharge for a Mastercard Credit Card or a Competitive Credit Card Brand is to include the amount of any discount or rebate that is applied to that card or brand at the POI but which is not equally applied to all Mastercard Credit Card Transactions.
2. "Mastercard Credit Card Cost of Acceptance" is:
 - a. A percentage of the Mastercard Credit Card Transaction amount, calculated based upon the average effective interchange rate plus the average of all fees imposed by the network to Mastercard Credit Card Transactions at your locations for the preceding one or twelve months, at your option, or
 - b. If you cannot determine your Mastercard Credit Card Cost of Acceptance, then you may use the Mastercard Credit Card Cost of Acceptance for your merchant category as published from time to time on the Mastercard public website.

3. "Mastercard Surcharge Cap" is the average Merchant Discount Rate applicable to Mastercard Credit Card Transactions at your locations for the preceding one or twelve months, at your option.

The following requirements apply to a Merchant that chooses to impose a Surcharge at the brand level:

1. The same Surcharge must apply to all Mastercard Credit Card Transactions after accounting for any discounts or rebates offered by you on Mastercard Credit Card Transactions at the POI. You may choose to Surcharge all face-to-face and/or non-face-to-face Mastercard Credit Card Transactions.
2. The Surcharge assessed on a Mastercard Credit Card Transaction may not exceed the lesser of:
 - a. Your Mastercard Surcharge Cap, or
 - b. The Maximum Surcharge Cap, as published by Mastercard from time to time.
3. You must comply with the Surcharge disclosure requirements set forth in the Subsections below.
4. If your ability to Surcharge a Competitive Credit Card Brand that you accept, in either a face-to-face or non-face-to-face environment, is limited by that Competitive Credit Card Brand in any manner other than by prohibiting a Surcharge greater than the Competitive Credit Card Brand's Cost of Acceptance, then you may Surcharge Mastercard Credit Card Transactions in accordance with Subsections 1 through 3 above pursuant to either:
 - a. The same terms under which the Competitive Credit Card Brand permits a Merchant to Surcharge transactions of the Competitive Credit Card Brand in a face-to-face or non-face-to-face environment, or
 - b. The same terms under which you actually Surcharge transactions of the Competitive Credit Card Brand, in a face-to-face or non-face-to-face environment, after accounting for any discounts or rebates offered by you at the POI to the Competitive Credit Card Brand Cards.
5. The requirements outlined in Subsection 4 above are not applicable if:
 - a. The Competitive Credit Card Brand does not prohibit or effectively prohibit surcharging Credit Cards and the Competitive Credit Card Brand

Cost of Acceptance to you are less than the Mastercard Credit Card Cost of Acceptance; or

b. The Competitive Credit Card Brand prohibits or effectively prohibits the surcharging of Credit Cards and you Surcharge the Competitive Credit Card Brand in an amount at least equal to the lesser of:

- i. The Competitive Credit Card Brand Cost of Acceptance; or
- ii. The amount of the Surcharge imposed on the Mastercard Credit Card Transaction to be Surcharged; or

c. You have entered into an agreement with the Competitive Credit Card Brand which waives or limits your right to Surcharge transactions on that Competitive Credit Card Brand and the agreement:

- i. Is not indefinite but is for a fixed duration;
- ii. Is unique to you, not a standard agreement generally offered by the Competitive Credit Card Brand to multiple Merchants;
- iii. Is not a condition to your acceptance of the Competitive Credit Card Brand, thus you must have the ability to accept the Competitive Credit Card Brand for payment if the agreement were not in place;
- iv. Is in exchange for Independent Consideration; and
- v. Contains a price under which you may accept Competitive Credit Card Brand transactions and surcharge those transactions up to your Merchant Discount Rate for the Competitive Credit Card Brand after accounting for applicable discounts or rebates offered by you at the POI.

Product-level Surcharging. Solely for purposes of this Subsection on "Product-level Surcharging," the following terms have these meanings:

1. "After accounting for any discounts or rebates offered by you at the POI" means that the amount of the Surcharge for Mastercard Credit Cards of the same product type or a Competitive Credit Card Product is to include the amount of any discount or rebate that is applied to that card or product at the POI but which is not equally applied to all Mastercard Credit Card Transactions of the same product type.
2. "Competitive Credit Card Product" includes any product within a brand of Credit Card or electronic credit payment form of a nationally accepted payment network other than Mastercard, specifically including without limitation Visa, American Express, Discover, and PayPal.

3. "Competitive Credit Card Product Cost of Acceptance" means your average effective Merchant Discount Rate applicable to transactions on the Competitive Credit Card Product at your locations for the preceding one or twelve months, at your option.
4. "Debit Card Cost of Acceptance" means the amount of the cap for debit transactions established by the Board of Governors of the Federal Reserve System pursuant to 15 U.S. C. § 1690-2 and its implementing regulations or, if the Board of Governors discontinues establishing a cap for debit transactions, your average effective Merchant Discount Rate for all PIN-based debit transactions for the preceding twelve months.
5. "Mastercard Credit Card Product Cost of Acceptance" means:
 - a. The average effective interchange rate plus the average of all fees imposed by the network upon you, expressed as a percentage of the Transaction amount, applicable to Mastercard Credit Card Transactions of a product type by you for the preceding one or twelve months, at your option; or
 - b. If you cannot determine your Mastercard Credit Card Product Cost of Acceptance, then you may use the Mastercard Credit Card Product Cost of Acceptance for its Merchant category as published by Mastercard on the Mastercard public website.
6. The "Mastercard Credit Surcharge Cap" for a product type is the average effective Merchant Discount Rate applicable to Mastercard Credit Card Transactions of that product type at your locations for the preceding twelve months. At any given point in time, the actual Merchant Discount Rate paid in the time period covered by your most recent statement relating to Mastercard Credit Card Transactions may be deemed a proxy for this amount.

The following requirements apply to a Merchant that chooses to impose a Surcharge at the product level:

1. The same Surcharge must apply to all Mastercard Credit Card Transactions of the same product type (for example, Standard Mastercard, World Mastercard, World Elite Mastercard) after accounting for any discounts or rebates offered by you at the POI. A Merchant may choose to Surcharge all face-to-face and/or non-face-to-face Mastercard Credit Card Transactions of the same product type.
2. The Surcharge assessed on a Mastercard Credit Card Transaction may not exceed the lesser of:

- a. Your Mastercard Credit Surcharge Cap for that product type minus the Debit Card Cost of Acceptance, or
 - b. The Maximum Surcharge Cap, as published by Mastercard from time to time.
3. You must comply with the surcharge disclosure requirements set forth in the next Subsection, below.
4. If your ability to Surcharge a Competitive Credit Card Brand that you accept, in either a face-to-face or non-face-to-face environment, is limited by that Competitive Credit Card Brand in any manner other than by prohibiting a surcharge greater than the Competitive Credit Card Brand's Cost of Acceptance, then you may Surcharge Mastercard Credit Card Transactions in accordance with (1) through (3) above pursuant to either:
 - a. The same terms under which the Competitive Credit Card Brand permits a Merchant to surcharge transactions of the Competitive Credit Card Brand in a face-to-face or non-face-to-face environment, or
 - b. The same terms under which you actually surcharge transactions of the Competitive Credit Card Brand, in a face-to-face or non-face-to-face environment, after accounting for any discounts or rebates offered by you at the POI on the Competitive Credit Card Brand.
5. The requirements outlined in Subsection 4 above are not applicable if:
 - a. The Competitive Credit Card Brand does not prohibit or effectively prohibit surcharging Credit Cards and the Competitive Credit Card Product Cost of Acceptance to you are less than the Mastercard Credit Card Product Cost of Acceptance, or
 - b. The Competitive Credit Card Brand prohibits or effectively prohibits the surcharging of Credit Cards and you surcharge the Competitive Credit Card Brand in an amount at least equal to the lesser of:
 - i. The Competitive Credit Card Brand Cost of Acceptance, or
 - ii. The amount of the Surcharge imposed on the Mastercard Credit Card Transaction to be Surcharged, or

c. You have entered into an agreement with a Competitive Credit Card Brand which waives or limits your right to surcharge transactions on that Competitive Credit Card Brand and the agreement:

- i. Is not indefinite but is for a fixed duration;
- ii. Is unique to you, not a standard agreement generally offered by the Competitive Credit Card Brand to multiple Merchants;
- iii. Is not a condition to your acceptance of the Competitive Credit Card Brand, you must have the ability to accept the Competitive Credit Card Brand for payment if the agreement were not in place;
- iv. Is in exchange for Independent Consideration; and
- v. Contains a price under which you may accept Competitive Credit Card Brand transactions and surcharge those transactions up to your Merchant Discount Rate for the Competitive Credit Card Brand after accounting for applicable discounts or rebates offered by you at the POI.

