M&T BANK MERCHANT SERVICES TERMS AND CONDITIONS AND PROCESSING TERMS AND CONDITIONS

The following are legal documents and should be retained by you for future reference.
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M&T BANK MERCHANT SERVICES
TERMS AND CONDITIONS

These Merchant Services Terms and Conditions are made on ___________________, 20 between M&T Bank, having a place of business at One M&T Plaza, Buffalo, New York, 14203 ("M&T") and ______________________ having a principal place of business at ________________________________
(“Merchant”).

1. DEFINITIONS
“Agent” has the meaning given to it in Section 23 of these Terms and Conditions.

“Agreement” means the (i) Merchant Services Application, (ii) Pricing Terms, Card Network and Services Election Form, (iii) these Merchant Services Terms and Conditions, (iv) Merchant Services Acceptance and Processing Terms, (v) Guaranty (if applicable), (vi) Rules (as defined herein) as each of the above may be amended from time-to-time; any additional Merchant Service addenda or riders that Merchant executes (collectively, the “Agreement”).

“Application” means the Merchant Services Application.

“Associations” means VISA USA, VISA International, MasterCard International, Discover Network, and American Express if included as an election in the Application, and Election Form.

“Authorized Representative” means an individual with actual or apparent authority to act on Client’s behalf, to sign documents or take any action contemplated under this Agreement on Client’s behalf.

“Authorization” means an affirmative response by or on behalf of Cardholder’s bank to a request to effect a Transaction.


“Cardholder” means an individual that is deemed to be issued a Card.

“Cardholder Information” means Transaction Records, Card account number and other Card information, deposit account information, information concerning a natural person which because of name, number, personal mark, or other identifier, can be used to identify that natural person in combination with any one or more of the following data: (a) social security number; (b) driver’s license number or non-driver identification card number; (c) mother’s maiden name, financial services account number or code, savings account number or code, checking account number or code, debit card number or code, automated teller machine number or code, electronic serial number or personal identification number; or (d) any information subject to Gramm-Leach-Bliley Act, Fair Credit Reporting Act, and Fair and Accurate Credit Transactions Act and all Laws affecting the subject matter and their respective regulations or guidelines.

“Device” means a terminal, point-of-sale PIN pad, printer, card readers, tablets, and other similar electronic devices Merchant uses to process Card Transactions.

“Election Form” means the Pricing Terms, Card Network and Service Election Form.

“Internet” means any electronic gateway for transmitting information, including, for example, the World Wide Web.

“Laws” means United States federal, state and local laws, regulations, rules and ordinances as from time-to-
time in effect that are applicable to M&T, Merchant, Agents and Associations.

“Merchant Deposit Account” means Merchant’s deposit account maintained at M&T or other financial institution that is credited or debited on account of Transaction Records. A Merchant Deposit Account is deemed a “Deposit Account” as defined in Revised Article 9 of the UCC.

“Merchant Obligations” means charges, fees, credit slips, charge-backs, charge-back fees, returned items adjustment fees, discount fees, indemnities, interest, fines, and other obligations owing to M&T under this Agreement.

“Merchant Services” means Visa, MasterCard and Discover® Network, American Express (if included as a Merchant Service in the Election Form) merchant card processing services, and such services and products as Merchant elects to use from time-to-time in the Election Form.

“PIN” means a Cardholder’s personal identification number.

“Recurring Transaction” means a Transaction where a Cardholder provides Merchant permission, either written or electronically, to periodically charge Cardholder’s Account for recurring goods or services.

“Rules” means by-laws, rules, regulations, operating manuals, operating letters and policies of the Associations as amended from time-to-time, in effect.

For Visa, the rules can be found at: 
https://usa.visa.com/support/small-business/regulations-fees.html

For MasterCard, the rules can be found at: 

For Discover, the rules can be found at: 
https://www.discovercentral.com/merchant-verify.html (must supply Discover merchant number to access)

For American Express, the rules can be found at: 
https://www209.americanexpress.com/merchant/services/en_US/merchant-regulations (must login using Merchant Number to access)

“Security Breach” means an incident where Cardholder Information is or is threatened to be lost, stolen, damaged or inappropriately accessed or used.

“Set-up Form” is defined in Section 1.B of these Terms and Conditions.

“Transaction” means a Cardholder request for an electronic funds transfer to the Card issuer to debit or credit funds from Cardholder’s account.

“Transaction Record” means an electronic or paper record of a Transaction generated on completion of a sale or refund.

1.1. SCOPE OF SERVICES

A. The Agreement shall govern the provision of any Merchant Services provided to Merchant from time in accordance with the Agreement. Merchant shall be deemed to have accepted the Terms and Conditions in the Agreement if Merchant enrolls in any Merchant Service, uses any Merchant Service, allows any other person to enroll in or use any Merchant Service on its behalf (including any servicer), or makes any payment to M&T for any Merchant Service.

B. Merchant may only use the Merchant Services and Merchant Deposit Accounts (i) for the lawful operation of the specific business that Merchant conducts, and not for any personal, family or household purpose and (ii) in compliance with the Agreement.

1.2. SET-UP OF MERCHANT SERVICES

Prior to using any Merchant Services under the Agreement, Merchant shall complete and submit to M&T a signed Election Form for such Merchant Service and any additional set-up forms (“Set-up Forms”), and/or submit to M&T additional information in connection with the Merchant Services. All such Election Forms, Set-up Forms and agreements must be in a form satisfactory to M&T in its sole discretion. Merchant hereby authorizes an Authorized Representative to sign and submit to M&T such forms.

Merchant hereby consents to M&T completing, on Merchant’s behalf, the Election Form and any additional Set-Up Form for any Merchant Service. In such case, Merchant shall carefully review such form prior to signing and/or submitting it to M&T to ensure the form accurately reflects Merchant’s instructions with respect to the Merchant Service. Merchant shall promptly notify M&T if any such form does not accurately reflect Merchant’s instructions and Merchant shall not use any
Merchant Service referenced in the form until such form is amended to accurately reflect Merchant’s instructions and re-submitted to M&T.

If Merchant wishes to change any elections or instructions in a previously submitted Election Form or Set-Up Form, Merchant must submit an updated form to M&T. Such change shall not be effective until M&T has approved such updated form and has had a reasonable time to act to implement such change.

B. If requested by Merchant, M&T may, in its sole discretion, permit Merchant to confirm to M&T the accuracy of details relating to the set-up of a Service in a form other than a Set-Up Form (e.g., via email from the Merchant, via telephone call from the Merchant). In such case, M&T shall be entitled to rely on instructions provided by Merchant’s Authorized Representative(s) relating to the set-up of such Service, including any changes to the set-up of such Service (and any such changes shall not be effective until M&T has approved such change and had a reasonable time to act to implement such change).

