

## MERCHANT AGREEMENT

This Merchant Agreement ("Agreement") is by, between and among:

MONTGOMERY COUNTY CLERK OFFICE  
64 BROADWAY  
FONDA, NY 12068

referred to herein as "Merchant"; Vantiv, LLC, for itself and its affiliates, a Delaware Limited Liability Company with a business address at 8500 Governors Hill Drive, Symmes Township, Ohio 45249 (hereinafter "Vantiv"); and Government Payment Service, Inc. (d/b/a "GovPayNet"), a Delaware corporation having a principal place of business at 7102 Lakeview Parkway West Drive, Indianapolis, Indiana 46268 ("GPS").

**WHEREAS**, GPS provides the "GovPayNet Payment Network," consisting of governmental entities that have each contracted with GPS to accept payments on their behalf made using credit cards and debit cards by their authorized users (individually, a "Cardholder" and collectively, "Cardholders") for transmission to such entities, and Merchant, in order to improve Merchant's services and enhance administration, desires to accept payments through GPS with such related support services as GPS provides; and

**WHEREAS**, the entities that establish and govern the rules, regulations and guidelines for the credit card and debit card systems such as Visa U.S.A., Inc. and MasterCard International Incorporated (collectively, the "Payment Type Organizations" or "PTOs") require that Merchant enter into a contractual relationship with an entity that is a member of the PTOs and agrees to comply with PTO rules and regulations ("PTO Rules") as they apply to credit and debit card transactions that are submitted to Vantiv by GPS on Merchant's behalf; and

**WHEREAS**, by Merchant executing this Agreement, Vantiv is made a party to this Agreement and Merchant understands that (i) Merchant has contracted with GPS to obtain certain processing services; (ii) GPS has agreed to be responsible for all or part of Merchant's obligations contained herein; and (iii) Merchant is fulfilling the PTO Rules.

**NOW, THEREFORE**, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Merchant, Vantiv, and GPS agree as follows:

### 1. Recitals.

The above recitals are by this reference incorporated into and made a part of this Agreement.

### 2. Security and Compliance.

- 2.1 Merchant acknowledges and agrees that certain PTO Rules apply to Merchant's acceptance of Cardholders' payments. Merchant further acknowledges and agrees that security standards and guidelines published by the Payment Card Industry ("PCI") Security Standards Council including PCI Data Security Standards ("DSS") are also applicable to Merchant's acceptance of payments from Cardholders. **In lieu of directly complying with all PTO Rules and PCI DSS requirements, Merchant may and hereby does appoint GPS as its agent to accept debit and credit cards and comply in full with all applicable PTO Rules and PCI DSS requirements, as they may be modified from time to time, on its behalf and GPS accepts such appointment subject to any limitations in this Agreement and any attachments hereto.** If any PTO requires an audit and/or forensic investigation due to an actual or suspected data security compromise event in connection with transactions processed hereunder, an audit and/or forensic investigation of GPS and its operations shall be sufficient for such purposes provided, however, that Merchant agrees to cooperate with such audit and/or forensic investigation as GPS may reasonably request.
- 2.2 Merchant acknowledges that any Cardholder personal information it obtains will be obtained lawfully, shall be retained only as necessary for the performance of Merchant's official duties, and will not be used by Merchant in violation of any PTO Rules or regulations or applicable law.

- 2.3 If at any time Merchant or GPS believes that Cardholder information has been compromised as a result of a breach of the GPS system, Merchant or GPS, as the case may be, must notify the other and GPS shall notify Vantiv, PTOs, Cardholders, and any other parties GPS is required to notify.
- 2.4 Merchant and GPS each additionally agrees to comply, at each party's expense, with all federal, state, and local laws and the requirements of regulatory agencies as they pertain to the respective parties' businesses and operations.