Requirements for Surcharge Disclosure

1. If you choose to Surcharge, either at the brand level or the product level, you must prominently display a clear disclosure of your Surcharge policy at the point of store entry or, when conducting an e-commerce Transaction, on the first page that references Credit Card brands. The disclosure must include a statement that the Surcharge that you impose is not greater than your Merchant Discount Rate for Mastercard Credit Card Transactions.

2. You must provide a disclosure of your Surcharging practices at the POI or point of sale and that disclosure must not disparage the brand, network, Issuer, or payment card product being used. A statement that you prefer or request that a Cardholder use a form of payment with lower acceptance costs does not constitute disparagement under this Rule. This disclosure must include:

- a. The Surcharge percentage that is applied to Mastercard Credit Card Transactions;
- b. A statement that the Surcharge is being imposed by you; and
- c. A statement that the Surcharge is not greater than the applicable Merchant Discount Rate for Mastercard Credit Card Transactions at your locations.

3. You choose to Surcharge must provide clear disclosure of the Surcharge amount on the Transaction receipt.

Merchant Notification and Acquirer Registration

If you choose to impose a Surcharge, you must provide Mastercard and Bankoh with no less than 30 days' advance written notice that you intend to impose a Surcharge on Mastercard Credit Card Transactions at either the brand level or product level.

For information about how to notify Mastercard, see www.mastercardmerchant.com. Bankoh must register the identity of you with Mastercard within 10 days of receipt of your notification.

Transaction Requirements

If you choose to apply either a Brand-level Surcharge or a Product-level Surcharge to Mastercard Credit Card Transactions, Bankoh must offer to you the ability to electronically submit any such Surcharge amount separately (in the defined surcharge field) from the Transaction amount in the authorization and clearing message.

The Transaction amount will include the purchase amount plus the surcharge amount. If you separately submit the Surcharge amount applied to a Transaction electronically, Bankoh must transmit the Surcharge amount in DE 28 (Amount, Transaction Fee) of the authorization request message and in DE 54 (Amounts, Additional), subfield 5 (Additional Amount, Amount) of the clearing message. DE 54 also must contain a value of 42 (Amount, Surcharge) in subfield 2 (Additional Amount, Amount Type).

For the avoidance of doubt, you are not prohibited from applying a Brand-level or Product-level Surcharge if Bankoh has not enabled you to electronically submit the Surcharge amount separately from the Transaction amount as set forth in this Subsection. If you apply a Brand-level or Product-level Surcharge, you must disclose the Surcharge amount as set forth above.

In the event that you provide a full or partial refund of a purchase Transaction that included a Brand-Level or Product-Level Surcharge, the refund Transaction must include the full or prorated Brand-Level or Product-Level Surcharge amount.

I. Responsibility for Transactions

You must ensure that the Cardholder is easily able to understand that you are responsible for the Card Transaction, including delivery of the goods (whether physical or digital) or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Transaction.

m. Minimum/Maximum Transaction Amounts Restricted

In the Asia/Pacific Region, you must not require, or indicate that you require, a minimum or maximum Transaction amount to accept a valid and properly presented Mastercard or Maestro Card.

In the U.S. Region and U.S. Territories, you may set a minimum Transaction amount to accept a Mastercard Credit Card that provides access to a credit account, if the following three conditions are met:

1. The minimum Transaction amount does not differentiate between Issuers; and
2. The minimum Transaction amount does not differentiate between Mastercard and another acceptance brand; and
3. The minimum Transaction amount does not exceed \$10.00 (or any higher amount established by the Federal Reserve by regulation).

You may set a maximum Transaction amount to accept a Mastercard Card that provides access to a credit account, under the following conditions:

1. You are:
 - a. A department, agency or instrumentality of the U.S. Government;
 - b. A corporation owned or controlled by the U.S. Government; or
 - c. If your primary business is reflected by one of the following MCCs:
 - MCC 8220—Colleges, Universities, Professional Schools, Junior Colleges; or
 - MCC 8244—Schools, Business and Secretarial; or
 - MCC 8249—Schools, Trade and Vocational; and
2. The maximum Transaction amount does not differentiate between Issuers; and
3. The maximum Transaction amount does not differentiate between Mastercard and another acceptance brand.

n. Illegal or Brand-damaging Card Transactions

You must not submit to Bankoh any Card Transaction that is illegal, or that in the sole discretion of Mastercard, may damage the goodwill of Mastercard or reflect negatively on the Mastercard brand. Mastercard considers any of the following activities to be in violation of this requirement:

- i. The sale or offer of sale of a product or service other than in full compliance with law then applicable to you, Bankoh, the Card's issuer, the Cardholder, Cards, or Mastercard.
- ii. The sale of a product or service, including an image, which is patently offensive and lacks serious artistic value (such as, by way of example and not limitation, images of nonconsensual sexual behavior, sexual exploitation of a minor, nonconsensual mutilation of a person or body part, and bestiality), or any other material that Mastercard deems unacceptable to sell in connection with a Mark.

o. Disparagement

In the U.S. Region and U.S. Territories in the Asia/Pacific Region, you must not disparage Mastercard or any of its products, programs, services, networks, or systems.

p. Mastercard Tokens

You may not use Account or Transaction data to create or maintain a repository of Mastercard Token primary account numbers (PANs) and corresponding Account PANs or perform mapping of Mastercard Token PANs to Account PANs for any purpose.

The PAN of a Mastercard Card or Access Device or any Maestro Card or Access Device for which Maestro is the primary Payment Application must not be replaced by, mapped to, or Tokenized with any PAN issued from an Issuer Identification Number (IIN) reserved by the ISO Registration Authority for a competing payment network. Refer to the current ISO Register of Issuer Identification Numbers for more information.

q. Payment Account Reference (PAR) Data

This Subsection applies where a BIN Controller (as such term is defined in the EMV Payment Tokenization Specification Technical Framework) allocates a Payment Account Reference (PAR) value to an Account PAN.

You must only use PAR data for one or more of the following purposes:

- To complete a refund, respond to a chargeback, or perform some other reversal of payment in connection with a purchase Transaction containing a PAR, in addition to an Account PAN or Token;
- To comply with applicable law or regulation or the Mastercard Anti-Money Laundering Program;
- To conduct fraud detection, control, or mitigation activities;

- To provide services to a Cardholder at the direction of and with the explicit consent of such Cardholder.

No other use of PAR data is permitted without the express prior written consent of Mastercard.

r. Interpretation.

The capitalized terms in this Section 12.2 shall have the meanings given to them under this Agreement, or if no definition is provided, under the Mastercard Rules.

2. Additional Terms for Discover Acceptance

This Subsection applies if you choose to accept Discover Cards. To the extent that any of the requirements in this Subsection cannot be reconciled with other terms of this Agreement then, with respect to Discover Card Transactions, the requirements in this Subsection control.

a. Sublicense of Program Marks.

You are prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by Bankoh. "Program Marks" mean the brands, emblems, trademarks, and/or logos that identify Discover Cards, including, without limitation, Diners Club International Cards. Additionally, you shall not use the Program Marks other than to display decals, signage, advertising, and other forms depicting the Program Marks that are provided to you by Bankoh pursuant to this Agreement or otherwise approved in advance in writing by Bankoh. You may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, Web sites, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by Bankoh in writing. You shall not use the Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Program Marks. You recognize that you have no ownership rights in the Program Marks. You shall not assign to any third party any of the rights to use the Program Marks.

b. Disclosure of Your Information for Program Administration Purposes.