C. M&T is under no obligation to approve Merchant’s use of any Merchant Service and the decision to approve or not is at M&T’s sole discretion. Merchant may not commence using any Merchant Service until after (i) M&T has received from Merchant all forms and agreements required by M&T for such service, including the Election Form and any Set-Up Form, (ii) M&T has approved Merchant’s use of such Merchant Service and (iii) M&T has had a reasonable time to act to implement such Service (and no such form shall be effective until thereafter).

D. Prior to using any Merchant Service, Merchant shall ensure that it has read and understood the Merchant Service Terms and Conditions and any user guides for such Merchant Service. By using a Merchant Service, Merchant agrees to all terms and conditions that apply to such Merchant Service.

E. Any recommendation or suggestion that M&T or its representatives make to Merchant (whether orally or in writing) relating to the type or scope of any Merchant Service (or feature) that Merchant may wish to purchase or use are made in good faith to assist Merchant in its decision to use such Merchant Service. M&T provides no guarantee or representation regarding any such recommendation or suggestion. The decision to purchase or use (or not to purchase or use) a particular Merchant Service (or feature) is Merchant’s sole decision, and M&T shall not be held responsible or liable in connection therewith or in connection with any such recommendation or suggestion.

F. M&T may decline to complete a particular Transaction or transaction included in a Merchant Service if M&T reasonably believes that it may suffer legal and/or reputational risk or that M&T may be in violation of any applicable Law or internal policy applicable to it if it completes such transaction.

1.3. EXCLUSIVITY
During the term of this Agreement, (i) Merchant represents that it shall use exclusively M&T for providing Merchant Services: and (ii) submit all Transaction data to M&T in compliance with all specified formats and procedures.

2. TERM
Unless Merchant elects otherwise on the Election Form (in which case those terms shall govern), the Term of this Agreement is month-to-month and, at the expiration of each month, it will automatically renew for successive months until either party delivers notice of termination to the other in accordance with the Terms and Conditions of this Agreement.

3. PAYMENT OF MERCHANT OBLIGATIONS
Merchant Obligations are immediately due and owing in full, without demand or notice to Merchant. Merchant Obligations that are not paid when due will bear interest at the rate of 1.5% per month or the maximum rate of interest allowed by Law, whichever is more.

4. DUTY TO HONOR CARDS AND COMPLY WITH LAW AND RULES
Merchant will honor those Cards designated by Merchant on the Election Form. With respect to the subject matter of the Agreement, Merchant will comply with the Laws, Rules and M&T’s procedures, established from time-to-time. Merchant will resolve disputes relating to Card Transactions that arise with a Cardholder, exclusively between itself and Cardholder.
5. MERCHANT DEPOSIT ACCOUNT
A. Merchant will maintain a Merchant Deposit Account with M&T. On terms and conditions acceptable to M&T, Merchant may maintain the Merchant Deposit Account at a financial institution other than M&T after first obtaining M&T’s written consent.

B. Merchant must promptly notify M&T’s Merchant Services Customer Service Department if Merchant:

i. Makes changes to the Merchant Deposit Account;
ii. Changes its legal name or structure, d/b/a, and telephone or fax number; and
iii. Updates the information it furnished to M&T on the Merchant Services Application or its elections made on the Election Form, including but not limited to new lines or types of business, closing or liquidation of business or any location, change in Card acceptance and processing methods, voluntary or involuntary party to a bankruptcy case, and enters into a binding agreement with a third party that seeks to affect this Agreement.

C. At the end of each calendar month, M&T will deliver to Merchant a statement showing the activity that occurred in the Merchant Deposit Account for the previous month. If Merchant believes there is an error in the statement, Merchant may request that M&T initiate an inquiry by delivering to M&T written notice within 60 days from the date of last recorded activity on the Merchant Deposit Account statement. Merchant’s failure to comply with this notice requirement will preclude Merchant from disputing the activity shown on the subject statement.

D. Merchant must maintain sufficient funds in the Merchant Deposit Account to prevent the occurrence of a negative balance. In the event that the proceeds from Merchant’s settled Transactions or the balance of the Merchant Deposit Account are not sufficient to pay amounts due under the Merchant Agreement, M&T may, in addition to any other rights and remedies under this Agreement, pursue one or more of the following:

i. Demand and receive immediate payment for such amounts;
ii. Debit the Merchant Deposit Account for the amount of the negative balance;
iii. Apply funds held in the Reserve Account against the negative amount; or
iv. Withhold all or some of the Merchant’s settlement funds for a Transaction and apply them against the negative amount.

6. GRANT OF SECURITY AGREEMENT
In addition to other rights and interests M&T may have under this Agreement, Law, and Rules, Merchant assigns and grants to M&T a security interest in the Merchant Deposit Account and its proceeds, and all other deposit accounts and their proceeds that Merchant maintains with M&T, as security for Merchant’s Obligations that are or may become due under this Agreement. This assignment and grant of security interest are unconditional and continuing until M&T releases them in writing. On M&T’s request Merchant will execute and deliver to M&T documents that M&T may require to perfect or protect the assignment and security interest.

7. RIGHT OF SET-OFF
Merchant grants to M&T the right to set-off Merchant Obligations without notice or demand, against:

i. Merchant Deposit Account,
ii. Other accounts with M&T,
iii. Credit balance in favor of Merchant arising from the deposit of Transaction Records, and
iv. Other amounts that may be owed to Merchant. At its option, M&T may bill Merchant for the amount of set-off.

8. REVOCATION OF TRANSACTION RECORDS
A. M&T may refuse to accept a Transaction Record and revoke its acceptance of a Transaction Record at any time, in any one or more of the following circumstances:

i. Cardholder disputes its liability to M&T or an Association because (a) Merchant refused to issue to Cardholder a credit slip in the proper
ii. amount of the goods or services subject to the Transaction Record after the goods or services were returned, rejected, or defective, or (b) Merchant failed to perform its obligations in connection with the Transaction or (c) the signature on the Transaction Record was not Cardholder’s; or
iii. The Transaction represented by the Transaction Record was not made in compliance with the terms of this Agreement, Rules or Law.
B. If M&T revokes acceptance of a Transaction Record, Merchant will promptly repay M&T the amount M&T originally credited to the Merchant Deposit Account on account of that Transaction Record.

9. CONDITIONAL CREDITS
M&T will credit the Merchant Deposit Account with the total face amount of Transaction Records that comply with the terms of this Agreement, Law and Rules, less credit slips presented at that time and offsets. Credits made to the Merchant Deposit Account are provisional and become final within the timeframes set forth in the Rules and Law.

10. CHARGE-BACKS
Merchant will immediately reimburse M&T the amount of negative balance in the Merchant Deposit Account that occurs as a result of deductions for charge-backs, charges, fees or otherwise. To the extent that the Rules permit Merchant to dispute a charge-back, Merchant will submit those disputes to M&T within 15 days of its receipt of the charge-back from M&T and if Merchant fails to dispute a charge-back within that 15-day period, Merchant will be deemed to have waived its rights to dispute it.