### **3. GPS Obligations**

GPS will enable Cardholders to pay amounts owed to Merchant by doing the following:

- 3.1 GPS shall obtain on Merchant's behalf authorization to process a charge to the Cardholder's credit card account or debit such Cardholder's debit card account for purposes of funding payment(s) by such Cardholder to Merchant. Such charges or debits shall be subject to acceptance by the card issuer, PTO rules, and any other applicable laws or regulations.
- 3.2 GPS shall act on Merchant's behalf in accepting payments from Cardholders made by credit cards and debit cards at the service fees listed on Attachment "A" to this Agreement. Cardholder shall pay all service fees unless Merchant advises GPS Merchant intends to pay all or any part of the service fees in the manner provided in this Agreement. For any service fees Merchant elects to pay, Merchant shall follow the payment procedures described in Attachment "B" to this Agreement. Merchant hereby authorizes GPS to net and retain as GPS's sole compensation service fees paid by Cardholders in addition to the payment amounts. GPS may modify Cardholder fees at its sole option, providing Merchant with 30 days' notice of such modification and a revised attachment reflecting modified fees prior to imposing a new fee structure. Service fees are non-refundable.
- 3.3 GPS shall transmit payment transactions on Merchant's behalf to Vantiv for further processing and shall further direct Vantiv to transfer Merchant's portion of all settling funds received from PTOs to Merchant in accordance with then-standard GPS practices. GPS shall establish unique payment codes on its system for the routing of Cardholder funds to Merchant. Such codes shall be available to Cardholders through Merchant or by accessing GPS's services.
- 3.4 GPS shall be responsible for the safety and security of all Cardholder information it obtains (such as the customer's PTO account number, expiration date, and CVV2) in connection with the processing services provided under this Agreement. GPS will maintain proper security and responsibility for Cardholder data while it is in GPS's possession, all at GPS's sole cost in accordance with applicable PCI DSS requirements.
- 3.5 GPS reserves the right to charge Merchant for services or equipment beyond the scope of this Agreement, such as custom software development, non-GPS standard peripheral devices, and other services and support as the parties may agree upon from time to time.
- 3.6 GPS shall provide administrative support to Cardholders and to Merchant through a toll-free telephone help line and the Internet.
- 3.7 GPS shall provide Merchant with participation procedures, toll-free telephone numbers, web addresses, and promotional and instructional materials to market and explain the GPS service to Cardholders, and shall train Merchant staff on how to access and use, and how to assist Cardholders to access and use the GovPayNet Payment Network.
- 3.8 GPS shall be responsible for all federal, state, and local taxes that may be imposed upon its services only.

#### 4. Merchant Obligations

Merchant's continued participation in the GovPayNet Payment Network is conditioned upon the following:

- 4.1 Merchant understands and agrees that its cooperation in promoting use of the GovPayNet Payment Network is a significant consideration for Merchant and GPS entering into this Agreement. Merchant shall therefore (i) ensure that the appropriate employees participate in any GPS training or refresher training on the use and promotion of the GovPayNet Payment Network and its associated services; (ii) keep available for reference any user manuals and instructional materials GPS provides to Merchant; (iii) display logos, signage, literature, and other promotional and instructional materials that GPS provides and otherwise inform, encourage and assist Cardholders to use GPS for their payments to Merchant; and (iv) cooperate with all reasonable GPS requests to encourage greater use of the GovPayNet Payment Network. All marketing and promotion of GPS services by Merchant shall conform to guidelines provided by GPS from time to time.
- 4.2 Merchant shall be responsible for funds Merchant has accepted in payment lost due to the reversal of any transactions (*i.e.*, "chargebacks") and determining whether to challenge an asserted chargeback. If the chargeback resulted from duplicate transactions, GPS shall determine whether an error in the GPS processing system was the source of such duplication and shall only be liable for chargebacks that result from such system errors. GPS shall provide enhanced assistance to Merchant in chargeback management and administration per Attachment "B." Chargebacks are initially deducted from a GPS account. Therefore, Merchant shall authorize GPS to debit on a periodic basis an account Merchant designates for reimbursement of chargebacks to GPS and any chargeback management fees imposed by a PTO which GPS is entitled to recover under Attachment "B." GPS shall retain secondary financial and operational responsibility for chargebacks in the event Merchant defaults on this obligation.
- 4.3 Merchant shall provide telecommunication capabilities, such as telephone, facsimile, and Internet connections to enable Cardholders to access GPS from Merchant locations and enable GPS to communicate with Merchant. Further, Merchant shall be responsible for establishing and maintaining secure access at its locations to the GPS administrative system, including user identification, passwords and precautions for accessing all confidential information. GPS shall be entitled to rely on any communications or instructions initiated with Merchant's user identification, passwords or other security and identity tokens or devices. Merchant shall designate a primary contact and a secondary contact with which GPS may communicate on operational, technical, and administrative issues.
- 4.4 Merchant shall raise any claimed transaction or settlement errors with GPS within 12 months of the date of Merchant's receipt of the GPS report on which the claimed error appeared and shall otherwise follow the GovPayNet Payment Network participation procedures that GPS provides to Merchant, as such procedures may be updated from time to time. Merchant shall cooperate with GPS in the event of an overpayment to refund to GPS funds that GPS can demonstrate exceed Cardholder liabilities to Merchant.
- 4.5 Merchant shall provide GPS with prompt written notice of any change in the information Merchant provides to GPS necessary for Merchant's participation in the GovPayNet Payment Network, including but not limited to any change in its bank routing and account numbers.
- 4.6 In the event Merchant receives a payment from GPS that appears to have been obtained through the commission of civil or criminal fraud, Merchant shall cooperate in any resulting investigation.
- 4.7 Merchant shall not enter into any other agreement or make any other arrangement for services similar to those available through the GovPayNet Payment Network for the duration of this Agreement.

