



This Merchant Services Agreement (“**Agreement**”) is made as of the date of the approval of the Merchant Processing Application into which this Agreement is incorporated (hereafter the “**Effective Date**”) by and among Mentom Payments, LLC. (hereinafter “**MENTOM**”) and Commercial Bank of California (“**Acquiring Bank**”) and the Merchant Applicant identified in the Merchant Processing Application (hereinafter the “**Merchant** or “**Client**”) and the undersigned Personal Guarantor thereof. MENTOM provides credit and debit card and electronic check payment processing and related services in the United States. Client desires to utilize the Services (as defined below) pursuant to the terms contained within this Agreement, and Personal Guarantor agrees to guarantee Client’s obligations. MENTOM is an agent of Acquiring Bank and Acquiring Bank is a principal party to the Agreement. Minimally, the acceptance of card association products is extended by the Acquiring Bank. Therefore, in consideration of the mutual promises set forth below, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement and the incorporated Attachments, the following terms shall have the following meanings:

“**Acquiring Bank**” means an entity (other than MENTOM) which MENTOM utilizes as its Acquiring Bank pursuant to a written agreement between MENTOM and the Acquiring Bank (referred to hereafter as the “**MENTOM Service Agreement**”).

“**Amex**” means American Express Travel Related Services Company, Inc., and any successor organization.

“**Cardholder**” means the person in whose name a Card is issued and whose name is embossed or imprinted on the face of a Card, and any authorized user of a Card.

“**Card Organizations**” means a worldwide incorporated body regulating and processing specific brands of Cards.

“**Cards**” means the credit and debit cards processed by Acquiring Bank under the MENTOM Service Agreement.

“**Chargeback**” means a Transaction that has been returned to Client in accordance with the Rules.

“**Client Account**” means the bank account described on Attachment 5.

“**Deductions**” means Chargebacks, credits, Fees, Chargeback Fees, payments imposed by the Acquiring Bank or issuing banks, any fees, charges, fines or penalties assessed by any Card Organization or Card issuer for violation of the bylaws, Rules, regulations, guidelines, policy statements or any threshold requirements of the Card Organizations related to the Client, and any other costs that Client shall be responsible for under the terms of this Agreement.

“**Discover**” means Discover Financial Services, LLC, and any successor organization.

“**Fees**” means the fees as set forth in Attachment 1, as amended from time to time, owed by Client to MENTOM.

“**MENTOM Service Agreement**” means the agreement between MENTOM and the Acquiring Bank, as amended from time to time.

“**Mastercard**” means MasterCard International Incorporated and any successor organization.

“**Service Provider**” means MENTOM and other third-party entities who work directly with an Acquiring Bank to process Transactions.

“**PCI-DSS**” means the Payment Card Industry Data Security Standards established by PCI Security Standards Council, LLC, as amended from time to time.

“**Remittances**” means the amount collected by MENTOM in respect of Transactions processed, net of Deductions.

“**Reserve Account**” means a non-interest-bearing deposit account established by MENTOM on behalf of the Client.

“**Rules**” means the written regulations and procedures issued by the Card Organizations, as amended from time to time.

“**Services**” means any of the services which are set forth in Section 2 of this Agreement or any additional service which Client subsequently elects to receive and which is provided by MENTOM.

“**Transaction**” means in relation to a Card, any payment or refund made by the use of the Card, the Card number or otherwise to debit or credit the Cardholder's account and, any process undertaken by the Acquiring Bank following a request from MENTOM and/or the Service Provider to collect any payment on its behalf.

“**Visa**” means Visa U.S.A. Inc. and any successor organization.

“**Website**” means the websites owned and controlled by Client to process Transactions.

“**Wholesale Fee**” means a fee that American Express shall deduct from each Charge submitted by Merchant to American Express by Mentom for settlement. A Wholesale Fee is not interchange.

2. SUPPLY OF SERVICES

2.1 General. In consideration of the Fees, MENTOM shall provide to Client the Services, including but not limited to the Services described in Section 2.2 and the risk management and fraud screening Services set forth on Attachment 2. MENTOM will use commercially reasonable efforts to provide the Services but does not warrant or represent that the Services will be uninterrupted or error free nor will it be liable for damages resulting therefrom, except where any interruption or error is due to the gross negligence or willful misconduct of MENTOM. MENTOM cannot guarantee the Services if the Services are subject to improper use or interference from external causes including, but not limited to, services or modifications not performed by MENTOM. MENTOM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SERVICES PROVIDED UNDER THIS AGREEMENT. Client designates MENTOM as its agent for direct delivery of data-captured Visa Transactions to VisaNet (as defined in the Rules) for clearing and routing the funds to the Acquiring Bank and to the Client's settlement account. The Acquiring Bank is responsible for providing settlement funds directly to the Client.

2.2 Services. Subject to Section 2.3, the Services will include the following:

- (a) Real-time online authentication and approval of Card information (including Card number and expiration date and, if applicable, the name of the Cardholder, account number, banking sort code and name of the financial institution) for each Transaction processed by MENTOM;
- (b) Real-time online confirmation and approval that the relevant Card number accounts have sufficient credit available to cover the amounts of the Transactions;
- (c) Settlement of the Transactions that have been approved based on Card information, credit availability and electronic mail verification to the extent used;
- (d) Crediting Cards up to the amount debited upon electronic instructions from the Client; and
- (e) Weekly electronic confirmations to Merchant regarding the status of the Transactions including the total Card deposits, returns and Chargebacks, pending and processed.
- (f) Wallet payment services known as “Zi App” services are governed by terms and conditions set forth in MENTOM's instructional memoranda and which are otherwise imposed by MENTOM from time to time. Zi App enables Merchant's customers to purchase virtual currency known as “Zi's” in a closed loop payment system and use this form of virtual currency to make purchases of goods and services from Merchant.
- (g) ACH and ICL payment transactions are subject to the terms and conditions imposed by MENTOM's industry partners providing such services.