10.1. EXCESSIVE CHARGE-BACKS
If Merchant is receiving an excessive amount of charge-backs, in addition to M&T’s other remedies under this Agreement, M&T may do any one or more of the following:

i. Review Merchant’s internal procedures relating to acceptance of Cards and notify Merchant of new procedures Merchant should adopt in order to avoid future charge-backs;
ii. Notify Merchant of a new rate M&T will charge to process Merchant’s charge-backs;
iii. Require Merchant to replace any magnetic-stripe-only point of sale terminal or electronic cash registered with an EMV chip-capable terminal, if required under the Card Association Rules
iv. Establish a Reserve Account; or
v. Terminate the Agreement in accordance with Section 21.

Merchant understands that having excessive charge-backs may result in assessments, fines, fees, and penalties by the Card Associations. Merchant agrees to reimburse M&T immediately for any such assessments, fines, fees, and penalties imposed on M&T and any related loss, cost, or expense incurred by M&T.

11. DEPOSIT ACCOUNT ADJUSTMENT
In the event of an error, charge-back or circumstance requiring adjustment, Merchant authorizes M&T to credit and debit the Merchant Deposit Account, future deposits in the Merchant Deposit Account and other deposit relationships of Merchant with M&T or its affiliates, all without prior notice to Merchant. M&T may disregard individual errors in the amount of $1.00 or less per day, whether the errors would result in a debit or a credit to the Merchant Deposit Account.

11.1 FEES
Merchant: A. Must pay all applicable fees for all Transactions, which are calculated and payable pursuant to this Agreement and which may be adjusted from time-to-time in accordance with Section 11.2;

B. Acknowledges that the fees payable under this Agreement and stated in the Election and Pricing Form:

i. Are based upon Merchant’s annual volume, average Transaction size, and other information
ii. provided by Merchant or contained in this Agreement;
iii. Are based upon the assumption that Merchant’s Transactions will qualify for certain interchange rates as determined in each case by the applicable Card Association; If any of Merchant’s Transactions fail to qualify for such interchange rates, M&T will process each such Transaction at the applicable interchange rate determined by the applicable Card Association; and
iv. Will be rounded up to the next full cent to the extent they contain a fraction of a cent; and

C. Is solely responsible for all communication expenses required to facilitate the transmission of all Transaction data to M&T.

D. M&T may charge Merchant a fee for producing or delivering any statement, report, record and other information that Merchant requests, which is related to
the Merchant Services, including but not limited to Merchant, the Merchant Deposit Account and Transactions.

11.2. FEE ADJUSTMENTS
The fees owed by Merchant under this Agreement (under the Election Form or any additional pricing supplement) may be adjusted at any time:

i. With thirty (30) days’ prior written notice;
ii. To reflect increases in interchange, assessments, or other Card Association fees;
iii. To reflect additional fees imposed by the Card Associations; or
iv. To reflect increases in, or additions to, third party fees.

All adjustments hereunder will be effective either upon the date set forth in the written notice or upon the date the corresponding increase or additional fee is implemented by the Card Association or third party provider.

12. RESERVE ACCOUNT
At M&T’s request and in an amount M&T requires, Merchant will promptly establish and maintain a deposit account (“Reserve Account”) at M&T as security for Merchant Obligations under this Agreement. Merchant’s obligation to maintain the Reserve Account survives termination of this Agreement for a period determined by M&T or Law, during which time M&T’s security interest will continue in effect.

13. INDEMNIFICATION
A. To the fullest extent permitted by Law and the courts having jurisdiction over the parties and this Agreement, Merchant will indemnify and defend M&T, its parent, subsidiaries and affiliates, along with their officers, directors, employees, shareholders, representatives and agents (“Indemnified Parties”) from and against liability, judgments, arbitration awards, settlements, complaints, actions, lawsuits, claims, counter-claims, demands, losses, damages, costs including, but not limited to, court costs and out-of-pocket costs, attorney fees, fines, penalties, and expenses relating to or arising from:

i. Merchant accepted Transactions,
ii. Merchant’s, its Authorized Representatives and its Agents’ acts and omissions,
iii. Merchant’s breach or alleged breach of a term, warranty, obligation or promise in an agreement with the Associations, this Agreement or any other agreement with M&T,
iv. Merchant’s breach of M&T procedures, the Rules or violation of Law,
v. Death or injury to persons or property caused by the goods or services purchased with a Card,
vi. Disputes between or among Merchant, its Agents and Cardholder,
vii. Merchant Obligations,
viii. Unless otherwise expressed, the loss, theft, destruction or damage to a Device,
ix. Security Breach; and
x. Merchant’s violation or alleged violation of a third party’s intellectual property rights.

B. For purposes of this Agreement, including the obligation to indemnify and defend the Indemnified Parties, Merchant is responsible and liable to M&T for the acts and omissions of its Authorized Representatives, employees, Agents and representatives whether or not they are acting within the scope of their duties.

14. LIMITATION ON LIABILITY
UNDER NO CIRCUMSTANCES WILL M&T’S (OR ITS THIRD PARTY VENDOR’S) FINANCIAL LIABILITY ARISING OUT OF OR RELATED TO ITS PERFORMANCE OF MERCHANT SERVICES UNDER THIS AGREEMENT EXCEED THE LESSER OF (A) TOTAL FEES PAID TO M&T BY MERCHANT UNDER THIS AGREEMENT (NET OF PAYMENT BRAND FEES, THIRD PARTY FEES, INTERCHANGE, ASSESSMENTS, PENALTIES, AND FINES) FOR THE SIX (6) MONTHS PRIOR TO THE TIME THE LIABILITY AROSE or (B) $25,000. IN NO EVENT WILL M&T (OR ITS THIRD PARTY VENDORS), DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OR ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

MERCHANT IS FULLY LIABLE FOR ANY FINES, FEES, PENALTIES OR ASSESSMENTS IMPOSED
BY THE PAYMENT BRANDS RELATED TO MERCHANT’S ACCEPTANCE OF PAYMENT INSTRUMENTS.

NEITHER M&T NOR ITS THIRD PARTY VENDORS SHALL BE LIABLE OR RESPONSIBLE FOR THE AUTHENTICITY, ACCURACY, CORRUPTION, DISAPPEARANCE, THEFT OF, DAMAGE TO, OR TAMPERING WITH ANY DATA, INCLUDING WITHOUT LIMITATION, TRANSACTION DATA, TRANSMITTED IN ANY FORM OR FORMAT TO M&T BY OR ON BEHALF OF MERCHANT, AND M&T SHALL BE ENTITLED TO RELY ON DATA IT RECEIVED FROM OR ON BEHALF OF MERCHANT IN THE DISCHARGE BY M&T AND ITS OBLIGATIONS HEREUNDER. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES AND M&T HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.