In addition to any other rights Bankoh may have under this Agreement, you grant it permission to disclose Card Transaction data and other information relating to you to Discover. This includes personally identifiable information about you and your owners or other principals (if provided by you to Bankoh) as well as information about Bankoh's experience with you in connection with Card acceptance, including any history of engaging in fraudulent or deceptive practices. Discover may disclose such data to other Card Organizations, other merchant acquirers, regulatory authorities, and other entities to whom Discover is required to provide such information and to the respective affiliates, agents, subcontractors, and employees of Discover and any entity it discloses your data to for the purposes of registering you with Discover, and other purposes Discover deems necessary in its reasonable discretion.

These purposes include disclosure in connection with Discover's performance of its obligations under the Program Documents, for fraud prevention purposes including the maintenance and disclosure of information contained in the Discover Merchant Control file for fraud and risk mitigation, and for purposes described in the Discover Operating Regulations. This includes:

- Detailed information about the Card Transactions conducted by you, including Card Transaction data required by the Discover Operating Regulations, Technical Specifications, and Dispute Rules Manual, to be delivered to Discover in connection with authorization requests, sales data, and Chargeback responses;
- Your aggregate and individual information and detail about the Card Transactions accepted by you, including the Merchant Category Code assigned to you;
- Collective and detailed information about your Card Transactions, Chargebacks, and other information reasonably required by Discover during an investigation;
- Information regarding the aggregate number, type, and kinds of Card Transactions Bankoh's merchant clients have accepted.

Information publicly disclosed by you such as telephone numbers, URLs, contact information, and participation in a program offered by Discover or its Card issuers in connection with Card acceptance (e.g., Recurring Payments Plans) may be compiled by Discover or third parties in a database designed to encourage and promote such programs.

Your privacy policy, where required under applicable laws and regulations, must disclose to a Cardholder that billing and shipping addresses, and other Cardholder information described in the Discover Technical Specifications for Card Transactions that are confirmed by you as or suspected to be fraudulent are collected by Bankoh and shared with Discover for fraud prevention purposes.

c. Restrictions on Contact with Cardholders.

Except as required or permitted by the Discover Operating Regulations, including the Disputes Rules Manual, you may not contact (and you must prohibit your officers, employees, agents and Service Providers from contacting) any Cardholder with respect to any matter arising under the Discover Operating Regulations.

d. Minimum/Maximum Dollar Limits and Other Limits.

You may not set a minimum dollar amount for Discover Card Transactions, except that (i) any purchase using a Discover Card or (ii) Cash Advance with a Discover Credit Card (but not a Debit or Prepaid Card) may have a minimum amount of up to \$10. You are also prohibited from limiting the maximum amount that a Cardholder may spend when using a Discover Card other than when the Issuer has not provided a positive Authorization Response for a Card Transaction, except that you may permit a U.S. federal agency or an institution of higher education to limit the maximum amount that a Cardholder may spend with a Discover Credit Card (but not a Debit or Prepaid Card). The setting of minimum or maximum amounts is subject to restrictions prohibiting

unfavorable treatment of certain Discover Card types in the Discover Operating Regulations.

e. Surcharges.

To the extent allowed by applicable laws and regulations, you may assess a surcharge on a Discover Card Transaction, provided that: (i) the amount of the surcharge may not exceed the Cost of Acceptance for the Card Transaction; and (ii) you assess the same surcharges on Card Transactions of other Selected Brands conducted using the same type of cards (e.g., credit, debit, prepaid) or payment methods, and (iii) you abide by the restrictions prohibiting unfavorable treatment of certain Discover Card types in the Discover Operating Regulations. You may not assess a surcharge or other penalty of any kind other than as set forth above.

f. Surcharge Notifications and Disclosures.

If you choose to apply a surcharge to Discover Card Transactions, you shall provide Discover and Bankoh with no less than thirty (30) calendar days advance written notice that you intend to impose the surcharge. For information about how to notify Discover, visit [DiscoverNetwork.com](https://www.discovernetwork.com).

You shall also clearly and prominently disclose the following, at the point-of-entry into retail outlets and/or locations (and including, for Internet Card Sales and mail order Card Sales, on the same pages of your website where your Selected Brands are displayed) and the point-of-sale:

- *At point-of-entry:* A statement that a surcharge imposed by you are not greater than your Cost of Acceptance.
- *At point-of-sale:*
 - The amount or percentage of a surcharge;
 - A statement that a surcharge will be applied; and
 - A statement that the surcharge is not greater than your Cost of Acceptance.
- *Transaction Receipt:* The dollar amount of the surcharge as a separate line item after the subtotal and before the total amount of the Discover Card Transaction.

g. Discounts.

Except where prohibited by applicable laws and regulations, you may offer discounts or in-kind incentives for payment by different tender types (e.g., a discount for payment by cash versus payment by credit card) subject to the restrictions prohibiting unfavorable treatment of certain Discover Card types in the Discover Operating Regulations.

h. Cash Access Checks.

Cash Access Checks are frequently issued to Discover Cardholders. You must accept Discover Cash Access Checks on a basis consistent with the terms of any policy you may have concerning the acceptance of payments made using a cash advance. You should handle Cash Access Checks like any other personal check drawn upon a bank in the United States.

i. Interpretation.

The capitalized terms in this Section 12.3 shall have the meanings given to them under this Agreement, or if no definition is provided, under Discover's Operating Regulations.

3. Additional Terms for American Express Acceptance

This Subsection applies if you choose to accept American Express branded Cards. To the extent that any of the requirements in this Subsection cannot be reconciled with other terms of this Agreement then, with respect to American Express Card Transactions, the requirements in this Subsection control.

a. Incorporation of Merchant Operating Guide.

The American Express Merchant Operating Guide (found at www.americanexpress.com/merchantopguide) and Appendix "A" (American Express OptBlue Addendum) are hereby incorporated into this Agreement.

b. Amex's Use of Your Application Information.

American Express may use the information provided in your merchant services application for marketing and administrative screening and/or monitoring purposes.

c. Amex Marketing Opt-Out.

You may opt out of receiving American Express commercial marketing communications about products and services by contacting your Bankoh Merchant Services Representative, or by exercising any opt-out option that American Express may describe or offer in E-mails, SMS messages, faxes, or other communications. If you have opted-out, you may continue to receive important transactional or relationship communications from American Express. In addition, you may continue to receive marketing communications from American Express while American Express updates its records to reflect your opt-out choice.

d. Conversion to Amex Direct.

If your American Express transaction volumes increase to the point where American Express determines that you are a "High CV Merchant", it may convert your account to require submission and settlement of Card Transactions directly with it. 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.

e. Your Option to Stop Accepting Amex Cards.

You may opt out of accepting American Express Cards at any time without penalty and without directly or indirectly affecting your rights to accept other Selected Brands.

f. Third-Party Beneficiary.

American Express is a third-party beneficiary of this Agreement. That means American Express has the discretion to enforce the terms and conditions of this Agreement against you itself to protect its interests.

g. Interpretation.

The capitalized terms in this Section 12.4 shall have the meanings given to them under this Agreement, or if no definition is provided, under the American Express Merchant Operating Guide.

APPENDIX “C” - Clover® Processing and Terminals

This contract (the “BOH Clover Contract”) is between you and Bank of Hawaii, (“Bankoh”). It is effective on the earliest of: (1) the date you sign the application for Clover® processing or terminals; or (2) the date you first process a Card Transaction using the Clover Service. Any capitalized terms that are not defined in this Appendix shall have the meaning defined in the attached Bank of Hawaii Merchant Agreement (“Agreement”).