2.3 Change in Services. MENTOM shall have the right to change the terms or specifications of any of the Services upon notice to Merchant.

2.4 Blocking Transactions. MENTOM has the right, in its sole discretion, to block processing of any Transactions, at any time and for any period of time, upon notice to Client, effective immediately upon notice to Client.

2.5 Service Issues. Client may contact MENTOM via telephone or email during business hours if Client experiences problems with the Services. MENTOM will determine and notify Client whether the problem is directly concerned with the Services, determine the severity of the problem and use commercially reasonable efforts to remedy the problem if possible. MENTOM will notify Client upon the resolution of any service request directed to MENTOM.

3. SETTLEMENT PAYMENTS

3.1 Settlement of Processed Funds.

Fees. Client shall pay to MENTOM all applicable Fees in accordance with the current schedule of Fees described in the attached Attachment 1, as amended. MENTOM may collect the Fees by: (a) debiting such amount from the Client Account, without notice or demand; (b) invoicing the amount of the Fee or charge to Client; (c) requesting a debit from the Reserve Account, without notice

or demand, (d) accepting Fees Mentom by Client to MENTOM, or (e) taking any lawful collection measures, in court or otherwise to collect such sums. Client authorizes MENTOM to present automated clearing house debits and credits to the Client Account and Reserve Account in the amount of fees and other amounts due to MENTOM under this Agreement. In furtherance of this authorization Client shall execute the document attached to this Agreement as Attachment 5. Client shall have no right to withdraw funds from or debit the Reserve Account.

3.2 Deductions. It is understood that the Card Organizations may charge Client a fine when it violates the Rules or other regulations that exist or that may be implemented from time to time. Client agrees to pay for and reimburse MENTOM for any charge or fine immediately upon presentment of any fine or charge levied by the Card Organizations on behalf of Client. Client's payment and reimbursement requirement provided for in this Agreement is absolute and unconditional and exists independent from any right or protest Client may have against the Card Organizations regarding any such fines.

3.3 Remittances. Client instructs Acquiring Bank to transfer to MENTOM all funds that would otherwise be transferred by Acquiring Bank to Client in connection with the electronic payment processing performed pursuant hereto (hereinafter those funds to be referred to as the "Acquiring Bank – Client Settlement Funds" with the foregoing instruction to be referred to as the "Payment Directive"). Said Payment Directive is absolute, unconditional, and irrevocable. MENTOM shall, in turn, remit the Acquiring Bank – Client Settlement Funds to Client, net of any and all processing and service fees due and owing MENTOM (hereinafter the net amount remitted by MENTOM to Client to be referred to as the "Net Settlement Funds"). MENTOM shall remit the Net Settlement Funds to Client approximately one week in arrears of its receipt of the Acquiring Bank – Client Settlement Funds. MENTOM shall be obligated to remit the Net Settlement Funds to Client only if MENTOM has received from the Acquiring Bank the Acquiring Bank – Client Settlement Funds. Any delay by the Acquiring Bank in remitting the Acquiring Bank – Client Settlement Funds to MENTOM, will result in delay by MENTOM remitting the aforesaid Net Settlement Funds to Client. Client hereby appoints MENTOM as its attorney in fact and grants MENTOM full power of attorney to receive the Acquiring Bank – Client Settlement Funds and distribute to Client the Net Settlement Funds (hereinafter the foregoing grant to be referred to as the "Power of Attorney"). Said Power of Attorney is absolute, unconditional, irrevocable, and coupled with an interest. All remittances will be accumulated and shall be Mentom to Client once the aggregate amount of such remittances reaches a minimum amount of \$5,000.00 unless otherwise agreed upon in writing between MENTOM and Client. MENTOM, in its sole discretion, may grant Client provisional credit for Transaction amounts, subject to receipt of final payment by MENTOM and subject to all Deductions and other amounts owed to MENTOM and the Acquiring Bank under this Agreement or the MENTOM Service Agreement. Upon submission of any payment request by MENTOM to Payment Service Provider, MENTOM will provide a statement to Merchant detailing the accounting of the amounts owed and Mentom. Client will promptly examine all statements relating to the Client Account and Reserve Account and immediately notify MENTOM in writing of any errors. Client's written notice must include: (a) Client name and Account number, (b) the dollar amount of the asserted error, (c) a description of the asserted error, and an explanation of why Client believes an error exists and the cause of it, if known. Such written notice must be received by MENTOM within 30 days after Client received the periodic statement containing the asserted error. Client may not make any claim against MENTOM and/or Acquiring Bank for any loss or expense relating to any asserted error for 60 days immediately following receipt of Client's written notice. During that 60-day period, MENTOM will be entitled to investigate the asserted error and Client will not incur any cost or expense in connection with the asserted error without notifying MENTOM. In the event Client changes the Client Account, this authorization will apply to the new Client Account.

3.4 Reserve Account.

- (a) MENTOM shall cause Acquiring Bank to withhold payment to Client of amounts otherwise payable to Client under this Agreement that are reasonably determined by MENTOM to be necessary to cover past and future Deductions, including, but not limited to, Chargebacks, credits and other amounts owed resulting from Client's Card activities and deposit such amounts in the Reserve Account. If MENTOM determines that the proceeds of Client's future Card sales are unlikely to cover anticipated Deductions, Chargebacks, amounts owed and credits (whether because this Agreement has been terminated or for any other reason), MENTOM may also prohibit the withdrawal by Client of some or all of Client's funds then held on deposit with Acquiring Bank or stop any funds from being electronically sent to Client's depository institution.
- (b) Client authorizes MENTOM to request the Acquiring Bank to debit such Reserve Account or any other account Client has with any financial institution to establish or maintain funds in the Reserve Account that is controlled by the Acquiring Bank. MENTOM may instruct the Acquiring Bank to deposit into the Reserve Account funds that would otherwise be owed to Client, for the purpose of establishing, maintaining, or increasing the Reserve Account, if it determines such action is reasonably necessary to protect its interests.
- (c) MENTOM may, without notice to Client, instruct the Acquiring Bank to apply deposits in the Reserve Account against any outstanding amounts owed under this Agreement or any other agreement between Client and MENTOM.
- (d) Funds in the Reserve Account shall remain in the Reserve Account for 180 days after Client's last Transaction is submitted to MENTOM for processing or for as long as MENTOM, the Card Organizations, and the Acquiring Bank are at risk of loss in connection with the payment processing performed hereunder (hereinafter the "Hold Period"); provided, however, that Client will remain liable to MENTOM for all liabilities occurring beyond the Hold Period. Acquiring Bank shall

