**TERMS OF SERVICE**

**U.S. CARD PROCESSING SERVICES**

**1. Certain Merchant Responsibilities.**

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

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

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

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

1.5 Merchant understands and agrees that should it process credit card Transactions in excess of $1,000,000.00 annually, it may be required to enter a processing agreement directly with the Acquirer. The terms of this clause may be revised unilaterally by FORTE based on any changes to requirements by the applicable Acquirer or Payment Association(s).

**2. Merchant Prohibitions.**

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

**3. Settlement.**

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

**4. American Express Card Acceptance.**

 4.1 Merchant hereby acknowledges and agrees that for purposes of acceptance of American Express, the American Express Merchant Operating Guide and any amendments thereto (the “Operating Guide”) is hereby incorporated by reference into this Agreement and can be found at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

All capitalized terms found in this Section 4 shall have the attributed meaning from the Operating Guide.

4.2 Merchant hereby acknowledges and agrees that it is not a party to any agreement between FORTE and American Express.

4.3 Merchant hereby authorizes FORTE and/or Acquirer to submit American Express transactions to, and receive settlement from, American Express on behalf of Merchant. Merchant must accept the American Express card as payment for goods and services (other than those goods and services prohibited under the Operating Guide) sold, or (if applicable) for charitable contributions made, at all of its establishments, except as expressly permitted by applicable Law. Merchant is jointly and severally liable for the obligations of Merchant’s establishments under the Agreement. For the avoidance of doubt, “cardholder” as used in this Agreement shall include Cardmembers as defined in the Operating Guide.

 4.4 Merchant hereby acknowledges and agrees that (i) FORTE or Acquirer may disclose American Express Transaction Data (which for purposes of this section shall have the same definition as “Transaction Data” in the Operating Guide), Merchant Data (as defined below), and other information about Merchant to American Express, (ii) American Express may use such information to perform its responsibilities in connection with the American Express Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purpose, including marketing purposes, and (iii) American Express may use the information obtained in this application at the time of setup to screen and/or monitor Merchant in connection with American Express Card (the “Card”) marketing and administrative purposes. If Merchant has provided a wireless phone number in connection with this Agreement, Merchant hereby agrees that it may be contacted at that number and the communications sent may include autodialed text messages or automated prerecorded calls. If Merchant has provided a fax number, Merchant hereby agrees that it may be sent fax communications. To opt out of American Express-related marketing communications, Merchant may contact FORTE customer service as described in this Agreement. For purposes of this section, “Merchant Data” means names, postal and email addresses, tax ID numbers, names and social security numbers of the authorized signer of Merchant and similar identifying information about Merchant. For clarification, Merchant Data does not include American Express Transaction Data.

 4.5 Merchant will adhere to the following website information display guidelines in the event Merchant has a website and/or operates an e-commerce business. Merchant’s website must display the following:

* An accurate description of the goods/services offered, including the currency type for the Transaction (e.g., U.S. Dollars). Note: Transaction currency must be in U.S. Dollars.
* Merchant's physical address in the U.S.
* An email address or telephone number for customer service disputes.
* Return/refund policy.
* A description of Merchant's delivery policy (e.g., no overnight delivery).
* A description of Merchant's security practices (e.g., information highlighting security practices Merchant uses to secure Transactions on its systems, including Transactions conducted on the Internet).
* A statement of known export restrictions, tariffs, and any other regulations.
* A privacy statement regarding the type of personal information collected and how the information is used. Additionally, Merchant must provide to customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.

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

 4.7 Except as expressly permitted by applicable Law, Merchant must not: (a) indicate or imply that Merchant prefers, directly or indirectly, any Other Payment Products over the Card, (b) try to dissuade Cardmembers from using the Card, (c) criticize or mischaracterize the Card or any of American Express' services or programs, (d) try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check), (e) impose any restrictions, conditions, disadvantages, or fees when the Card is accepted that are not imposed equally on all other payment products, except for electronic funds transfer, cash or check, (f) suggest or require Cardmembers to waive their right to dispute any Transaction, (g) engage in activities that harm American Express' business or the American Express Brand (or both), (h) promote any Other Payment Products (except, if applicable, Merchant’s own private label card that it issues for use solely at its Establishments) more actively than Merchant promotes the Card, or (i) convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

 4.8 Merchant may offer discounts or in-kind incentives from its regular prices for payments in cash, ACH funds transfer, check, debit card, or credit/charge card, provided that (to the extent required by applicable Law): (i) Merchant clearly and conspicuously discloses the terms of the discount or in-kind incentive to its customers, (ii) the discount or in-kind incentive is offered to all of Merchant’s prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the Issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth Section 3.2 of the Operating Guide.

4.9 Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate its acceptance of the Card and display American Express' Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use American Express' Marks in any way that injures or diminishes the goodwill associated with the American Express Mark, nor in any way (without American Express’ prior written consent) indicate that American Express endorses Merchant’s goods or services. Merchant shall use the American Express brand and marks in accordance with the requirements set forth in the Operating Guide and shall remove the American Express brand and marks from Merchant’s website and wherever else they are displayed upon termination Merchant’s acceptance of American Express cards.

4.10 Any and all Cardmember Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Cardmember Information, nor use nor store it, other than to facilitate Transactions in accordance with this Agreement. For more information, refer to the Operating Guide, Section 4.2, "Completing a Transaction at the Point of Sale" and Chapter 8, "Protecting Cardmember Information".

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

 4.12 Merchant hereby agrees that American Express shall have third party beneficiary rights, but not obligations, to enforce this Agreement as against Merchant to the extent applicable to American Express processing. Merchant understands and agrees that it shall have no third- party beneficiary rights under any agreement between FORTE and American Express and/or Acquirer. Merchant shall maintain refund policies for purchases on the American Express card that are at least as favorable as its refund policy for purchases on any other payment product. Merchant will disclose any such refund policy to Cardmembers at the time of purchase and in compliance with the Operating Guide and all applicable Laws. Merchant’s termination of American Express Card acceptance shall have no direct or indirect effect on Merchant’s rights to accept other card brands. To terminate American Express acceptance, Merchant may contact FORTE customer service as described in this Agreement.

 4.13 Without limiting any other rights provided herein, FORTE and/or Acquirer shall have the right to immediately terminate Merchant’s acceptance of American Express cards upon request of American Express. Merchant may not bill or collect from any Cardmember for any purchase or payment on the Card unless a chargeback has been exercised, Merchant has fully paid for such charge, and it otherwise has the right to do so. Merchant will comply with all procedural requirements relating to chargebacks, as provided in the Operating Guide, Chapter 11.

4.14 American Express Liability. SPONSORED MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.