A. Card Transaction Processing.

Your acceptance of Card Transactions, Bank of Hawaii's processing of those transactions, the fees you will pay for Bank of Hawaii products and services, and allocation of the risk between you and the Bank are governed by your existing Agreement. This contract amends the Agreement in these ways:

1. Modifications to Pricing and Other Terms.

Use of the Clover Service provided by First Data Merchant Services, LLC and its affiliates (collectively, “First Data”) requires that the Merchant's location have internet access. Because of this, the Merchant and Bank of Hawaii agree that in addition to the notification methods listed in the Agreement, Bankoh may give notice of any changes to pricing, fees, terms and conditions by both:

- a. Posting the changes on an internet website; and
- b. Sending Merchant an e-mail message or other written notice that the changes have been posted, and how to access them. The e-mail message will be sent to the e-mail address provided to Bankoh by the Merchant for receipt of deposit account or Merchant Services notifications. It is important that you notify Bankoh of any changes in your e-mail address and other contact information, so that you receive this important information.

2. Allocation of Risk.

Because of the unique combination of card processing provided by Bank of Hawaii; the Clover equipment and software from First Data; and the ability to run third-party applications on the equipment; the allocation of risk is changed as follows:

- a. In addition to all of the protections already in the Agreement, you agree that Bank of Hawaii will not be legally responsible to you or anyone else who makes a claim on your behalf for any error, incompatibility, unavailability, loss of data, or other defect in either the Clover equipment and accessories you rent from or purchase through the Bank; the Clover Service you obtain from First Data; or any software applications you acquire through the Clover applications store (currently called the “Clover App Market”).

- b. You agree that the cumulative amount Bank of Hawaii will be required to pay you (or anyone else who makes a claim on your behalf) for any losses claimed to have happened during a calendar year is limited to the greater of: (1) \$3,500, or (2) the amount of fees you paid to Bank of Hawaii under the Agreement during the same calendar year. If the loss occurs in the middle of a year, the fees already paid by you during that year will be used to calculate the limit on Bank of Hawaii's liability. This limitation of liability includes any losses you may claim are covered under the TransArmor Limited Warranty described later in this contract. This limit of liability overrides any other language in the Agreement or any other agreement you have with Bank of Hawaii that suggests a larger amount applies.

B. TransArmor Data Protection.

1. Scope.

The TransArmor® Data Protection Service provides software- or hardware-based encryption with random-number tokenization to improve the security of your customers' cardholder information while it is being moved between you and Bank of Hawaii's processing system. Use of the TransArmor Data Protection Service, by itself:

- Will **not** make a merchant compliant with the Payment Card Industry Data Security Standards ("PCI DSS") or Card Organization Rules about security (See Section B.5.a, below);
- Does **not** guarantee that a merchant's computer systems will not be breached, or that the merchant's customer data will not be stolen (See Section B.5.b);
- **Cannot** stop someone from conducting fraudulent transactions on a merchant's own systems (See Section B.7);
- **Does not** detect data breaches or alert merchants to vulnerabilities (See Section B.10), and
- Will **not** protect certain Card Transactions that cannot be tokenized (See Section B.4).

2. Definitions.

- a. "**Covered Systems**" means Merchant's systems or point-of-sale devices that are using the TransArmor Data Protection Service.
- b. "**Data Protection Rules and Procedures**" are the rules or procedures that First Data as licensor may have Bankoh provide to Merchant from time to time related to use of the Data Protection Service.
- c. A "**Token**" is a unique, randomly generated string of numbers, characters or symbols assigned to a Card number.

- d. **"Tokenization"** is the process of creating or retrieving a Token through the Data Protection Service.

3. Grant of License.

Bankoh grants to Merchant a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this BOH Clover Contract to use the Data Protection Service and the Data Protection Service Marks (as identified in the Data Protection Rules and Procedures) in the United States in accordance with this BOH Clover Contract, including without limitation the Data Protection Rules and Procedures. Any rights with respect to the Data Protection Service not expressly granted in this BOH Clover Contract are withheld.

4. Services.

The Data Protection Service applies only to Card Transactions sent using Clover®-branded terminals from Merchant to Bankoh or its third party processor for authorization and interchange settlement pursuant to your Agreement, and specifically excludes electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, Wright Express Transactions, Voyager Transactions, and other Card types that are not capable of being Tokenized. Bankoh or its third party providers will provide an encryption key to Merchant to be used to encrypt (make unreadable) Card data during transport of the authorization request from Merchant's point of sale to Bankoh's processing systems. During the period when the transaction is being transmitted to Bankoh or its third party providers for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Bankoh or its third party providers will then generate or retrieve a Token that will be returned to Merchant in the authorization response.

5. Responsibilities of Merchant.

Merchant is responsible to comply with the following regarding Merchant's use of the Data Protection Service:

- a. (1) Merchant is required to comply with the Card Organization Rules (as defined in the Agreement), including taking all steps required to comply with PCI DSS. This includes ensuring that all third parties, hardware and software used by Merchant in connection with Merchant's payment processing is either compliant with PCI DSS, or has been approved for use by Bankoh.
- (2) Use of the Data Protection Service will not cause Merchant to be compliant or eliminate Merchant's obligations to comply with PCI DSS or any other Card Organization Rule.
- (3) Merchant must demonstrate and maintain Merchant's current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor with a corresponding Report on Compliance, or by successful

completion of the applicable PCI DSS Self-Assessment Questionnaire or Report on Compliance, as applicable, and if applicable to Merchant's business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.

- b. Use of the Data Protection Service is not a guarantee against an unauthorized breach of Merchant's systems or point-of-sale devices (collectively, "Merchant's Systems").
- c. Merchant must deploy the Data Protection Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout Merchant's Systems, including replacing existing Card numbers on Merchant's Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- d. Merchant must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e. Any point-of-sale device, gateway and/or value added reseller used by Merchant in connection with the Data Protection Service must be certified for use with the Data Protection Service.
- f. If Merchant sends or receives batch files containing completed Card Transactions to/from Bankoh, Merchant must use the service provided by Bankoh or its third party providers to enable such files to contain only Tokens or truncated information.
- g. Merchant must use truncated report viewing and data extract creation within reporting tools provided by Bankoh.
- h. Merchant is required to follow the Data Protection Rules and Procedures. Bankoh will provide Merchant with advance written notice of any such rules or procedures or changes to such rules or procedures.
- i. Merchant has no right, title or interest in or to the Data Protection Service, any related software, materials or documentation, or any derivative works thereof, and nothing in your Agreement assigns or transfers any such right, title or interest to Merchant. Merchant shall not take any action inconsistent with the stated title and ownership in this BOH Clover Contract. Merchant will not file any action, in any forum, that challenges the ownership of the Data Protection Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of your Agreement. Bankoh has the right to immediately terminate this BOH Clover Contract and Merchant's access to and use of the Data Protection Service in the event of a challenge by Merchant. No additional rights are granted by implication, estoppel or otherwise.

- j. Merchant will not: (i) distribute, lease, license, sublicense or otherwise disseminate the Data Protection Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the Data Protection Service or any portion of it; or (iii) sell, license or otherwise distribute the Data Protection Service or any portion of it; (iv) make any copies, or permit any copying, of the Data Protection Service or any portion of it; or (v) use any portion of the Data Protection Service as a standalone program or in any way independently from the Data Protection Service. If any portion of the Data Protection Service contains any copyright notice or any other legend denoting the proprietary interest of Bankoh or any third party, Merchant will not remove, alter, modify, relocate or erase such notice or legend on such item.
- k. Merchant will only use the Data Protection Service for its internal business purposes in a manner consistent with your Agreement.
- l. Merchant will use only unaltered version(s) of the Data Protection Service and will not use, operate or combine the Data Protection Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this BOH Clover Contract.
- m. Merchant will promptly notify Bankoh of a breach of any terms of this BOH Clover Contract.

6. Termination of the Data Protection Service.

- a. Bankoh offers the Data Protection Service under a licensing agreement. If the licensor terminates Bankoh's license for any reason, the Data Protection Service will cease to operate.
- b. The Data Protection Service may be terminated upon thirty (30) days written notice from one party to the other party.