have control of the Reserve Account. In the event it becomes necessary for MENTOM and/or its Acquiring Bank to terminate Client's right to process sale transactions because Client has exceeded acceptable chargeback ratios, Client agrees to forfeit to MENTOM all funds contained within the Reserve Account to cover, among other things, fees, chargebacks, uncollectibles, losses, fines, accounting and legal fees, investigations, account monitoring and maintenance fees, etc.

- (e) Client will not grant any security interests in or allow any encumbrance upon the funds contained in the Reserve Account, other than the security interests or encumbrances of MENTOM.
- (f) In order to facilitate the Client's objectives under this Agreement, Client agrees to afford to MENTOM all of the powers set forth in Attachment 6 -- Agent Appointment Services Agreement, which is attached hereto and incorporated herein by reference.

3.5 **Fee Change.** MENTOM shall have the right, upon notice to Merchant, to increase the Fees due to: (a) any change in charges or fees of the Acquiring Bank and/or any institution which issues Cards to Cardholders; or (b) changes in the Services; (c) delays due to Client's failure to fulfill its obligations; or (d) Client's request that MENTOM delay work for any reason. MENTOM shall also have the right to increase the Fees for any other reason at any time upon 30 days' notice to Merchant.

3.6 **Obligations.** Any fees or amounts Mentom to the Acquiring Bank shall not relieve Client of any obligation to pay all Fees due to MENTOM hereunder.

3.7 **Recoupment and Setoff.** MENTOM shall have the right to setoff and recoup the Fees and other amounts owed to MENTOM by Client under this Agreement against any funds credited to or owing to Client. MENTOM may exercise this right of setoff and recoupment at any time and without notice to Client whether or not the obligations of Client are due by setting off against or recouping from: (a) any amounts MENTOM may owe Client under this Agreement or any other agreement; and (b) any funds in the Reserve Account. In the event such set off or recoupment does not fully reimburse MENTOM for the amount owed, Client shall immediately pay MENTOM such amount. Client shall hold harmless financial institutions that follow MENTOM' request pursuant to this Section. MENTOM acknowledges that in the event of a bankruptcy proceeding, in order to provide adequate protection under the Bankruptcy Code to MENTOM, Client must create or maintain the Reserve Account as required by MENTOM, and MENTOM must have the right to offset against the Reserve Account for any and all obligations which Client may owe to MENTOM, without regard to whether the obligations relate to credit and/or debit entries initiated or created before or after the filing of the of the bankruptcy petition. As security for the obligations of Client to MENTOM, Client hereby grants MENTOM a security interest in all money, instruments and other property of Client that may now or hereafter be held by MENTOM.

4. OBLIGATIONS OF CLIENT

4.1 **Exclusivity.** Client shall process all sales transactions exclusively through MENTOM during the term of this Agreement. Client shall not enter into any agreement with any third party under which the third party provides services similar to the Services.

4.2 **Transactions.** Client shall: (a) provide complete, accurate and timely information as required by MENTOM to enter into this Agreement and/or provide the Services; (b) comply with the terms of the MENTOM Service Agreement; (c) observe all applicable laws, statutes, regulations, directions and codes, including without limitation, relevant data protection, privacy legislation, the Rules and other Card Organization requirements; and (d) abide by the appropriate jurisdiction's applicable financial services legislation including know-your-customer, anti-money laundering and terrorist financing regulations. If Client desires to process Transactions by accepting cards of Amex or Discover, Client may arrange for Client's authorization or authorization and data capture services for such transactions, provided however, Client must enter into separate merchant agreements with Amex and/or Discover.

4.3 **Website Information.** Client shall include the following information clearly and conspicuously on its Websites: (a) Visa and MasterCard flag symbols; (b) complete description of the goods and services offered by Client; (c) complete description of the refund, return and cancellation policy (if the Client has a limited or no refund policy it must be clearly communicated to Cardholders prior to the purchase); (d) Client's customer service contact information including email address and phone number; (e) Client's permanent business address; (f) transaction currency in both words and symbols; (g) all export restrictions; (h) delivery and special delivery policies, if any; (i) Client country which must be provided to Cardholders at the time of payment presentment; (j) Cardholder data privacy policy; and (k) security policy covering transmission of Card payments. Client represents and warrants the following regarding its Websites: (i) each Website is fully compliant with Verified by Visa, Visa's Cardholder Information Security Program, MasterCard's Site Data Protection, MasterCard Secure Code and PCI-DSS; (ii) each Transaction that is processed by Client will be 3-D Secure validated; (iii) Each Website is restricted and may only be accessed by Client's customers above the age of 18; (iv) Client does not and shall not use the Website or process Transactions through MENTOM for Transactions relating to: (A) sales made under a different trade name or business affiliation other than as set forth under this Agreement; (B) fines, penalties, losses, damages or any other costs that are beyond the total Transaction sales price; (C) any Transaction that violates any law, ordinance, or regulation applicable to Client's business; (D) goods which will be resold by a Cardholder who is not in the business of reselling such goods; (E) other any amount which the

Cardholder has not specifically authorized payment; (F) cash, traveler's checks, cash equivalents, or negotiable instruments; or (G) amounts which do not represent a bona fide sale of goods or services by Client. Each Website must prominently and unequivocally inform the Cardholder of the identity of the Client at all points of interaction. Client will be fined by MENTOM in the amount of US \$50,000 per occurrence if any of the above statements are false or misleading.