#### 5. Term and Termination

- 5.1 This Agreement shall become effective upon the date it has been executed by Merchant and GPS and shall continue for one year, automatically renewing for additional one year periods. Notwithstanding

the foregoing, this Agreement shall terminate if and when Vantiv ceases to provide processing services to GPS or if terminated earlier as provided herein.

- 5.2 Merchant may terminate this Agreement upon 30 days' written notice to GPS and GPS shall promptly inform Vantiv of such termination. If at any time Merchant wishes to terminate the services of GPS but continue to process transactions under this Agreement through Vantiv, Merchant shall immediately upon GPS's cessation of services become directly responsible for complying with all duties hereunder Merchant had formerly assigned to GPS.
- 5.3 GPS may terminate this Agreement (a) upon 30 days written notice prior to its annual expiration date; (b) upon 30 days written notice if Merchant fails to comply with GPS procedures for participating in the GovPayNet Payment Network (subject to Merchant's reasonable opportunity to cure); or (c) immediately if Merchant fails to comply with any other term of this Agreement.

## **6. GPS and Vantiv Representations and Warranties**

Each of Vantiv and GPS represents and warrants as follows:

- 6.1 This Agreement is valid, binding, and enforceable against the warranting party in accordance with its terms. Each party has full power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- 6.2 The employees, agents and subcontractors of Vantiv and GPS shall possess the education, knowledge and experience necessary to qualify them individually for the particular duties they perform.
- 6.3 During the performance of this Agreement, each of Vantiv and GPS shall provide services in a non-discriminatory manner and shall not deny services or employment on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status or any other legally protected class.

## **7. Merchant Representations and Warranties**

Merchant has taken all administrative, legal and regulatory measures necessary for it to enter into this Agreement and this Agreement is valid, binding, and enforceable against Merchant in accordance with its terms.

## **8. Notices**

All notices permitted or required by this Agreement shall be in writing and shall be given to the respective parties in person, by first class mail, or by facsimile (with a hard copy following) addressed to:

### **Merchant:**

Meghan Manion  
Montgomery County Clerk Office  
64 Broadway  
Fonda, NY 12068  
Mmanion@co.montgomery.ny.us  
(518) 853-8125

### **GPS:**

Client Services Department  
Government Payment Service, Inc.  
7102 Lakeview Parkway West Drive  
Indianapolis, Indiana 46268  
Phone: (866) 564-0169  
Facsimile: (888) 665-4755  
Email: accountservices@govpaynet.com

or to such other person or place that the parties may from time to time designate. Notices and consents under this section shall be deemed to be received, if sent by mail or courier, five days following their deposit in the U.S. Mail or with such courier and, if sent by facsimile, when such facsimile is transmitted to the number provided in this section and sender receives a confirmation of such facsimile.