7. Data Protection Limited Warranty.

Bankoh provides the following limited warranty to Merchant with respect to the Data Protection Service: SUBJECT TO SECTION B.9, BANKOH WARRANTS TO MERCHANT THAT THE TOKEN RETURNED TO MERCHANT AS A RESULT OF USING THE DATA PROTECTION SERVICE CANNOT BE USED TO INITIATE A SALE TRANSACTION BY AN UNAUTHORIZED PERSON/ENTITY OUTSIDE OF MERCHANT'S COVERED SYSTEMS.

8. Exclusive Remedy for Breach of Limited Warranty.

Subject to Section B.9 of this BOH Clover Contract and the terms of your Agreement (including the damages cap(s), damages exclusion(s), and other limitations on liability in your Agreement), Bankoh will indemnify Merchant for direct damages resulting from Bankoh's breach of the Data Protection Service limited warranty in Section B.7. For clarity,

“direct damages” includes third party claims asserted against Merchant arising from Bankoh's breach of the limited warranty in Section B.7. THE INDEMNIFICATION IN THIS SECTION B.8 IS THE SOLE AND EXCLUSIVE REMEDY, AND BANKOH'S ENTIRE LIABILITY, FOR BANKOH'S BREACH OF THE LIMITED WARRANTY IN SECTION B.7.

9. Exceptions to Limited Warranty and Exclusive Remedy.

The limited warranty in Section B.7 and the indemnification in Section B.8 will not apply, and will be voidable at Bank's election, and Bankoh will have no liability of any kind arising from the limited warranty if Merchant: (a) is not receiving authorization and settlement services from Bankoh under the Agreement, (b) is not in compliance with all terms of the Agreement and any other agreement relating to payment forms eligible for the Data Protection Service, (c) uses the Data Protection Service in a manner not contemplated by, or in violation of, the Agreement, (d) is grossly negligent, or (e) engages in intentional misconduct.

10. Warranty Disclaimer.

EXCEPT FOR THE LIMITED WARRANTY IN SECTION B.7 AND IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, BANKOH AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR IMPOSED BY STATUTE OR OTHER LAW, THAT ARISE OUT OF OR RELATE TO THE DATA PROTECTION SERVICE, OR ANY ASPECT OF THE DATA PROTECTION SERVICE, INCLUDING: (a) WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, (b) WARRANTIES OF NON-INFRINGEMENT OR NON-INTERFERENCE, AND (c) ANY WARRANTY THAT THE DATA PROTECTION SERVICE (OR ANY ASPECT OF THE DATA PROTECTION SERVICE) WILL (i) MEET MERCHANT'S REQUIREMENTS, (ii) OPERATE ACCORDING TO MERCHANT'S EXPECTATIONS, (iii) DETECT EVERY VULNERABILITY ON MERCHANT'S SYSTEMS, (iv) GUARANTEE COMPLIANCE WITH APPLICABLE LAW, CARD ORGANIZATION RULES, OR APPLICABLE STANDARDS (INCLUDING PCI DSS), (v) PREVENT A DATA BREACH OR COMPROMISE OF DATA SECURITY, (vi) PROVIDE ACCURATE OR COMPLETE DATA, OR (vii) OPERATE UNINTERRUPTED OR ERROR FREE.

11. Third Party Beneficiary.

Bankoh has been granted the right by First Data Merchant Services LLC (“First Data”) to sublicense the Data Protection Service and the Data Protection Service Marks to Merchant. As such, First Data (including its successors or assigns) is a third-party beneficiary of this BOH Clover Contract, with the right to receive all benefits that Bankoh receives under this BOH Clover Contract and the right to initiate enforcement of the terms of this BOH Clover Contract, including applicable terms of your Agreement, against Merchant at First Data's sole discretion.

C. Rental or Purchase of Clover Equipment and Accessories.

1. Rental Equipment

Bankoh will rent you the Clover-branded equipment listed on the application, and which you elect to rent from Bankoh in the future ("Rental Equipment"). Your use of the Rental Equipment will be governed by the Agreement, with these modifications:

a. Identification and Ownership.

(1) Any labels or other markings on the Rental Equipment showing Bankoh as its owner shall not be removed, defaced or covered.

(2) Merchant shall bear the entire risk and be responsible for loss, theft, damage or destruction of the Rental Equipment from any causes whatsoever after Merchant receives the Rental Equipment. Merchant will notify Bankoh immediately if the Rental Equipment is lost, destroyed, stolen, or is taken from the Merchant's location by any person other than a Bankoh employee.

b. Repairs, Maintenance and Upgrades.

(1) Bankoh will repair or replace any Rental Equipment that fails due to defects or normal wear-and-tear while you are renting it. Repair parts and replacement equipment will be either new or reconditioned. If the Rental Equipment is damaged beyond normal wear-and-tear as described in Section C.1.d(2) below, then Bankoh will arrange for repair or replacement if you request it, and you will pay the vendor's fee for the repair or replacement, plus shipping costs.

(2) From time to time, new technologies or procedures in payment processing may require upgrading of the software or certain hardware components of the Rented Equipment. To the extent that a user can reasonably be expected to download and run a software upgrade or swap out hardware components, Bankoh will make the software or component available, and the Merchant shall perform the upgrade. Where more extensive upgrading is required, Bankoh may choose to either replace the Rented Equipment with an upgraded version at no additional charge, or to terminate the rental agreement and offer to rent the upgraded Clover equipment to you under a new agreement.

c. Term and Termination.

(1) For Rental Equipment, the term of the rental begins on the first day of the month in which the equipment is delivered to the Merchant's location. The term shall end on the last day of the month in which the Rental Equipment is received in good condition (showing only normal wear-and-tear) at the location designated by Bankoh, and the equipment is logged in.

(2) The minimum Rental Term is three (3) years. After three (3) years, the Rental Term will extend month-to-month. After the minimum Rental Term, Merchant may

terminate the rental by sending Bankoh written notice at least thirty (30) days ahead of time. When it receives the termination notice, Bankoh will send the Merchant a 'call tag' shipping label to be used to send the Rental Equipment to Bankoh. Failure to use the provided shipping label or to ship the Rental Equipment to the location designated by Bankoh will result in a delay in receiving and logging the equipment, and the Merchant will incur additional rental charges and handling fees.

(3) Except where the Merchant has terminated the Rental Term because of a material breach of the Agreement by Bankoh, the Merchant will pay Bankoh all remaining rent due for the minimum Rental Term in a lump-sum as an early rental termination fee. The early rental termination fee is in addition to any early termination fee for processing services that becomes due under the Agreement.

d. Loss or Damage.

(1) The Merchant shall operate the Rental Equipment in accordance with the user manual and any instructions provided by the vendor or Bankoh.

(2) The Merchant will not allow the Rental Equipment to sustain more than normal wear-and-tear during the rental period. Examples of conditions beyond normal wear-and-tear are:

- Extraneous materials (e.g., cat hair, insects, soil, dust) in the interior of the Rental Equipment;
- Smashing or cracking of Rental Equipment cases or screens;
- Contact with liquids;
- Fire damage, such as melted or burnt units;
- Dents and broken plastic on ports;
- Use of software, interfacing or supplies supplied by anyone other than the Rental Equipment vendor and its authorized suppliers; and
- Unauthorized modification or repair.

(3) Merchant shall promptly send any Rental Equipment damaged by negligence, accident, acts of nature such as flood or lightning damage, electrical spikes, loss or damage in transit, or improper site preparation by or on behalf of the Merchant to Bankoh's repair service for repair or replacement.

(4) If the Rental Equipment is lost, stolen, or damaged beyond reasonable repair during the Rental Term, Merchant shall pay Bankoh for its replacement. The cost of replacement may be as much as the retail cost of the current version of the Rented Equipment, plus shipping and handling costs.

2. Purchased Items

Bankoh will order on your behalf any Clover terminals and accessories (for example, Clover Go® terminals, card readers or printers) and supplies (such as ink and receipt paper) listed on the application, plus any other Clover equipment, accessories or supplies stocked by Bankoh's vendor that you ask to have ordered later (collectively, "Purchased

Items"). You are not required to purchase accessories or supplies through Bankoh or its vendors, and you are free to obtain such items from other sources. Purchased Clover terminals are "merchant-supplied equipment" for the purposes of the Agreement, with the following modifications:

a. Identification and Ownership.