4.4 Receipts. Client shall include the following information on all Transaction receipts: (a) unique identification number assigned to the Transaction and displayed clearly on the Transaction receipt; (b) Client's Website address; (c) Cardholder name; (d) Transaction date; (e) Transaction amount; (f) Transaction currency; (g) authorization code; (h) Client's name; and (i) notice to the Cardholder to print the Transaction receipt for its records. Client shall not print the Cardholder's account number or Card expiration date on the Transaction receipt.

4.5 Employees. Client is responsible for its employees' actions while in its employ.

(j) Compliance. Client must ensure Cardholder account data is kept in a secure environment. Client may not retain any discretionary Card read data prohibited by the Rules. Failure to comply with the Rules will put Client in direct violation of the Rules. Fines may be assessed to Client for each violation and shall be grounds for immediate termination of this Agreement. Client shall be liable for all fines, charges and penalties that may be assessed by any Card Organization or payment network as a result of transactions made by Client or Client's noncompliance with the preceding requirements. Client also acknowledges that it may be prohibited from participating in payment network programs if it is determined that Client is non-compliant. Client acknowledges that it may be subject to, and MENTOM retains the right, to conduct or cause to be conducted an audit to verify Client's compliance with the foregoing security requirements. Client shall immediately notify MENTOM if any Cardholder or account information is breached or compromised. Client shall comply with the terms of this Agreement, with the Rules, and with all applicable state and federal laws and regulations, including, but not limited to Visa's Cardholder Information Security Program, MasterCard's Site Data Protection and PCI-DSS. Client shall demonstrate compliance with such security requirements upon request of MENTOM. If Client processes internet transactions through an IP connected point-of-sale terminal, or upon MENTOM's request, Client must complete a PCI DSS Compliance Questionnaire and System Perimeter Scan performed by a Qualified Data Security Company ("QDSC") approved by Visa, MasterCard and Discover at Client's expense, and must attain PCI DSS compliance certification. Client must provide the results of the Compliance Questionnaires and System Perimeter Scans to MENTOM within 10 days of receipt. Client must ensure that each Payment Application (as defined in the Rules), or other vendor Client contracts with complies with PCI DSS. Client consents to MENTOM's direction to a QDSC to conduct network scans of any web sites or externally facing Internet Protocol addresses utilized by Client. Any costs for such scans will be at Client's expense. The results of such scans are the property of MENTOM. Client shall: (a) install and maintain a firewall configuration to protect data; (b) not use vendor-supplied defaults for system passwords and other security parameters; (c) protect stored data; (d) encrypt transmission of Cardholder data and sensitive information across public networks; (e) use and regularly update anti-virus software; (f) keep security patches up-to-date; (g) develop and maintain secure systems and applications; (h) assign a unique ID to each person with computer access; (i) restrict physical access to Cardholder data; track and monitor all access to network resources and Cardholder data; (k) regularly test security systems and processes; and (l) maintain a policy that addresses information security. Client must notify MENTOM of any service provider of Client that will have any access to Cardholder data; such as gateways, point-of-sale system integration, etc. Client must validate the service providers are certified as compliant with the PCI DSS or a similarly established data security standard.

4.6 Goodwill. If Client engages in any act or omission that may damage the reputation, business, or goodwill of MENTOM, Client agrees that it shall pay MENTOM damages for each occurrence in addition to all other legal and equitable remedies which may be available.

4.7 Changes in Client's Business or Information. Client must provide MENTOM with immediate notice of its intent to: (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Client's business; or (e) alter in any way Client's approved monthly volume and average ticket amount. Client must immediately notify MENTOM of any bankruptcy, receivership, insolvency, levy or similar action initiated by or against Client or any of its principals. Client will include MENTOM on the list of creditors filed with the Bankruptcy court, whether or not a claim exists at the time of filing. Client must notify MENTOM in writing of any changes to the information in the Merchant Processing Application, General Business Questionnaire, and this Agreement, including but not limited to a material change to Client's financial condition (within 3 days of such occurrence), any additional location or new business, a change in the business location or contact information, both physical and email addresses, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and how sales are completed. Client must also notify MENTOM in writing if Client sells or closes its business. Except for a change to the financial condition, all such notices must be received by MENTOM 7 days before the change. Client will also provide updated information to MENTOM upon request. Client must immediately notify MENTOM in writing if Client is threatened with or becomes party to any action, suit or proceeding at law or in equity that could substantially impair its right to carry on its business or adversely affect its financial condition or operations. Client must provide separate notification regarding changes to MENTOM used by Client in connection with the Services or the services provided under this Agreement.

4.8 Credit and Financial Inquiries: Additional Locations: Inspections. Client authorizes MENTOM to make any credit

MERCHANT SERVICES AGREEMENT

Client, its principal owners or officers. If requested by MENTOM, Client shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as MENTOM may consider necessary to perform initial or periodic reviews of Client's financial stability and business practices. Client agrees to permit MENTOM to inspect locations to confirm that Client is in compliance with the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and licenses or permits (where necessary) to conduct its business. However, nothing in this paragraph shall be deemed to waive Client's obligation to comply in all respects with the terms of this Agreement. Client may process transactions only at locations and websites approved by MENTOM. Representatives of MENTOM may, during normal business hours, inspect, audit and make copies of Client's books, accounts, records and files pertaining to any payment transactions processed under this Agreement.