## 9. Disclaimers and Limitation of Liability

- 9.1 The sole purpose of this Agreement is to enable Merchant to participate in the GovPayNet Payment Network. Merchant understands and agrees that GPS takes no responsibility that amounts GPS transmits in payment to Merchant will fully satisfy any obligation to Merchant, and that GPS does not guarantee any particular outcome or result other than the delivery of each Cardholder's payment to Merchant.
- 9.2 Other than the limited agency of GPS to accept payments for Merchant this Agreement establishes, nothing creates any association, partnership, joint venture, or relationship of master and servant or employer and employee between the parties or to provide either party with the right, power, or authority, expressed or implied, to create any such duty or obligation on behalf of the other party.
- 9.3 GPS shall be liable for losses or damages to Merchant to the extent provided herein only if they are caused directly by the gross negligence or willful misconduct of GPS.
- 9.4 Merchant bears all responsibility for administrative and official actions taken by Merchant. GPS accepts no liability whatsoever for Merchant actions taken based on payment information provided by GPS even if such information proves to be incorrect.
- 9.5 **THIS IS A CONTRACT FOR SERVICES. GPS LIABILITY TO MERCHANT IS LIMITED TO MAKING PAYMENTS TO MERCHANT IN THE AMOUNTS THAT GPS HAS INFORMED MERCHANT HAVE BEEN AUTHORIZED. THE GOVPAYNET PAYMENT NETWORK AND ANY INCIDENTAL GOODS AND RELATED SERVICES ARE PROVIDED ON AN AS-IS, AS-AVAILABLE BASIS. GPS MAKES NO WARRANTIES THAT GPS SERVICES WILL BE ERROR FREE OR UNINTERRUPTED AND DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER MERCHANT NOR GPS SHALL BE LIABLE FOR LOST REVENUES, PROFITS, INTEREST, GOOD WILL, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES SUFFERED OR INCURRED BY THE OTHER PARTY IN CONNECTION WITH OR ARISING FROM SERVICES PERFORMED UNDER THIS AGREEMENT. VANTIV'S FUNCTION IS TO ACCEPT AND PROCESS MERCHANT'S TRANSACTIONS FROM GPS. VANTIV SHALL HAVE NO LIABILITY TO MERCHANT WHATSOEVER HEREUNDER.**

## 10. Publicity

GPS shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of Merchant.

## 11. Intellectual Property

Merchant acknowledges and shall not challenge GPS's ownership of GPS trademarks, service marks, trade names, patents, copyrights, or other intellectual property ("GPS Intellectual Property"). Merchant agrees that any Merchant use of GPS Intellectual Property shall be in accordance with GPS instructions and subject to the control, direction and approval of GPS; that any rights arising out of such use shall inure solely to the benefit of GPS; and that Merchant shall have no ownership or other interest in GPS Intellectual Property.

## 12. Miscellaneous Terms and Conditions

- 12.1 **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 12.2 **Assignment.** This Agreement may not be assigned, in whole or in part, by GPS or by Merchant without prior written consent of the other party, which consent shall not be unreasonably withheld.
- 12.3 **Force Majeure.** All parties are excused from performance and shall not be liable for any delay in performance or non-performance, in whole or in part, caused by the occurrence of any contingency

beyond the control of the parties including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, terrorism, loss of power or telecommunications, flood, storm, Acts of God, or similar occurrences.

- 12.4 Governing Law. All matters of contractual interpretation shall be governed by the internal laws of the State of Indiana.
- 12.5 No Waiver. A waiver of any portion of this Agreement shall not be deemed a waiver or renunciation of other portions.
- 12.6 Survival. Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.
- 12.7 Severability. In the event that any provision of this Agreement is adjudicated by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, all other provisions of this Agreement shall nevertheless remain in full force and effect.
- 12.8 Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which is deemed an original, but all of which taken together constitute one and the same instrument. For purposes of execution and delivery, each party may rely upon the electronically imaged and emailed or faxed signature of the other party as an original document.
- 12.9 Complete Agreement. This Agreement, together with its attachments is the entire agreement between and expresses the complete understanding of the parties, superseding all prior or contemporaneous agreements, with regard to the subject matter herein and may not be altered, amended, or modified except in a writing incorporated hereto, and signed by the parties, provided, however, that GPS may revise the terms of this Agreement if required to comply with PTO rules, law, or regulation and GPS provides notice to Merchant of such change.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives or agents as of the date written below.