(1) Unless the order form used for a purchase says otherwise, ownership of all Purchased Items transfers to you when it leaves the vendor. This means that you bear the risk of loss or damage that occurs in transit, and upon delivery and installation at your location.

b. Use of Purchased Items with Merchant-Provided Devices.

(1) When Clover software and hardware components are added to a Merchant-provided smartphone, tablet or other computer device to create a terminal (such as Clover Go), the Merchant assumes full and complete responsibility for the security of cardholder information until it is received by Bankoh or its processor.

(2) Because of the variety of devices available that will run Clover software and hardware components, it is very unlikely that any particular terminal configuration that incorporates a Merchant-provided device will have been certified as PCI DSS compliant. However, as long as the Merchant-provided terminal is using the latest Clover and device operating system software, current anti-virus software, a secure internet connection and compatible Clover hardware, the Merchant may use it to submit transactions to Bankoh. Merchant shall provide any additional information reasonably required by either Bankoh or the Merchant's PCI DSS qualified security assessor to determine the terminal's level of security.

c. Handling Damage and Defects.

(1) Damaged or defective Purchased Items are only subject to repair or replacement if the vendor has provided a warranty covering the damage or defect. Bankoh will assist you in contacting the vendor if it appears there is a warranty that applies in the situation. You should keep any vendor warranty documents which are packed with Purchased Items, in case a claim becomes necessary.

(2) If no warranty applies, you may ask Bankoh to arrange for repair or replacement of a Clover terminal, and you will pay the vendor's fee for the repair or replacement, plus shipping costs.

3. Allocation of Risk.

- a. The Rental Equipment is rented to you "as is" for business and/or professional purposes, and this is not a consumer leasing contract. With respect to Purchased Items, Bankoh is facilitating your ordering and payment for Clover terminal related

accessories and supplies from a third-party vendor. Merchant acknowledges Bankoh is not a manufacturer, distributor, manufacturer's agent or reseller of the Rental Equipment or the Purchased Items.

- b. You have chosen the Rental Equipment and Purchased Items based on your own judgment, and you did not rely on any statements or representations made by Bankoh representatives about their quality or suitability for your purposes.
- c. You are responsible for providing an appropriate place at your location for the Rental Equipment and Purchased Items. This includes providing telephone, internet, and/or electrical connections as specified in the applicable users manuals, as well as sufficient open space to allow your staff and customers access to the Rental Equipment and Purchased Items as required by the Americans with Disabilities Act, state disability discrimination laws, and occupational and health safety laws and regulations.
- d. ***Bankoh has not provided either express or implied warranties for the Rental Equipment and Purchased Items, use of the Rental Equipment or Purchased Items, and/or any services it provides. Bankoh specifically disclaims any implied warranties of merchantability and/or fitness for any particular use.***
- e. Bankoh will not have any liability for indirect, consequential or special damages claimed by the Merchant or anyone claiming through the Merchant which arises from acquisition or use of the Rental Equipment or Purchased Items.
- f. Merchant shall indemnify and hold Bankoh harmless against any and all claims, actions, proceedings, expenses, damages and liabilities, including attorneys' fees, arising in connection with the Rental Equipment or Purchased Items. This includes, without limitation, their manufacture, selection, purchase, delivery, possession, use, operation, or return.
- g. The limitation on Bankoh's monetary liability to the Merchant, which is set forth in the Agreement and modified in Section A.2.b of this BOH Clover Contract, shall apply to any claim of damage or loss arising from the Rental Equipment or Purchased Items.

4. Default by the Merchant.

- a. In addition to the events of default listed in the Agreement, the Merchant will be in default under the Agreement if:
 - (1) Merchant uses, attempts to use, or allows any other person to alter Rental Equipment so that anyone other than Bankoh Merchant Services can process Card Transactions for the Merchant.
 - (2) The Rental Equipment becomes involved in any civil or criminal actions or suits, or is seized by law enforcement agencies due to Merchant's neglect, criminal acts, or misconduct.

- (3) Merchant (or any guarantor of the Merchant's obligations hereunder) files, or there is filed against it, a petition for relief in U.S. Bankruptcy Court.
 - (4) Merchant (or any guarantor of my obligation hereunder) have made an assignment for the benefit of creditors.
 - (5) The Rental Equipment is lost, stolen or destroyed, if the replacement cost is not paid by Merchant within thirty (30) days after billing by Bankoh.
 - (6) Merchant fails to return the Rental Equipment at the end of the Rental Term.
 - (7) Merchant fails to follow any other material terms of this BOH Clover Contract or the Agreement.
- b. If Merchant defaults, Bankoh has the right to exercise any or all of the following remedies, in addition to the remedies described in the Agreement:
- (1) Require the immediate payment of all amounts then due for the Rental Equipment and Purchased Items, plus the unpaid balance of rental fees due for the Rental Term.
 - (2) Take possession of the Rental Equipment or demand that Merchant return it to Bankoh.
 - (3) Charge Merchant any amount necessary to replace or put the Rental Equipment in good condition, normal wear and tear excepted.
 - (4) Continue to charge Merchant monthly rental fees until the Rental Equipment is returned, restored to good condition, and/or is replaced.

[End of contract with Bank of Hawaii]

CLOVER® SERVICE AGREEMENT WITH FIRST DATA

These Clover Service terms and conditions (the "Clover Service Agreement") are by and between you and First Data Merchant Services, LLC and its Affiliates, successors and assigns (collectively, "FDMS"). **You understand and agree that Bank of Hawaii is not liable to you in any way with respect to products and services provided by or through FDMS under this Clover Service Agreement.**

In addition to this Clover Service Agreement, your use of the Clover Service may require your agreement to website terms of use, privacy policies, end user license agreements and other contracts with FDMS, Clover Network, Inc., application developers, and others. **Bank of Hawaii is not a party to those contracts, is not responsible for them, nor is it liable to you in any way with respect to them.**

1.1. Definitions.

"Affiliate" means a Person that, directly or indirectly, (i) owns or controls such Person, or (ii) is under common ownership or control with such Person.

"Clover Marks" means the names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations of Clover Network, Inc., an Affiliate of FDMS ("Clover").

"Clover Service" means the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time you are provided with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) and any materials, documentation and derivative works released by FDMS from time to time. For the avoidance of doubt, the term 'software' in the preceding sentence does not include any software that may be obtained by you separately from the Clover Service (e.g., any applications or software downloaded by you through an application marketplace).

"Customer" means a person or entity that makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

"Customer Information" means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.

"Device" means a tablet, smartphone, or other mobile or fixed form factor identified by FDMS from time to time as compatible with and capable of supporting the Clover Service.

"Person" means a person or entity other than Merchant or FDMS.

“Third Party Services” are the services, products, promotions or applications provided by someone other than FDMS.

1.2. Term and Termination. The Clover Service Agreement shall become effective on the day FDMS begins providing the Clover Service to you and shall end one (1) year later unless otherwise terminated as set forth herein. The Clover Service Agreement shall automatically renew until terminated by either party upon at least thirty (30) days’ notice. The Clover Service may be terminated for convenience at any time by either party upon at least thirty (30) days’ written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, FDMS may suspend the Clover Service or terminate this Clover Service Agreement if (i) FDMS determines that you are using the Clover Service for any fraudulent, illegal, or unauthorized purpose, (ii) FDMS terminates its agreement with any third parties that are involved in providing the Clover Service, or (iii) FDMS otherwise decides to discontinue providing the Clover Service.

1.3. Fees.

1.3.1. You shall pay the fees for the Clover Service as set forth on the application, or on any fee schedule or website information published by FDMS.