5. INDEMNITY AND LIMITATION OF LIABILITY

5.1 **Indemnification.** Merchant shall indemnify, defend, and hold MENTOM and its affiliates harmless from any and all damages, liabilities, losses, costs, penalties and any other expenses including attorneys' fees arising, directly or indirectly, out of or related to: (a) this Agreement or the MENTOM Service Agreement; (b) any governmental or Card Organization inquiry or investigation related to this Agreement, the MENTOM Service Agreement or Client's acts or omissions; (c) Client's breach of the obligations or representations and warranties of this Agreement or the MENTOM Service Agreement; (d) any inquiry, investigation or lawsuit alleging that MENTOM is violating any laws for processing payments on behalf of Client; (e) misuse or negligent acts by Client, its employees or agents in the use of the verification data or services provided to Client under the terms of this Agreement; or (f) compromised Cardholder data and compliance with data breach notification laws. MENTOM shall not be liable to Client or any third party for any liquidated, indirect, consequential, exemplary or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of this Agreement even if advised of the possibility of such damages.

5.2 **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, in no event shall MENTOM's liability under this Agreement or the MENTOM Service Agreement exceed the total amount of Fees Mentom to MENTOM by Client during the preceding 12-month period measured from the date the liability accrues. In the event of any legal action with third parties, customers, businesses or regulatory agencies concerning any Transaction or event arising under this Agreement, Client agrees to: (i) immediately notify MENTOM of the claim or legal action; (ii) cooperate with MENTOM in the making of any claims or defenses; (iii) provide any information deemed important or relevant by MENTOM or its attorneys; (iv) make available at least one employee or agent who can testify regarding said claims or defenses; and (v) assist in the full resolution of the claim.

5.3 **High Risk.** Client acknowledges the electronic nature of the Services to be supplied hereunder and the inherent risk that communications by electronic means may not reach their intended destination or may do so much later than intended for reasons outside MENTOM's control.

6. TERM AND TERMINATION

6.1 **Term.** This Agreement shall be effective commencing on the Effective Date.

6.2 **Early Termination.** Unless confirmed otherwise on your application, the initial term of this merchant agreement is three years. If you terminate early without cause, you may be required to pay a five-hundred-dollar (\$500.00) early termination fee.

6.3 **Termination.** This Agreement shall immediately terminate upon termination of the MENTOM Service Agreement. Either party may terminate this Agreement at any time by thirty (30) days prior written notice to the other party. Acquiring Bank and/or MENTOM may terminate this Agreement, by notice to Merchant, effective immediately upon mailing, fax or email, at any time, should the Client breach this Agreement, any of its provisions, any provision of the Rules, for any activity that may create harm or loss to the goodwill of the payment system, and/or in case that any of the circumstances that entitle MENTOM to terminate this Agreement occur.

6.4 **Unfinalized Requests.** In the event Client submits an authorization request without finalization of a Transaction ("Unfinalized Requests") and those requests exceed 20% of the Transactions submitted by the Client during any period of time determined by MENTOM, MENTOM may terminate this Agreement and may charge a retroactive discount fee for such Unfinalized Requests, as if such Transactions had been submitted with respect thereto. Termination of this Agreement shall not relieve Client or MENTOM of their respective obligations to pay amounts accrued or owing, nor affect any legal rights or obligations which may have arisen under this Agreement prior to or at the date of termination.

6.5 **Termination Event.** Without derogating from any other right to which MENTOM is entitled under this Agreement, the MENTOM Service Agreement and/or under applicable law, in the event of the termination of this Agreement and/or receipt by MENTOM of a notice or intention to terminate (each a "Termination Event"), MENTOM shall have the right, in its sole discretion, to freeze and withhold (or, to the extent applicable under the MENTOM Service Agreement, to instruct the Acquiring

MERCHANT SERVICES AGREEMENT

and withhold) any amount due to Client, for a period of up to six (6) months from the end of the month of the last approved Transaction submitted by Client. MENTOM shall notify Client in writing of such withholding upon such a Termination Event. The hold period referenced above may be for a longer period of time as determined by MENTOM in its sole and absolute discretion.

7. REPRESENTATIONS AND WARRANTIES

Client represents and warrants to MENTOM that: (a) it shall not knowingly do anything or allow anything to be done which is likely to harm the reputation of MENTOM; (b) it shall not use the Services in connection with any illegal or fraudulent business activities; (c) it is a validly organized and validly existing company in good standing under the laws where its principal office is located; (d) it has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which such party is subject; (e) to the best of its knowledge, there is no action, suit or proceeding at law or in equity now pending or threatened by or against or affecting Client which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; and (f) it has never experienced excessive Chargebacks, committed fraud, nor has it ever been terminated by an acquirer or asked to terminate its agreement with acquirer.

8. CONFIDENTIALITY

8.1 **Confidential Information.** Each party agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of the other party and that each party will safeguard such information and data by using the same degree of care and discretion that it uses to protect its own confidential information. Neither party will be obligated to maintain the confidentiality of information: (a) it is required to reveal in performing its obligations under this Agreement, (b) that is or becomes within the public domain, (c) was in the possession of the party prior to its disclosure under this Agreement, and it can prove that, or (d) is required to be disclosed by state or federal law, provided, however, that the disclosing shall promptly inform the non-disclosing party of the operation of this Section to enable it to defend nondisclosure of its confidential information.

8.2 **Breach.** In the event of a breach of this Section 8, the parties agree that the non-breaching party will suffer irreparable harm, and that the amount of monetary damages would be impossible to calculate. Thus, the non-breaching party will be entitled to injunctive relief in addition to any other rights to which the non-breaching party may be entitled.

9. ADDITIONAL DOCUMENTS

9.1 **Guaranty.** The undersigned guarantors (“**Guarantors**”), as an inducement to MENTOM to execute this Agreement, jointly and severally, absolutely and unconditionally, guarantee the obligations of the Client to MENTOM for losses, damages, liabilities, costs, penalties and any other expenses including attorneys’ fees arising, incurred by MENTOM related to, directly or indirectly: (a) unpaid invoices for equipment (rental or purchase) and related charges; (b) fines assessed by Card Organizations, (c) Deductions, and (d) any other amount related to Transactions, this Agreement or the MENTOM Service Agreement, whether such obligations arise before or after termination or expiration of this Agreement and whether or not any of the Guarantors receives notice of any amendment to this Agreement. In furtherance of the Guaranty, the Guarantor shall execute the Guaranty attached to this Agreement as Attachment 3. If Client breaches any term of this Agreement or the MENTOM Service Agreement, MENTOM may proceed with the collection of all amounts due to it from Client directly and against Guarantor or any other persons entities responsible for the performance of this Agreement, without first exhausting its remedies against the Client.