**MONTGOMERY COUNTY CLERK OFFICE**

**GOVERNMENT PAYMENT SERVICE, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Honorable Matthew Ossenfort

Mark E. MacKenzie

County Executive

Managing Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## ATTACHMENT "A" – SERVICE FEES AVAILABLE

**ALL SERVICE FEES ARE NON-REFUNDABLE**

Service Fee Schedule for Government Program Payments Made via Internet (Web/Gov\$wipe®)	
Credit Card Fee Per Payment Amount	Debit Card Fee Per Payment Amount
\$0.01 to \$50.00 = \$1.00	1.15% \$1.00 minimum
\$50.01 to \$100.00 = \$2.00	
\$100.01 to \$150.00 = \$3.00	
\$150.01 and above = 2.50%	

Service Fee Schedule for Health Care Payments Made via Internet (Web/Gov\$wipe®)							
Transaction Range			Service Fee	Transaction Range			Service Fee
\$0.01	>	\$50.00	\$1.75	\$100.01	>	\$150.00	\$5.75
\$50.01	>	\$75.00	\$2.00	\$150.01	>	\$200.00	\$7.25
\$75.01	>	\$100.00	\$3.75	For each additional increment of \$50.00, or portion thereof, add \$2.00			

Service Fee Schedule for Telephone-Assisted Payments	
Add \$2.50 to each payment amount for use of operator assistance	Add \$1.50 to each payment amount for use of Integrated Response Unit

## ATTACHMENT "B" – ADDITIONAL SERVICES

### General Service Terms

Merchant is responsible for advising GPS as to the types of payments GPS is authorized to accept on Merchant's behalf (per the service fees stated in any Attachment to this Agreement). Merchant may at any time (i) authorize GPS to accept additional types of payments within the scope of the applicable service fees; (ii) cancel the processing through GPS of any types of payments; and (iii) modify the account(s) to which GPS shall direct payments to Merchant by specifying all such changes to GPS **in writing** (for purposes of this attachment, "**in writing**" means via letter, email, or facsimile). Any such changes require reasonable lead-time to implement and are subject to GPS acceptance and confirmation **in writing**.

### Service Fees

Service Fees may be the responsibility of Cardholder, Merchant, or shared by Cardholder and Merchant. Unless Merchant advises GPS otherwise, Merchant will be presumed to have chosen that Cardholders shall be responsible for all Service Fees. If Merchant elects to pay all or any portion of the Service Fee, Merchant must so advise GPS **in writing**. For any Service Fees Merchant elects to pay, GPS will debit Merchant's account for Merchant's share of the Service Fee in accordance with the terms of the debit authorization form Merchant completes. Merchant must allow GPS 30 days to make any changes Merchant requests to the Service Fee responsibility. Merchant warrants that Merchant's decisions and instructions to GPS with respect to Cardholder responsibility for payment of all or any part of the Service Fee shall conform with applicable law.

### Service Models

GPS provides an e-commerce payment solution to entities that contract to participate in the GovPayNet Payment Network. Basic service policies include a system designed to be available 24 hours a day, 7 days a week, 365 days a year; access to online administrative, analytical, and reporting capabilities; and customer service support to Merchant's payers and staff. GPS will cause funds to be forwarded electronically to Merchant's designated account(s) for all approved transactions which are accepted by Merchant within two banking days after transaction authorization, or will remit funds by check if Merchant so requests **in writing**.

Cardholders may make payment transactions via the Internet or by toll-free telephone. All payments are processed using the Internet regardless of their method

of initiation. GPS makes various methods of system access available to paying parties, including integrated solutions. The following additional terms apply to Merchant's use of *GovSwipe*® and *ConnexYourGov*®. By electing to utilize such services, Merchant agrees to the following:

**GovSwipe:** If Merchant selects *GovSwipe*, GPS will provide Merchant with card readers and peripheral equipment (cables, etc.), which are and will remain the property of GPS. Merchant understands that GPS card readers are embedded with proprietary technology ("Firmware"). GPS grants Merchant a license to use such card readers and Firmware for the duration, and only for purposes of this Agreement. Acceptance and use of card readers does not convey to Merchant any title, patent, copyright, or other proprietary right in or to the Firmware. At all times, GPS or its suppliers retain all rights to the Firmware, including but not limited to updates, enhancements, and additions. Merchant shall not attempt to access or disclose the Firmware to any party, or transfer, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on the Firmware.