1.3.2. As a convenience to you and FDMS, Bank of Hawaii will include recurring and certain one-time fees for Clover Service in the billing it provides to you, and will collect those fees along with other amounts due under the Bank of Hawaii Merchant Agreement. Apps and other purchases made directly from FDMS may be charged to a credit or debit card that you are asked to provide at the time of purchase, or you and FDMS may agree on other methods of paying for Clover Service and other purchases.

1.4. License Grant. During the term of this Clover Service Agreement, FDMS grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the Clover Service for your internal business use solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with this Clover Service Agreement. For purposes of this Clover Service Agreement, “United States” does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Clover Service Agreement does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain FDMS’s, its Affiliates’, its vendors’, or its licensors’ (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by FDMS in this Clover Service Agreement are deemed withheld.

1.5. Restrictions.

1.5.1. All right, title and interest in and to all confidential information and intellectual property related to the Clover Service (including Clover Marks, all software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by FDMS at any time or employed by FDMS in connection with the Clover Service, shall be and will remain, as between FDMS and you, FDMS

or its affiliates', vendors' or licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Clover Service not expressly granted by FDMS in this Clover Service Agreement are deemed withheld. You shall not use Clover Marks in any manner, including in any advertisements, displays, or press releases, without FDMS's prior written consent.

1.5.2. If FDMS provides you with copies of or access to any software or documentation, unless otherwise expressly stated in writing, that software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the Clover Service and solely for you to access and use the software and documentation to receive the Clover Service for its intended purpose on systems owned or licensed by you.

1.5.3. You shall not and shall not permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that is not intended to be made available to you or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, Rental, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining FDMS's advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in FDMS's reasonable judgment impose an unreasonable or disproportionately large load on FDMS's infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in Section 1.4. You shall not take any action inconsistent with the stated title and ownership in Section 1.4. You will not file any action, in any forum that challenges the ownership of any part of the Clover Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Clover Service Agreement. FDMS has the right to immediately terminate this Clover Service Agreement and your access to and use of the Clover Service in the event of a challenge by you.

1.6. Clover Service Limitations and Requirements.

1.6.1. You may access the Clover Service through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.

1.6.2. You may use the Clover Service to conduct point of sale activities offline. Transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the Clover System is restored. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.

1.6.3. The Clover Service does not function with every mobile device. FDMS may alter which Devices are approved as compatible with the Clover Service in FDMS's discretion from time-to-time.

1.6.4. The default version and functionality of Clover software applications that are accessible at the time you acquire a Device may vary from time to time as determined by FDMS or an affiliate of FDMS. Notwithstanding anything to the contrary herein, software for certain Clover Devices may only be offered by FDMS or an affiliate of FDMS as applications via an application marketplace.

1.6.5. FDMS may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. FDMS will not be liable for any such interruptions, delays, errors, or bugs. You agree that FDMS may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors.

1.6.6. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you (collectively, "Clover Ops Guide").

1.6.7. You shall comply with the following requirements in connection with your use of the Clover Service:

a) With respect to each of your Customers who requests the delivery of marketing materials, Sales Transaction Records or other communications from you via text message or E-mail, such Customer must give his consent in writing or enter his phone number or E-mail address in the appropriate space on the device and provide such consent via a check box himself on the Device; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and E-mail address) or any Customer's consent indication on behalf of a Customer.

b) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or E-mail address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.

c) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE

CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

d) You shall provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your Customers through the Clover Service.

1.7. Third Party Services. The Clover Service may contain links to additional services provided by FDMS or its affiliates as well as Third Party Services (e.g., an application marketplace). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Any access of or content downloaded or otherwise obtained through the use of Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Clover Service Agreement or the Bank of Hawaii Merchant Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. FDMS WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND FDMS EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. FDMS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY SERVICE OR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND FDMS WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

1.8. Account Registration. FDMS may require you to register and create a “Member” or “Merchant” account to use the Clover Service. If and when prompted by FDMS’s registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, FDMS has the right to terminate your Clover Service account (“Account”) and refuse any and all current or future use of the Clover Service.

1.9. Privacy and Data Use. All data collected from you at www.clover.com or in connection with your use of the Clover Service, including Customer Information, transaction information and information about your business and employees used with or stored in or by the Clover Service (collectively, “Account Data”), is collected by Clover Network, Inc. and not by FDMS or Bank of Hawaii; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at https://www.clover.com/privacy_policy). You acknowledge and agree that FDMS and/or Bank of Hawaii may access your Account Data by making a request to Clover, and their use of your Account Data is governed by the terms set forth in the Bank of Hawaii Merchant Agreement and any applicable privacy policies.

1.10. Protecting Your Information.

1.10.1. You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of Account Data; (2) protect against any anticipated threats or hazards to the security or integrity of Account Data; (3) protect against unauthorized access to or use of Account Data that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of Account Data; and (b) take appropriate actions to address incidents of loss, theft or unauthorized access to or use of Account Data. You will comply with all applicable card organization rules (including, without limitation, applicable data security rules). You are responsible for all electronic communications sent to FDMS or to any third party (including Clover Network, Inc.) containing Account Data and for all uses of the Clover Service or any software provided or approved by FDMS to authenticate access to, and use of, the Clover Service and any software. When FDMS receives communications containing Account Data, FDMS assumes you sent it to FDMS. FDMS has the right to rely on user names, passwords and other signor credentials, access controls for the Clover Service or any software provided or approved by FDMS to authenticate access to, and use of, the Clover Service and any software. You must immediately notify FDMS if you become aware of any loss, theft or unauthorized use of any Account Data (see Clover Service support center contact information below). FDMS reserves the right to deny you access to the Clover Service, in whole or in part, if FDMS believes that any loss, theft or unauthorized use of any Account Data or access information has occurred. FDMS may, in its sole discretion, suspend or terminate services under this Clover Service Agreement for any data security compromise. You also understand and acknowledge that you are solely responsible for the compliance of any and all third parties (including but not limited to Internet Service Providers) that are granted access by you, to Account Data. You also acknowledge that it is your duty to notify FDMS of any data security compromise and to cooperate and assist FDMS in any subsequent investigation

1.10.2. You may submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service. By submitting any idea, you agree that: (a) FDMS expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any idea, (b) your submission will be non-confidential, and (c) FDMS is free to use and disclose any idea on an unrestricted basis without notifying or compensating you. You release FDMS from all liability and obligations that may arise from FDMS's receipt, review, use or disclosure of any portion of any idea.

1.11. Confidentiality.

1.11.1. You must not use, disclose, store, sell or disseminate any Account Data except as may be allowed under this Clover Service Agreement. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Account Data. No Account Data, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Merchant's business.

1.11.2. You will treat this Clover Service Agreement, and any information supplied or otherwise made accessible by FDMS, its agents or Affiliates as confidential, including without limitation, (i) Account Data, information about FDMS's and its Affiliates' products, services, operations, procedures and pricing; and (ii) all documentation, computer software, source code, object code, databases. You receive FDMS's confidential information in confidence and shall not disclose the confidential information to any third party, except as may be agreed upon in writing by FDMS. Merchant shall safeguard all of FDMS's confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by FDMS or upon termination of this Clover Service Agreement, Merchant shall return to FDMS or destroy all of FDMS's confidential information in its possession or control.

1.11.3. The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the effective date of this Clover Service Agreement or subsequently came into the public domain through no fault of yours; (ii) was received from a third party free of any obligation of confidence of you to the third party and which third party, to your knowledge, was not under an obligation to keep the information confidential; (iii) was already in your possession prior to receipt from FDMS; or (iv) is subsequently and independently developed by your employees, consultants or agents without use of or reference to FDMS's confidential information.