9.2 **Certification of Good Standing.** Client represents and warrants that each Website used to process Transactions complies with the requirements set forth in Section 4.3 of this Agreement. In furtherance of such representation and warranty Client shall execute the document attached to this Agreement as Attachment 4.

10. INDEPENDENCE

10.1 **ISO/MSP.** Client acknowledges that MENTOM is an independent sales organization/member service provider operating under applicable Acquiring Bank rules and regulations and is an independent contractor and not an agent of the Acquiring Bank. Further, Client acknowledges that MENTOM is not and shall not be responsible, either directly or indirectly, for any act or failure to act of any bank or any agent of any bank in the processing of and providing for the payment of charges created by Cardholders as set forth in this Agreement.

10.2 **Binding Agreements.** Client shall not bind or attempt to bind MENTOM, or represent that MENTOM is bound, to any agreement, commitment or understanding without MENTOM’ express written consent given in advance, and any attempt to do so shall be null and void.

10.3 Independent Contractors. The parties' relationship to each other in all matters relating to the performance of this Agreement is that of independent entities. Nothing contained in this Agreement will place the parties in the relationship of partners, participants in a joint venture, contractor-subcontractor, or employer-employee and, except as set forth in this Agreement, neither party will have any right to obligate or bind the other in any manner whatsoever nor represent to a third party that it has any right to enter in to any binding obligation on the other's behalf.

11. TRANSFER OF RIGHTS

This agreement may not be assigned, directly or by operation of law by either Client or Mentom, without the Acquiring Bank's prior written consent.

Subject to this Section, this Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns. This Agreement will not be deemed to be for the benefit of any third party.

12. THIRD PARTY SERVICES

MENTOM may use third party service providers to assist MENTOM to provide Services to Client. Client further acknowledges that the supply of some of the Services under this Agreement, and their quality, are all subject to the receipt of such services by MENTOM from a third-party service provider ("**Service Provider**"). MENTOM shall not be liable for any delay in or failure to supply the Services (including but not limited to any claim with regard to their quality) if that delay, failure or claim is connected to and/or caused by a Service Provider and/or if that delay or failure are caused by circumstances beyond the control of MENTOM.

13. MISCELLANEOUS PROVISIONS

13.1 Integration. The Attachments attached to this Agreement constitute an inseparable part of this Agreement and shall be completed (where applicable) by Client.

13.2 Law and Jurisdiction. The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement subject to conflict of law provisions and other mandatory legal provisions which govern the interpretation of this Agreement. Client acknowledges and agrees that any action brought by Client against MENTOM for the purposes of hearing and determining a dispute arising out of this Agreement shall be commenced in a court of competent jurisdiction located in California. Notwithstanding the foregoing, in any action brought by MENTOM against Client and/or the Personal Guarantor identified below for the purposes of hearing and determining any dispute arising out of this Agreement and/or the Personal Guaranty, shall be commenced in any court of competent jurisdiction located in any state or country.

13.3 Entire Understanding, Amendment. This Agreement, including the Attachments which are incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter, and all other understandings, written or oral, are superseded. Unless otherwise stated in this Agreement, this Agreement may be amended, including changes to pricing, by MENTOM upon notice to Client.

13.4 Force Majeure. Any delay in or failure of performance by MENTOM under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking or ACH networks.

13.5 Void. If for any reason any court of competent jurisdiction finds any provisions of this Agreement to be void or voidable, Client and MENTOM agree that the applicable court may reform such provision(s) to render the provision(s) enforceable ensuring that the restrictions and prohibitions contained in this Agreement shall be effective to the fullest extent allowed under applicable law.

13.6 Enforcement of Acquiring Bank Rights. To the maximum degree permitted by law and by the rules and regulations of the Card Organizations, it is the intention of the parties that the rights of Acquiring Bank set forth in this Agreement or arising from this Agreement may be exercised by MENTOM.

13.7 Delay. Except as otherwise provided in this Agreement, no failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

13.8 Headings. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. All sections mentioned in the Agreement refer to section numbers of this Agreement. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

13.9 Notices; Consent to Electronic Communications. Client is confirming to MENTOM that it has the means to access the internet through its own service provider and download or print electronic communications. Client agrees to the receipt of electronic communications by email. Such communications may pertain to the services delivered by MENTOM, changes in laws or rules impacting the service or other reasons, such as amendment of the MENTOM Service Agreement or this Agreement. In addition, all notices and other communications required or permitted under this Agreement by MENTOM to Client may also be delivered by MENTOM to Client either by FAX, overnight carrier or first-class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Client to MENTOM shall be delivered by Client to MENTOM by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Notice by FAX or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first business day after mailing or delivery to the carrier. All notices and other communications hereunder shall be sent to the parties' respective addresses set forth in this Agreement. Any change in address must be transmitted in writing to a party.

13.10 Counterparts and Copies. This Agreement may be executed and delivered in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. A facsimile of this document bearing a party's signature or a printed copy of the original, signed document scanned in .pdf or .tiff format shall have the same legal force and effect as an original of such signature and shall be treated as an original document for evidentiary purposes.

13.11 Survival. All agreements that by their context are intended to survive the termination of this Agreement will survive termination of this Agreement.

13.12 Additional Obligations. Upon MENTOM' request Client shall provide any additional licenses, certificates, opinions and all other documents and instruments that MENTOM may consider appropriate, in form satisfactory to MENTOM. Upon MENTOM' request Client shall participate in calls with Client's customers, and provide any assistance necessary, to resolve customer payment disputes.