Merchant will use reasonable care to protect card readers from loss, theft, damage or encumbrance. GPS shall provide card readers and installation instructions at service implementation and when providing replacement or additional card readers by shipment to a location Merchant designates. Or, at GPS's option, Merchant will allow GPS and its designated representatives reasonable access to Merchant's premises for purposes of training or device installation, repair, removal, modification, upgrades, or relocation. GPS is solely responsible for the maintenance of its card readers and shall supply Merchant with replacements on Merchant's request and as GPS deems appropriate. Upon termination of the Agreement, GPS may require Merchant to return card readers to GPS, at GPS's expense and by such method as GPS specifies.

Merchant may request an increase or decrease in the number of card readers deployed **in writing**. Any such changes will be subject to GPS acknowledgment and acceptance **in writing**. GPS shall communicate shipping and handling procedures and any costs to Merchant in advance of taking action.

**ConnexYourGov:** If Merchant elects to utilize GPS's *ConnexYourGov* solution, Merchant must provide GPS with photographs, graphics, digital assets, or

digital images legally created, taken, or acquired by Merchant (collectively, "Images") that Merchant desires GPS to use. All Images that participating Merchants deliver to GPS become subject upon delivery to a limited license granting GPS a non-exclusive right to reproduce, publicly display, and distribute the Images only for purposes of this Agreement. Any other GPS use of Images must be with Merchant's express written permission. Images may contain copyright management information at the discretion of Merchant in the form of either (i) a copyright notice (©) and/or (ii) other copyright and ownership information embedded in the metadata or elsewhere, unless otherwise agreed to by the parties. All rights relating to the Images remain the sole and exclusive property of Merchant.

### Security

If desired, GPS may connect with Merchant's systems in a variety of methods. Any interfaces GPS establishes shall be based on specifications Merchant and GPS mutually develop. Merchant is responsible for advising GPS of any system changes that may affect such interfaces prior to their implementation. A Merchant interfacing with GPS may receive Cardholder information that is subject to PCI DSS which will be the Merchant's responsibility to secure. **GPS ACCEPTS NO RESPONSIBILITY FOR SECURITY OR PCI DSS COMPLIANCE WITH RESPECT TO INFORMATION THAT RESIDES ON SYSTEMS OTHER THAN THOSE CONTROLLED BY GPS.**

*GovSwipe* card readers are designed to communicate Cardholder data to GPS through Merchant's computing equipment to which they are cable-attached via USB port. Internet access to GPS is required for *GovSwipe* transaction processing and is enabled solely by Merchant's computers and networks. Merchant is responsible to use standard safeguards and practices to keep its computers and networks secure and free from malicious software or hardware. **GPS IS NOT LIABLE TO MERCHANT FOR EXPOSURE OF MERCHANT'S COMPUTERS OR NETWORKS TO MALICIOUS SOFTWARE OR HARDWARE OF ANY KIND.**

### Chargeback Administrative Support

GPS shall immediately notify Merchant by telephone or email if GPS becomes directly aware of a transaction that the Cardholder did not authorize and will provide prompt notification in writing of chargebacks for which GPS receives notice through industry channels. GPS shall be responsible for any industry chargeback processing fees provided, however, GPS shall not be responsible for fees imposed for arbitration or other actions associated

with Merchant's decision to re-present or dispute any chargeback. GPS will, however, submit the re-presented or disputed chargeback on Merchant's behalf and at Merchant's request for review. GPS will provide transaction documentation to the Merchant summarizing chargeback activity relating to payments made to the Merchant via GPS.

### American Express® Card Acceptance

**1. American Express Compliance.** Merchant agrees to comply with all Applicable laws, rules and regulations, including the American Express Merchant Operating Guide requirements, which are incorporated into this Agreement by reference as if they were fully set forth in the Agreement. The American Express Merchant Operating Guide may be viewed at: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

**2. Processing Restrictions.** Merchant is prohibited from processing transactions or receiving payments on behalf of, or (unless required by law) re-directing payments to any other party.

**3. Third Party Beneficiary Rights.** a. Notwithstanding anything in this Agreement to the contrary, Merchant confers on American Express the third party beneficiary rights, but not obligations, to the Merchant's Agreement and subsequent addendums (collectively the "Agreement") between Merchant and GPS and, as such, American Express has the express right to enforce the terms of the Agreement against the Merchant.

b. Merchant warrants that it does not hold third party beneficiary rights to any agreements between GPS and American Express and at no time will attempt to enforce any such agreements against American Express.

**4. American Express Liability.** MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO 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.