1.11.4. Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under FDMS's confidential information to you. Except as specifically provided for herein, no license is hereby granted to you under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

1.11.5. You acknowledge that breach of the restrictions on use or disclosure of any FDMS's confidential information would result in immediate and irreparable harm to FDMS, and money damages would be inadequate to compensate for that harm. FDMS shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

1.11.6. FDMS may use data collected as part of performing payment processing or other transaction-related services for you for the purpose of providing additional products and services to you, other merchants, or third parties. As permitted by law this includes, but is not limited to, collecting, using, and anonymizing cardholder information, dates, amounts, and other data from your transactions ("Transaction Data") to provide you with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

1.12. Accuracy of Information. You are solely responsible for ensuring the accuracy, quality, integrity, legality and appropriateness of all information and data regarding your business that you provide to FDMS or its service providers in connection with the Clover Service. In addition, you are solely responsible for verifying that all information and data loaded onto a Device by FDMS or its service providers at your request are accurate prior to your business use of such Device. FDMS and its service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data you provide.

1.13. Clover Service Disclaimer. USE OF THE CLOVER SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED “AS IS” AND FDMS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) TO YOU OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, WARRANTIES REGARDING QUALITY, SUITABILITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR DOES NOT INFRINGE ON THE RIGHTS OF ANY PERSON.

1.14. Indemnity. You agree to indemnify and hold FDMS harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys’ fees) arising out of or relating to: a) Your failure to comply with or your breach of, any term or condition, representation or warranty in this Clover Service Agreement, including, but not limited to the Clover Ops Guide; b) Your use of the Clover Service; c) Your use of any Customer Information obtained in connection with your use of the Clover Service; d) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or E-mail address collected through the use of the Clover Service; or e) Any other party’s access and/or use of the Clover Service with your user names, password, other appropriate security code, or any other sign on credentials/access controls for the Clover Service or any software provided by or approved by FDMS to authenticate access to, and use of, the Clover Service and any software.

1.15. Exclusion of Consequential Damages; Limitation on Liability.

1.15.1. Exclusion of Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS CLOVER SERVICE AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL FDMS OR ITS 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.

1.15.2. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS CLOVER SERVICE AGREEMENT TO THE CONTRARY, FDMS AND ITS AFFILIATES’ CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY MERCHANT AGAINST FDMS AND/OR ITS 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) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF, (I) \$10,000; OR (II) THE AMOUNT OF FEES RECEIVED BY FDMS PURSUANT TO THIS CLOVER SERVICE AGREEMENT FOR CLOVER SERVICE PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS.

1.16. Default. If either party defaults in the performance of any of its obligations hereunder, and if any such default is not corrected within thirty (30) days after notice in writing, the non-defaulting party may terminate this Clover Service Agreement and the Clover Service upon written notice. This Clover Service Agreement and the Clover Service may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, which are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter; (ii) upon the other party's making a general assignment for the benefit of creditors; or (iii) upon the other party's dissolution or ceasing to conduct business in the ordinary course.

1.17. Compliance with Laws. In performing its obligations under this Clover Service Agreement, the parties agree to comply with all federal and state laws, rules and regulations applicable to it for the Clover Service provided hereunder.

1.18. Assignment. Neither party may assign its rights or delegate its obligations under this Clover Service Agreement without the other party's prior written consent, which will not be unreasonably withheld. FDMS may, however, assign any or all of its rights or delegate any or all of its obligations to an Affiliate or an entity acquiring all or substantially all of the assets of FDMS.

1.19. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder shall be in writing, if to you at your address appearing on the application or by any electronic means, including but not limited to the e-mail address you have provided. If to FDMS at First Data Merchant Services LLC, 1307 Walt Whitman Road, Melville, New York 11747, Facsimile (631) 683-7516, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to your last known address (including E-mail address), as indicated in FDMS's records, shall constitute effective notice to the Merchant under this Clover Service Agreement. If you change your address (including your e-mail address), you must notify FDMS at least 30 days prior of the effective date of any such change. All notices must include your merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

1.20. Amendment. FDMS has the right to change or add to the terms of this Clover Service Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Clover Service with notice provided to you as set forth in the Notices section of this

Clover Service Agreement. Any use of the Clover Service after FDMS's publication of any such changes shall constitute your acceptance of this Clover Service Agreement as modified.

1.21. Third Party Beneficiaries. FDMS's Affiliates and any Persons FDMS uses in providing the Clover Service (including Bank of Hawaii) are intended third party beneficiaries of this Clover Service Agreement, and each of them may enforce its provisions as if it was a party hereto. Except as expressly in this provided in this Clover Service Agreement, nothing in this Clover Service Agreement is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Clover Service Agreement.

1.22. Miscellaneous.

1.22.1. Headings. The headings contained in this Clover Service Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Clover Service Agreement.

1.22.2. Entire Agreement; Waiver. This Clover Service Agreement constitutes the entire agreement between you and FDMS with respect to the subject matter thereof, and supersedes any previous agreements and understandings. Except as provided herein this Clover Service Agreement can be changed only by a written agreement signed by you and FDMS. A party's waiver of a breach of any term or condition of this Clover Service Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition. Purchase orders, requests for production, pre-printed terms or other Merchant-generated documents that FDMS may receive are for administrative convenience only and do not modify this Clover Service Agreement and are expressly rejected by FDMS. The words "including", "include" and "includes" will each be deemed to be followed by the term "without limitation".

1.22.3. Severability. Every provision of this Clover Service Agreement is severable. If any provision of this Clover Service Agreement is held to be invalid, illegal, void or unenforceable by reason of any judicial decision, then such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision, and all other provisions of this Clover Service Agreement will nevertheless remain in full force and effect. 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.

1.22.4. Choice of Law and Venue. This Clover Service Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to this Clover Service Agreement shall be in the appropriate state or federal court located in New York.

1.22.5. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS CLOVER SERVICE AGREEMENT.

1.22.6. **Force Majeure.** FDMS shall not be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), the nonperformance, delay or error by a third party or in any other third party system for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of Merchant or any government authority, or other causes reasonably beyond the control of FDMS.

1.22.7. **Survival of Obligations.** The rights and obligations of the parties that would be intended to survive by their nature or context will survive expiration or termination of this Clover Service Agreement.

1.22.8. **Counterparts.** This Clover Service Agreement may be executed in counterparts (including by means of signature pages transmitted via facsimile or other electronic means), any one of which need not contain the signatures of more than one party. Each signature will be deemed to be: (a) an original; and (b) valid, binding, and fully enforceable.

By signing the application, you acknowledge that you have read, understand and agree to comply with the terms and fees, as set forth in this Clover Service Agreement. You also understand that the Clover Service and other fees charged by FDMS may be modified from time to time.

2. E-SIGN CONSENT AGREEMENT

2.1. **Consent.** By signing this Clover Service Agreement, you consent and agree that:

- a) FDMS can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- b) Where required or requested, your electronic signature (via “clickthrough” or other method) on agreements and documents relating to the Services has the same effect as if you signed them in ink.
- c) FDMS, its affiliates and its third party subcontractors and/or agents, can send all communications, billing statements, amendments to this Clover Service Agreement, notices, and other disclosures or information regarding the Services or your use of the Service or the Services as defined herein and in the Bank of Hawaii Merchant Agreement (collectively defined as “Disclosures”) to you electronically (1) via e-mail, (2) by access to a web site that FDMS designates in an e-mail notice FDMS sends to you at the time the information is available, (3) via SMS and text messages, or (4) to the extent permissible by law, by access to a website that FDMS will generally designate in advance for such purpose.
- d) If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.

e) You agree that FDMS, its affiliates and its third party subcontractors and/or agents, may contact you via telephone, live or artificial, even if the number you provided is a cellular or wireless number or if you have previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes.

f) This consent applies to all future Disclosures sent to you in connection with this Clover Service Agreement, the Bank of Hawaii Merchant Agreement, or your use of the Clover Service or the other Services as defined herein and in the Bank of Hawaii Merchant Agreement.

2.2. Legal Effect. By consenting, you agree that electronic Disclosures have the same meaning and effect as if FDMS provided paper Disclosures to you. When FDMS sends you an E-mail or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if FDMS provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

BY SIGNING ON THE APPLICATION, YOU SEPARATELY CONSENT TO THE E-SIGN CONSENT AGREEMENT ABOVE, WHICH YOU ACKNOWLEDGE IS REQUIRED FOR YOUR ACCEPTANCE OF THE CLOVER SERVICE.