13.13 Attorney's Fees. Merchant shall reimburse MENTOM for all costs and expenses incurred in enforcing its rights under this Agreement, including reasonable attorneys' fees and costs.

13.14 PCI DDS Scan Requirements. As a merchant who accepts credit cards you are required to protect the information you receive.

13.15 Merchant Prohibitions. As a merchant who accepts credit cards, you are prohibited from doing the following: a.) submitting a transaction that was previously disputed and subsequently returned to the merchant. b.) submitting any transaction into the payment system that is illegal or that the merchant knows or should have known was illegal, c.) submitting a transaction into the payment system that the merchant knows or should have known to be either fraudulent or not authorized by the cardholder, d.) requiring a cardholder to complete a postcard or similar device that includes any of the following in plain view when mailed: the cardholder's account number, card expiration date, signature, or any other card account data, e.) requesting a Card Verification Value 2 (CVV2) from the cardholder for a card-present environment transaction, f.) storing Card Verification Value 2 (CVV2) information subsequent to authorization, g.) adding surcharges to transactions, unless explicitly done so in accordance with applicable law, regulations, and network rules, h.) disbursing funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods and services, i.) Accepting a transaction that does not result from an act between the cardholder and the merchant or the cardholder and the sponsored merchant, j.) Accepting cardholder payments for debit repayment that do not comply with the Rules, k.) requesting or using an account number for any purpose other than as payment for its goods or services, and l.) adding any tax to transactions, unless applicable law expressly requires that a merchant be permitted to impose a tax.

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Attachment 2

American Express OptBlue Terms and Conditions

To the extent Merchant elects at any time to accept American Express Transaction Cards and qualifies for Mentom's Direct Settlement Program for American Express OptBlue™ (the "Program"), the following terms and conditions shall apply, in addition to the Merchant Agreement, including the general terms and conditions as applicable (the "Agreement"), shall apply to the relationship between Mentom and Merchant covered by this Addendum. In the event of any conflict between the Agreement and this Addendum related to the Program, the terms of this Addendum shall apply.

- I. **DEFINITIONS.** The following capitalized terms shall have the meanings set forth below when used in this Addendum in relation to the Program. Any terms not defined in this Addendum shall have the meaning given to them in the Agreement or by American Express; any conflict between any defined term in this Addendum or the Agreement and any term defined by American Express, the term provided by American Express shall control as applied to the Program):
- a. "American Express Brand" means the American Express name, trademarks, service marks, logos, and other proprietary designs and designations and the imagery owned by American Express or American Express affiliates and the goodwill associated with all of the foregoing and with all the goods and services now and in the future provided, marketed, offered, or promoted by American Express or an American Express affiliate.
 - b. "American Express Transaction Card" means (a) any card, account device, or payment device or service bearing an American Express or an American Express affiliate trademark or logo and issued by an Issuer or (b) an account number issued by an Issuer, which can be used to purchase goods or services at merchants on the American Express network.
 - c. "Applicable Law" means: (a) any law, statute, regulation, ordinance or subordinate legislation in force from time to time to which a party or its affiliates is subject; (b) the common law as applicable to the parties from time to time; (c) any court order, judgment, or decree that is binding on a party or its affiliates; and (d) any directive, policy, rule or order that is binding on a party or its affiliates and that is made or given by a regulator, or other government or government agency, of, in the case of items (a) through (d) above, any country, or other national, federal, commonwealth, state, provincial or local jurisdiction.
 - d. "High CV Merchant" means Merchant has either: (i) greater than \$1,000,000 in American Express Transaction Card volume (net of Chargebacks, credits and any other amounts Merchant owes to American Express) in a rolling 12-month period or (ii) greater than \$100,000 in American Express Transaction Card volume (net of Chargebacks, credits and any other amounts Merchant owes to American Express) in any 3 consecutive months. For clarification, if Merchant has multiple Locations, the American Express Transaction Card volume from all of Merchant's Locations shall be summed together when determining whether Merchant has exceeded the thresholds above.
 - e. "Issuer" means any legally recognized entity or organization (including American Express and American Express affiliates) authorized by American Express or an American Express affiliate to issue an American Express Transaction Card and to engage in the American Express Transaction Card issuing business.
 - f. "Location" means any or all of Merchant's locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that Merchant adopts in the future.
 - g. "Other Payment Products" means any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services or products other than the American Express Transaction Cards.
- II. **SETTLEMENT.** Merchant hereby authorizes Bank and Mentom to submit Transactions to, and receive settlement from, American Express on behalf of Merchant.
- III. **TREATMENT OF THE AMERICAN EXPRESS MARKS.** Merchant shall cease all use of and remove American Express' Licensed Marks from Merchant's website and wherever else they are displayed upon termination of the Agreement or Merchant's participation in the Program. For additional guidelines on the use of the American Express Marks, contact Mentom.
- IV. **TREATMENT OF AMERICAN EXPRESS CARD MEMBER INFORMATION.** Merchant must report all instances of a Data Incident to Bank and Mentom after discovery of the incident. Merchant must ensure data quality and that Transaction Data and customer information is processed promptly, accurately and completely, and complies with the American Express Technical Specifications. Merchant is responsible for being aware of and adhering to privacy and data protection laws and providing specific and adequate disclosures to Cardmembers of collection, use, and processing of personal data.
- V. **CONVERSION IF BECOME A HIGH CV MERCHANT.** Merchant will be converted from the Program to a direct card acceptance agreement with American Express if and when Merchant becomes a High CV Merchant (or if Merchant currently is a High CV Merchant). 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's American Express Transaction Card acceptance.
- VI. **AMERICAN EXPRESS THIRD-PARTY BENEFICIARY.** American Express shall have the right, but not the obligation, to enforce the terms of the Agreement and this Addendum against Merchant with respect to the Program.