15. DISCLAIMER OF WARRANTY
EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, M&T (AND ITS THIRD PARTY VENDORS) DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE MERCHANT SERVICES, DEVICES AND PRODUCTS, WHETHER OR NOT PROVIDED BY A THIRD PARTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

16. EXCEPTION EVENTS
A. Each of the following events is an Exception Event:
   i. Merchant breaches a representation or warranty given to M&T,
   ii. Merchant sells a type of good or service that has not been disclosed to M&T,
   iii. The dollar value of Merchant’s monthly charge-back volume exceeds one half of one percent of Merchant’s applicable monthly sales volume,
   iv. One or more of the Associations impose fines or increased costs on M&T as a result of Merchant’s activities,
   v. Merchant violates or is suspected to have violated the Rules, Law or any term of this Agreement,
   vi. The occurrence of an event or circumstance whereby M&T, deems itself insecure with respect to M&T’s provision of Merchant Services to Merchant; and
   vii. Merchant’s level or manner of compliance with PCI Data Security Standard is unacceptable.

B. Upon the occurrence of an Exception Event, M&T may take action it deems necessary to protect its interests including but not limited to any one or more of the following:
   i. Terminate this Agreement,
   ii. Suspend or terminate provision of some or all of the Merchant Services and revise the pricing,
   iii. Require Merchant to provide M&T with a written explanation of the Exception Event,
   iv. Require Merchant to provide collateral for Merchant Obligations,
   v. Require Merchant to establish a Reserve Account,
   vi. Require Merchant to adopt revised security and verification procedures; and
   vii. Restrict and prohibit withdrawals from the Merchant Deposit Account and Reserve Account, whether such Merchant Deposit Account and Reserve Account is held at M&T or at another financial institution;

17. INFORMATION SECURITY
A. In addition to security measures Merchant and its Agents are required to implement and maintain under the Rules and Law, Merchant will and will require its Agents to comply with the following:
i. Not disclose Cardholder Information except as permitted in this Agreement, authorized by Law, or authorized in writing by Cardholder,

ii. Maintain security measures in accordance with Law, the Rules and regulatory guidance that are designed to (a) ensure the security, integrity and confidentiality of Cardholder Information, (b) protect against anticipated threats or hazards to the security or integrity of Cardholder Information; and (c) protect against unauthorized access to or use of Cardholder Information regardless of whether it is on Merchant’s or Agent’s systems and facilities or in transit,

iii. Not store the contents of any track information from the magnetic stripe on the back of a Card or the Card validation codes,

iv. In the event of a Security Breach, Merchant will immediately notify M&T by telephone or other immediate means, which must be promptly followed in writing no later than within 12 hours of Merchant’s knowledge of the Security Breach and provide M&T with the pertinent facts surrounding the Security Breach. And in the case of Security Breach involving unencrypted Cardholder Information, Merchant will also notify each Cardholder of the Security Breach in accordance with the notice requirements in this section.

v. Cooperate with M&T, its regulatory agencies, Associations and law enforcement agencies; and

vi. Conduct periodic audits and risk assessments of its and its Agents’ security procedures, systems and networks and on reasonable notice, permit M&T and its regulators access to them for inspection and audit.

B. Merchant and its Agents will comply with the requirements of the Payment Card Industry Data Security Standard, as may be amended from time-to-time (PCI Data Security Standard). The PCI Data Security Standard is available directly to Merchant from Visa, MasterCard, Discover and American Express Networks at their respective websites listed in the Card Acceptance Guide. Using a qualified independent scan vendor in accordance with PCI Data Security Standards, Merchant will validate its and its Agents’ compliance with PCI Data Security Standards and deliver to M&T the results of its validation testing, including but not limited to the results of the Annual Compliance Questionnaire, Quarterly System Perimeter Scan Report, Annual Report on Compliance, as those terms are defined in the Rules as well as other documentation that PCI Data Security Standard may require from time-to-time.

C. Customer Data Protection Policies for Ecommerce Merchants:

If Merchant operates an electronic commerce website through which Transactions are generated, in addition to any requirements otherwise set forth in this Agreement, Merchant shall:

(a) display the following on each electronic commerce website:

i. Merchant’s name and the name that will appear on the Customer’s Payment Card statement;

ii. Its customer data privacy policy;

iii. A description of its security capabilities and policy for transmission of Payment instruction information; and

iv. The address of Merchant’s fixed place of business (regardless of website or server location); and

(b) offer its Customers a data protection method such as 3-D Secure or Transport Layer Security (TSL).

(D) If Merchant operates an ecommerce website, M&T is obligated under the Payment Brand Rules to investigate the contents of such website, either directly or through review of screen shots presented to M&T by Merchant (the “Website Inspection”). M&T may suspend the settlement of Merchant’s Transactions until a Website Inspection can be completed and approved by M&T.

18. CONFIDENTIALITY
Merchant will keep this Agreement and the terms of this Agreement confidential and may only share them with Merchant’s professional advisers that agree to accept the disclosed information under condition of keeping it confidential.

19. TRADEMARK LICENSES AND COPYRIGHTS
Unless expressly provided in this Agreement otherwise, Merchant does not obtain rights or title to, or interest in
the Merchant Services or other services that M&T may provide by or through third party providers under this Agreement. M&T and its third party providers, as the case may be, retain all right, title and interest to the Merchant Services and other services that M&T may provide by or through third party providers under this Agreement. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object codes, schematics or operation of, or otherwise attempt to reverse engineer the Merchant Services or other services M&T may provide by or through third party providers under this Agreement or their related equipment and software.

20. FINANCIAL INFORMATION
At M&T’s request Merchant will provide M&T in form and detail satisfactory to M&T financial and other information of Merchant that represents its operations, cash flows and financial position, certified by an officer of Merchant that the information was prepared in accordance with generally accepted accounting principles and that it is correct, complete and in accordance with Merchant’s records. Merchant will permit M&T’s officers, employees, attorneys and other agents to (a) visit and inspect each of Merchant’s premises, (b) examine, audit, copy and extract financial information from Merchant’s records, and (c) discuss Merchant’s business, operations, assets, affairs or condition (financial or other) with its responsible officers, employees, attorneys and independent accountants.

Additional Financial Information. Upon five (5) days’ written notice at any time, Merchant, and each Guarantor (if any), agrees to furnish to M&T all financial statements and information as M&T may reasonably request. Merchant’s and each Guarantor’s signature on this Agreement authorizes M&T to perform any credit check deemed necessary with respect to Merchant and each Guarantor, as applicable.

21. TERMINATION
Except as otherwise described in this Section 21, either party may terminate this Agreement by delivering no less than 30 days prior written notice to the other, which termination will be effective on the date specified in the notice. Notwithstanding anything to the contrary in the preceding sentence, if Merchant breaches any provision of this Agreement, or M&T believes an Exception Event has occurred, M&T may terminate this Agreement in its entirety or with respect to any part of Merchant’s elections by delivering prior notice to Merchant orally or in writing, which termination will be effective immediately on receipt. In the event of an immediate termination made by oral notice to Merchant, M&T will send written confirmation to Merchant within a reasonable time. Merchant Obligations that arise under this Agreement prior to the effective date of termination survive termination.

21.1. ACTIVE ACCOUNT
Merchant’s Deposit Account will be considered “Active” as long as Merchant continues to make on-time payments of all amounts owed under the Agreement. If Merchant goes more than 90 consecutive days without posting Transactions under this Agreement, Merchant must notify M&T that it is terminating the Merchant Deposit Account and this Agreement. Until such time as M&T receives notice of termination by Merchant and had a reasonable time to act upon such notice, Merchant shall pay all fees, charges and expenses owed M&T under this Agreement, notwithstanding the fact that the Merchant’s Deposit Account may be inactive. M&T may, at its sole discretion:

i. Consider the Merchant’s account as not Active;
ii. Terminate this Agreement immediately; and
iii. Collect any termination fee and all or a prorated portion of any of any signing bonus and/or the estimated retail value of any equipment provided to Merchant in promotion of this Agreement.

21.2. POST TERMINATION
The termination of this Agreement will not affect either party’s rights or obligations with respect to Transactions submitted prior to termination. Therefore, the provisions governing processing and settlement of Transactions, all related adjustments, fees, and other amounts due from Merchant, and the resolution of any related Chargebacks, disputes, or other issues involving Transactions, will continue to apply for all Transactions made prior to termination.

Upon termination of this Agreement, Merchant must:

i. Continue to be responsible for all Chargebacks, fees, fines, assessments, credits, and adjustments resulting from Transactions processed pursuant to this Agreement before termination; and
ii. Be responsible for all amounts then due or which thereafter may become due to M&T under this Agreement.

iii. Upon termination or notice of termination of this Agreement, M&T may, in its sole discretion and without waiving any of its rights or Remedies under this Agreement.

iv. Establish a Reserve Account; and

v. Process Transaction Records submitted by Merchant after termination in accordance with and subject to all of the terms of this Agreement.

22. AMENDMENT
M&T may amend this Agreement by delivering to Merchant prior written notice of the terms of the amendment. If the amendment is unacceptable to Merchant, Merchant must terminate this Agreement by delivering written notice of termination to M&T within 3 business days of the date of the notice of amendment. If Merchant does not terminate this Agreement in strict compliance with this section, Merchant will continue to be bound by this Agreement as amended. This Agreement or any of M&T’s rights and remedies under this Agreement or Law may not be amended by a course of dealing between the parties.

23. MERCHANT’S SUBCONTRACTORS AND AGENTS
If Merchant uses a third party subcontractor or agent (“Agent”) to perform any of Merchants obligations under this Agreement, Merchant represents and warrants that at all times this Agreement is in effect, its Agents will comply with Laws and Rules. If Merchant’s Agents will perform any functions that include generating, processing, storing or transmitting Cardholder Information then at M&T’s request, Merchant will submit information in writing to M&T describing the nature of services its Agents will perform and promptly cooperate with M&T in submitting any documentation that M&T requests to effect the necessary registrations and filings with the Associations and pay Association fees now or later imposed in connection with the Agent’s registration and services.

24. NO AGENCY
Neither Merchant nor M&T may act as an agent for the other.

25. NOTICE
Unless otherwise permitted in this Agreement, the parties will deliver notices to the other in writing. Notices will be deemed given when postmarked or if overnight or similar courier is used, then when delivered. Notice to M&T by email or facsimile is not valid notice.

26. FORCE MAJEURE
M&T is released from liability to the extent that its, its agents, subcontractors and the Networks’ failure or delay in performing any of their respective obligations under this Agreement is the result of an act of God, government order, Law or rule and other causes beyond their reasonable control. In the event of a force majeure, M&T will resume provision of the affected component of the Merchant Services as soon as practically possible.

27. GOVERNING LAW AND JURISDICTION
This Agreement will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. Merchant irrevocably consents to the exclusive jurisdiction of any state or federal court in Erie County, State of New York. M&T may send service of process by nationally recognized overnight courier service directed to Merchant at Merchant’s address and service will be deemed to be completed on the business day after deposit with the courier. Nothing contained in this Agreement will prevent M&T from bringing an action, enforcing an award or judgment, or exercising its rights against Merchant and its property outside of Erie County, State of New York. The venue provided is the most convenient forum for both M&T and Merchant and Merchant waives any right it may have to (i)object to venue; (ii) assert a counterclaim, set-off or defense based on a statute of limitations, laches or any other legal theory; and (iii)waives its right to appeal a final judgment that is obtained as a direct or indirect result of any action.

28. WAIVER OF JURY TRIAL
Merchant knowingly, voluntarily, and intentionally waives its right to a jury trial in connection with this Agreement, any document executed in connection with this Agreement, or any transaction conducted hereunder. Merchant represents and warrants that no representative or agent of M&T has represented, expressly or otherwise that M&T will refrain from enforcing this jury trial
waiver. THIS IS A KNOWING AND VOLUNTARY WAIVER.

29. WAIVER OF SOVEREIGN IMMUNITY
MERCHANT REPRESENTS AND WARRANTS THAT IT HAS EXPRESSLY INFORMED M&T IN WRITING, PRIOR TO ENTRY INTO THE AGREEMENT, IF IT IS AN ENTITY THAT HAS OR MAY HAVE ANY RIGHT OF SOVEREIGN IMMUNITY OR SIMILAR RIGHT.

WITH RESPECT TO ANY DISPUTE OR CONTROVERSY RELATING TO THE AGREEMENT, SERVICES AND/OR ACCOUNTS, MERCHANT HEREBY WAIVES ANY RIGHT OF SOVEREIGN IMMUNITY OR SIMILAR RIGHTS AS TO IT OR ITS PROPERTY WITH RESPECT TO M&T’S ENFORCEMENT OF THE AGREEMENT AND ANY OTHER RIGHTS AND/OR REMEDIES M&T MIGHT HAVE AGAINST MERCHANT OR ITS PROPERTY RELATING TO THE AGREEMENT, MERCHANT SERVICES AND/OR ACCOUNTS. IF THIS PROVISION DOES NOT EFFECTIVELY WAIVE SUCH IMMUNITY OR RIGHT, MERCHANT SHALL PROMPTLY DELIVER TO M&T SUCH DOCUMENT(S) AS IS NECESSARY TO EFFECTIVELY WAIVE SUCH IMMUNITY OR RIGHT.

30. ARBITRATION AGREEMENT FOR CLAIMS INVOLVING AMERICAN EXPRESS ONLY
This provision applies solely to claims related to American Express Transactions. In the event that Merchant or M&T are not able to resolve a claim related solely to an American Express Card Transaction (“Claim”), this Section 30 explains how Claims may be resolved through arbitration. Merchant or M&T or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any party to resolve a Claim, the parties understand and agree that neither Merchant nor M&T nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, M&T and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under that certain American Express OptBlue Program Addendum to Service Agreement between M&T and First Data Resources LLC dated as of the date thereof ("OptBlue Addendum").