- VII. **CEASE ACCEPTANCE OF AMERICAN EXPRESS.** By contacting Mentom customer service or using some other method established by Mentom, Merchant may opt out of accepting American Express Transaction Cards at any time without directly or indirectly or affecting Merchant's rights to accept Other Payment Products.
- VIII. **REFUNDS.** Merchant's refund policies for purchases on the Card must be at least as favorable as Merchant's refund policy for purchases with any Other Payment Products, and the refund policy must be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law.
- IX. **RIGHT TO BILL OR COLLECT FROM CARDHOLDER.** Merchant shall not bill or collect from any Cardmember for any purchase or payment on the Card unless (i) a Chargeback has been exercised, (ii) Merchant has fully paid for such Charge, and (iii) Merchant otherwise has the right to do so.
- X. **INFORMATION RIGHTS.** Merchant hereby authorizes (i) Mentom to disclose to American Express Transaction Data (including without limitation, information obtained at the point of sale, information obtained or generated during authorization and settlement, and any Chargeback or other fee information related to a transaction), Merchant Data (including without limitation, name, postal and email addresses, tax ID numbers, names and social security numbers of Merchant's authorized signers and similar identifying information), and other information about Merchant; (ii) American Express to use such information disclosed in (i) to perform its responsibilities in connection with the Program, promote the American Express network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing purposes within the parameters of the Agreement, and important transactional or relationship communications from American Express; and (iii) Mentom to share information that Merchant discloses to Mentom with Mentom's agents, subcontractors, affiliates and other parties including industry organizations and reporting agencies, for any purpose permitted by Applicable Law. In addition, American Express may use the information obtained in the application at the time of setup of Merchant's account to screen and/or monitor Merchant in connection with American Express Transaction Card marketing and administrative purposes.
- XI. **AMERICAN EXPRESS MERCHANT REQUIREMENTS.** You must abide by and are subject to: (i) the American Express Merchant Operating Guide which may be amended from time to time and is incorporated herein by reference: https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf, and (ii) the American Express Opt Blue Operating Regulations, including without limitation the Data Security Operating Policy contained therein, which may be found at https://www.americanexpress.com/content/dam/amex/us/merchant/new-merchant-regulations/Reference-Guide_EN_US.pdf, (iii) [the American Express Data Security Requirements \(DSR\)](#), (vi) [the Payment Card Industry Data Security Standard \(PCI DSS\)](#), and (v) [all Applicable Laws, rules, and regulations relating to the conduct of Merchant business](#).
- XII. **TERMINATION.** Mentom may immediately terminate Merchant for cause or fraudulent or other activity or upon American Express' request. Mentom may terminate Merchant's right to accept American Express Transaction Cards if (i) Merchant breaches any of the provisions in this Addendum, the Agreement, or (ii) the American Express Merchant Operating Guide.
- XIII. **ASSIGNMENT OF PAYMENTS.** Merchant shall not assign to any third party any payments due to Merchant under the Agreement, and all indebtedness arising from any Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Mentom, its affiliated entities and/or any other cash advance funding source that partners with Mentom or its affiliated entities, without consent of American Express.
- XIV. **MARKETING OPT-OUT.** By contacting Mentom, Merchant may opt out of receiving future commercial marketing communications from American Express. Note that Merchant may continue receiving marketing communications while American Express updates its records to reflect Merchant's choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.



Attachment 3

Risk Management and Fraud Screening Service

1. MENTOM will provide Client with risk management services in relation to all Transactions that are processed through MENTOM's platform.
2. Some of the tools that will be used as part of the risk management service are as follows:
 - Card verification codes (CVV2/CVC2)
 - Velocity checks
 - Limits modules
 - Negative DB (Email, IP address, Address, etc.)
 - Customizable Rules (if/then logic)
 - Geo-location technologies
 - Pre/post-process, transaction analyses before / after submission to the bank.
 - Periodic fraud alerts will be sent to Client
 - Address verification systems (AVS) when applicable
3. MENTOM will use commercially reasonable efforts to upload all updated Chargebacks and retrieval information to MENTOM client reporting system no later than 7 business days after the information was received by MENTOM.



Attachment 4

Certification of Good Standing of Client Websites

1. The Client owns and operates the Websites listed in the merchant application herein and has full control and authorization of the Websites' content (the “Websites”):
2. The Websites are restricted and may only be accessed by users above the age of 18 years.
3. The Client does not provide any type of credit card payment services to any company or any business organization other than as listed on the Websites.
4. All transactions that will be processed in connection with the Agreement will be originated only by the Client, and the Client is the owner of all sales traffic that is originated from the Websites.
5. Client does not and shall not use MENTOM’ processing system for transactions relating to:
 - (a) Sales made under a different trade name and/or business affiliation than indicated on this Agreement or otherwise approved by MENTOM in writing and/or sales by third parties;
 - (b) Fines, penalties, losses, damages or any other costs that are beyond the total sale price;
 - (c) Any transaction that violates any law, ordinance, or regulation applicable to Client’s business and/or related to any illegal content;
 - (d) Goods which Client knows will be resold by a customer whom Client should reasonably know is not ordinarily in the business of selling such goods;
 - (e) Any other amounts for which a customer has not specifically authorized payment through MENTOM;
 - (f) Cash, traveler's checks, cash equivalents, or other negotiable instruments; or
 - (g) Amounts which do not represent a bona fide sale of goods or services by Client.
6. All Websites include a clear and conspicuous ownership statement stating that the Client is the owner of the Websites.
7. Client complies with all terms and conditions of Section 4.3 of the Agreement.

The signor declares that Client is the beneficial owner of all proceeds derived from the Websites and that all declarations and information provided above are true. The signor agrees to inform MENTOM in case of any change in the statements above, and that any such change is subject to MENTOM' prior written approval. The signor confirms that Client agrees to be fined by MENTOM an agreed amount of US \$50,000 per occurrence if any of the above statements are proved to be false.