Arbitrator’s decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights Merchant, M&T, or American Express would have in court may also not be available in arbitration.

i. Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Section 30 and the selected arbitration organization’s rules in effect when the Claim is filed, except where those rules conflict with the OptBlue Addendum. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express or M&T, on one hand, selects the organization and Merchant, on the other hand, select the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in New York, NY.

ii. Limitations on Arbitration. If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator’s authority is limited to Claims between Merchant, M&T, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, M&T or
American Express and cannot be used in any other case except to enforce the award as between Merchant, M&T and American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Section 30, if any portion of these Limitations on Arbitration set forth in this Section 30(ii) is found invalid or unenforceable, then the entire Section 30 (other than this sentence) will not apply, except that Merchant, M&T, and American Express do not waive the right to appeal that decision.

iii. Previously Filed Claims/No Waiver. Merchant, M&T, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, M&T, or American Express may choose to delay enforcing or to not exercise rights under this Section 30, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this Section 30 applies to any class-action lawsuit relating to the “Honor All Cards,” “non-discrimination,” or “no steering” provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the effective date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

iv. Arbitrator’s Authority. The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under the OptBlue Addendum. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 30.

v. Split Proceedings for Equitable Relief. Merchaht, M&T, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This Section 28 shall be enforced by any court of competent jurisdiction.

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

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This Section 30 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If Merchant’s Claim is for $10,000 or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator’s decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

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

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

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

xi. **Definitions.** For purposes of this Section 30 only, (i) “American Express” includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) “You” includes your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) “Claim” means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including you or us) that American Express has the right to join, including any allegation involving a transaction using an American Express product or network or regarding an American Express policy or procedure.

### 31. SURVIVAL
Sections 5, 6, 7, 8, 9, 10, 11, 11.1, 11.2, 12, 13, 14, 15, 16, 18, 19, 27 and 28 survive termination of this Agreement.

### 32. FINAL AGREEMENT
These Terms and Conditions, the Merchant Services Application, the Election Form, the Acceptance and Processing Terms applicable to those elections made by Merchant on the Election Form, the Rules, Guaranty (if applicable) as each may be amended and delivered to Merchant from time-to-time, constitute the entire agreement between Merchant and M&T with respect to the Merchant Services. All negotiations, promises, representations, warranties and prior agreements with respect to Merchant Services are merged into this Agreement.

### 33. MERCHANT TAXPAYER CERTIFICATION AND M&T REPORTING OBLIGATIONS
Pursuant to 26 USC 6050W, M&T is a “payment settlement entity”, obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant must provide M&T with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant must promptly notify M&T if there are any changes in this information. M&T may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under applicable law. M&T may, in accordance with applicable law and from time-to-time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant is responsible for any penalties related to the reporting obligations of M&T hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from M&T.

### 34. MISCELLANEOUS
A. M&T’s failure or delay to exercise a right or power it has by way of this Agreement or Law will not operate as a waiver of that right or power or preclude M&T’s subsequent exercise of that or any other right or power.
M&T does not waive and is not stopped from enforcing its rights under this Agreement or at any future time as a result of any course of dealing between the parties.

B. In this Agreement, the singular includes the plural and the plural the singular.

C. References to Law and the Rules include provisions consolidating, amending and replacing the subject Law and Rule.

D. Section headings are only for descriptive purposes.

E. Each provision of this Agreement is severable. The invalidity or unenforceability of any particular provision will not affect the validity or enforceability of another provision.

F. This Agreement is binding on and will inure to the benefit of Merchant’s and M&T’s respective administrators, heirs, executors, successors and assigns. Merchant may not assign or transfer any of its rights or delegate its duties hereunder without the prior written consent of M&T.
1. APPLICABILITY
These Acceptance and Processing Terms are part of the Agreement between M&T and Merchant for Merchant Services and apply to Merchant and its level of participation in and use of Merchant Services.

2. ASSOCIATION RULES
These Acceptance and Processing Terms are not a full reproduction of the Rules that are applicable to Merchant in its use of Merchant Services. Merchant is responsible for maintaining compliance with the Rules as they may be amended from time-to-time, regardless of whether those Rules are reproduced in this Acceptance and Processing Terms and regardless of whether Merchant may receive from M&T information regarding the Rules. The Rules are available in their entirety at each Association’s respective websites as set forth in the Terms and Conditions.

3. DISPLAY OF CARD NAMES AND SYMBOLS
For those Cards that Merchant accepts and unless exempt from doing so under the Rules, Merchant will display the Cards’ name and symbol on its promotional materials to inform the public that the Cards are honored at Merchant’s places of business, including its internet sites and catalogues, if applicable. Merchant’s right to use and display the Cards’ name and symbol will terminate on the earliest of the date the Agreement expires or an Association or M&T notifies Merchant to cease use of the name or symbol. Other than expressly permitted in the Agreement, Merchant obtains no rights to M&T’s or the Associations’ names and symbols.

4. TRADEMARKS AND SERVICE MARKS
Merchant is granted a limited non-exclusive right to use on its signs and other displays and in advertising or promotional materials the trademark or service mark of each Network in which it elected to participate. Merchant will not use any symbol, word or other mark that is similar to or likely to be confused with a Network trademark or service mark. Merchant will use the Network trademark and service mark only in connection with its participation in the Network and only as M&T or the Network may direct from time-to-time, and permit the Network and M&T to inspect the manner in which Merchant is using the trademark or service mark. If M&T or the Network requests, Merchant will submit to M&T and Network samples of its use of the trademarks and service marks along with a descriptions of its use. Merchant may not do or cause to be done anything that contests, impairs or otherwise adversely affects the Network’s right, title and interest in and to the trademarks and service marks. On termination of this Agreement or earlier if M&T or the Network requests, Merchant’s right to use the trademarks and service marks will end and Merchant will cease using the trademarks and service marks.

5. TRANSACTION RECORDS
A. For each Transaction completed, Merchant must prepare and deliver to Cardholder the Transaction Record or a copy of it.

B. Alterations to the Card number and stray marks such as circles or underlines on the Transaction Records are prohibited after the Transaction is completed and the Transaction Record is signed.

C. Card numbers that are displayed on a terminal window or printers must match the Card number embossed on the Card. Merchant must call the
Authorization center to verify Transactions that do not meet these requirements.

D. Merchant must refuse to accept a Card if it appears to be counterfeit, altered or otherwise disfigured; not yet effective or expired; does not include Cardholder’s signature; and when Merchant has received a communication requesting that it not be honored.

E. Merchant must process Transactions in a manner that complies with M&T procedures and the Rules using acceptable equipment.

F. Merchant must verify the true identity of each Cardholder, regardless of whether it is a Card present Transaction.

G. Each Transaction Record must contain the following information:

i. Card account number in the manner required by Law and Rules. Transaction Records may not include the Card expiration date or any more than the last four digits of the Card number,

ii. Card imprint. An imprint is the process using a manual imprinting machine to make an impression of a Card on a Transaction Record. An imprint is not a printout from a printer attached to Device. Merchants are not required to imprint Cards for Transactions where electronic Devices (e.g., authorization and draft capture terminal, cash register, POS Device, etc.) are used to read and capture Card information via the magnetic stripe or embedded microprocessor chip,

iii. If a Device fails to read the magnetic stripe or chip or a voice authorization is required, Merchant must imprint the Card on the Transaction Record and obtain Cardholder’s signature,

iv. Cardholder’s signature, except that Merchants Participating in MasterCard’s Quick Payment Service Program, Visa’s Small Ticket, Visa/Discover Network No Signature Program, and certain Discover Network transactions are not required to obtain the Cardholder’s signature under certain conditions set forth by each program,

v. Transaction date,

vi. Amount of the Transaction, including the approved currency of the sale,

vii. Description of the goods and services that are the subject of the Transaction. Numerous items may be combined into one description e.g., “clothing” instead of “one pair of pants, one shirt,”

viii. A valid authorization code; and

ix. Merchant’s d/b/a, city, state and Merchant account number

6. AUTHORIZATIONS
An Authorization must be obtained for each Transaction processed. M&T reserves the right to refuse to process any Transaction Data presented by Merchant unless it includes a proper authorization. If required by the Associations, each authorization request must include the Payment Card’s expiration date.

Merchant acknowledges: (a) the authorization of a Transaction indicates only that the Payment Card contains a valid account number and has an available balance sufficient for the amount of the Transaction; and (b) that authorization of a Transaction does not constitute a representation from M&T, a Payment Brand or a card issuing bank that a particular Transaction is, in fact, valid or undisputed by the actual customer.

7. SETTLEMENT AND DELIVERY OF TRANSACTION RECORDS
A. Each business day Merchant will electronically transmit Transaction information to M&T’s operating center or other processing center as M&T may instruct. Transmission must be completed prior to 1:00 a.m. of the calendar day immediately following the Transaction date. Late delivery may result in Transactions being processed the following business day.

B. Merchant’s transmission will be rejected without being processed for correction and re-submission if any information transmitted is incorrect, incomplete or electronically illegible; or the Transaction or Transaction Record fails to comply with the Terms and Conditions of this Agreement for that type of Transaction.

C. M&T will directly credit Merchant’s Deposit Account for the amount of the Transaction, less
Merchant issued credits, applicable discounts and any unpaid sums. Transactions will be credited on the second business day following the Transaction date, except when (i) delayed due to banking holidays and Association holidays, (ii) mechanical, electronic, electrical, or communication failures, and (iii) factors beyond M&T’s control. Merchant will furnish M&T Card sales and credits (data) by electronic transmission, the method of such transmission to be designated by M&T.

D. Merchant will review its outgoing sale and credit data to assure that it is not submitted to M&T twice. If Merchant inadvertently supplies the same data twice, it will promptly upon discovery notify M&T and assist M&T in identifying the subject Transactions.

8. RETENTION AND RETRIEVAL OF TRANSACTION RECORDS
A. Merchant is responsible for storing and retrieving originals and copies of Transaction Records for the period of time required by Laws and Rules, but in no event for less than 18 months.

B. Within 3 business days of M&T’s request, Merchant will provide originals or legible copies of Transaction Records. If Merchant fails to provide Transaction Records that have been credited to Merchant’s Deposit Account, M&T will adjust the Merchant Deposit Account accordingly.

C. Merchant may transmit only accurate information and will maintain sufficient back-up information and data to reconstruct any information or data lost due to system malfunction.

9. TRANSACTION RECORDS – REPRESENTATIONS AND WARRANTIES
Upon presentment of a Transaction Record to M&T, Merchant represents and warrants to M&T that:

i. The Transaction is and the Transaction Record represents Merchant’s bona fide sale for goods or services to a purchaser in the ordinary course of business,

ii. Merchant has performed or will perform its obligations to Cardholder in connection with the Transaction,

iii. The Transaction represented by the Transaction Record does not involve credit for a purpose other than the Transaction,

iv. The Transaction is and the Transaction Record represents a Transaction directly between a Cardholder and Merchant,

v. The Transaction was made using a valid, authorized, non-expired Card,

vi. If a Card present Transaction, Cardholder signed the Transaction Record and the signature on the Transaction Record matches the signature appearing on the Card,

vii. If the Transaction Record is not for the full sale price of the goods or services, the remaining portion of the sale price was paid with cash, check or another Card,

viii. The Transaction Record is a valid and legally enforceable obligation of Cardholder named on it and M&T will not be subject to claims, counterclaims, defenses or set-offs,

ix. The goods sold, services performed and the Transaction Record comply with Laws and regulations, including the Rules; and

x. The goods and services that are the subject of the Transaction Record are free and clear of security interests, liens and other encumbrances.

10. MULTIPLE TRANSACTION RECORDS AND PARTIAL CONSIDERATION
Merchant will include goods and services purchased in a single Transaction as one total amount on a single Transaction Record except:

i. When Rules permit,

ii. For partial payment, delayed delivery or advance deposit Transactions where Cardholders pay the balance of the amount due at the time of sale in cash, by check, with another Card; and

iii. The goods or services will be delivered or performed at a later date and one of the Transaction Records represents payment of the balance, in which case Merchant must note on the Transaction Record - “delayed delivery,” “deposit” or “balance” as appropriate, along with the Authorization date and code.
11. RECURRING TRANSACTIONS

A. For each recurring Transaction Merchant accepts, Merchant must:
   
   i. Obtain Cardholder’s written permission, which must include the Transaction amount, frequency of the recurring charges, the duration of time for which Cardholder’s permission is granted, and whether the charge should be made against a credit account or a deposit account,
   
   ii. Retain Cardholder’s written permission for the duration of the recurring charges,
   
   iii. Provide the original written permission form to the Card issuer on the Card issuer's request,
   
   iv. Cease charging Cardholder’s account on notice of cancellation, when charged back or not renewed; and
   
   v. Input the words “Recurring Transaction” on the signature line of the Transaction Record.

B. Recurring Transactions may not include partial payments made to Merchant for goods or services purchased in a single Transaction, or periodic payments of goods or services for which Merchant assesses finance charges. Merchant must first obtain M&T’s written approval for prepayment periods longer than 30 days. If a recurring Transaction will be charged against a consumer deposit account, as that term is defined by Federal Reserve Board Regulation E, then Cardholder has the rights afforded to consumers in connection with “pre-authorized electronic fund transfers” under Regulation E.

12. MAIL, TELEPHONE, INTERNET AND OTHER CARD NOT PRESENT SALES

A. Merchant may engage in mail, telephone, Internet and other Card-not-present Transactions provided they do not exceed the percentage of total payment Card volume reflected on the Merchant Services Application.

B. For each Card-not-present Transaction, Merchant will:
   
   i. Obtain the Card expiration date,
   
   ii. Imprint the Card number and effective date, Transaction date, description of the goods and services, Transaction amount including shipping, handling, insurance, etc., Cardholder’s name, billing address and shipping address, authorization code, and merchant’s name and address (city and state required),
   
   iii. Insert on the Transaction Record signature line “MO” for mail orders and “TO” for telephone orders,
   
   iv. Notify Cardholder of delivery time frames and special handling and cancellation policies. Goods must be shipped within 7 days of Authorization, unless the order has been taken and there are known delivery delays such as out of stock, then notify Cardholder and reauthorize the Transaction when in stock,
   
   v. Ensure the website includes a complete description of the goods or services offered, Merchant’s return and refund policy, customer service contact, including email address or telephone number, Transaction currency, applicable export or legal restrictions, and the web-site’s security policy and procedures; and
   
   vi. Not submit a Transaction for processing until after goods have been shipped or the service provided to Cardholder, unless made to Cardholder’s specifications, in which case it may be processed prior to delivery so long as Cardholder has been advised of the billing details.

13. INSTALLMENT PAYMENTS

Merchant may offer Cardholders an installment payment option for goods and services sold in not-present Transactions under the following conditions:

   i. Merchant clearly discloses to Cardholder in writing the installment terms including, whether they are limited to certain goods or services, shipping and handling charges and applicable tax, and that each installment billing amount may vary due to currency conversion rate fluctuations if Cardholder uses currency other than Merchant’s currency,
   
   ii. Merchant ensures that the sum of installment billing does not include any finance charge or exceed the total price of the goods and services,
   
   iii. Merchant deposits subsequent installment billing
iv. Transaction Records in 30-calendaryear intervals or on the monthly anniversary of the shipment date; and
v. Merchant does not deposit the first installment billing
vi. Transaction Record with M&T until the goods are shipped or services delivered.

14. DELAYED DELIVERY
Merchant will deliver Transaction Records to M&T or its designated agent within 5 calendar days after the date of the applicable Transaction except for:

i. Deferred delivery Transactions, in which case Merchant will deliver Transaction Records when the goods are delivered or the services performed,

ii. Transactions in which Merchant requests and receives Authorization for delayed delivery, in which case Merchant will deliver the Transaction Record within 5 calendar days after the date the balance of the purchase price is due; and

iii. Circumstances in which Merchant has multiple locations and delivers Transaction Records to M&T through a central location, in which case the Transaction Records may be delivered within 5 calendar days of Merchant’s central location’s receipt. Merchants with multiple locations must deliver Transaction Records in a manner that identifies the location where the Transaction originated.

15. PRE-AUTHORIZATION FOR TRAVEL & ENTERTAINMENT AND RESTAURANT
Merchants that provide travel and entertainment services (e.g., car rentals, hotels, motels, etc.) or operate a restaurant business and pre-authorize Transaction must comply with the following:

i. Merchant must notify Cardholder of the dollar amount to be pre-authorized,

ii. If Cardholder uses another form of payment (e.g., cash, check, etc.) Merchant must delete the original Authorization through the Authorization center by providing Card account number, original dollar amount, date of the Transaction and the authorization code. If a new Transaction takes place, Merchant must imprint the Card and obtain Cardholder signature on the new Transaction Record for the exact amount and obtain a new Authorization for that amount,

iii. If a Transaction is declined, Merchant may not attempt to authorized it in less than 24 hours,

iv. Hotels, motels, and car rental Merchants are permitted up to a 15% (restaurants 20%) variance above the amount pre-authorized. If the final amount charged to Cardholder exceeds the original estimate by more than 15% (restaurants 20%) above the pre-authorization, another Authorization is required for the incremental amount and the Authorization code must be written on Transaction Record,

v. Estimated amounts of pre-authorizations for lodging accommodations must be based on the intended length of stay, the room rate, applicable taxes and service charges, and miscellaneous charges as dictated by experience,

vi. Merchant may not add an estimated tip amount to the authorization request beyond the value of the goods provided or services rendered plus tax; and

vii. Vehicle rental Merchant may not include potential vehicle damage or insurance deductible in a preauthorization.

16. MERCHANT’S RETURN POLICY
Merchant will establish and post a fair refund policy in accordance with the Rules and will issue adjustments to Cardholders with respect to goods or services when appropriate. Merchant will not refuse to exchange, return or adjust for a Transaction if the exchange, return or adjustment is permitted for a cash Transaction. Merchant’s return policy for “no refund,” “exchange only,” or “in-store credit only,” must be legibly printed on Transaction Records in font no less than ¼ inch high

and in close proximity to the space provided for Cardholder’s signature.
17. MERCHANT ADJUSTMENTS
Merchant may only process credits to Cardholder’s account if Cardholder has returned goods or cancelled services or if Cardholder is otherwise entitled to a bona fide credit. If Merchant accepts return of a good or a service is cancelled or Merchant grants Cardholder a price adjustment (other than involuntary refunds required by Law), Merchant may not make a cash refund to Cardholder and will instead deliver to M&T a credit slip evidencing the amount of the refund or adjustment. A Merchant that provides express payment services may either make a cash refund to Cardholder or deliver a credit slip to M&T evidencing the amount of the refund or adjustment. Merchant will deliver to Cardholder a true and correct copy of the credit slip that includes the date, a brief identification of the goods returned, services canceled or adjustment made, and the amount of the credit in sufficient detail to identify the Transaction. The refund or adjustment indicated on a credit slip may not exceed the original Transaction amount. Merchant may not issue a credit slip for sales originally paid for with cash.

18. CONFISCATION OF CARDS
If an Authorization center directs Merchant to confiscate a Card, or Merchant has reasonable grounds to believe a Card is counterfeit, disfigured, fraudulent or stolen, Merchant will use reasonable efforts to confiscate it. M&T has no liability to Merchant for injury or damage resulting from Merchant’s confiscation or attempt to confiscate Cards whether or not the Authorization center directed Merchant to do so.

19. PROHIBITED ACTIVITIES OR TRANSACTIONS
Merchant shall not:

i. Represent that an Association has endorsed or approved of its goods or services,

ii. Disparage the services the Associations offer,

iii. Use 2 or more Transaction Records to avoid calling the Authorization center,

iv. Require Cardholders to provide personal information such as a home or business telephone number, a home or business address, a social security number, or a driver’s license number as a condition to honor Cards unless the Associations require that information under appropriate circumstances,

v. Present for processing or entry into an interchange, directly or indirectly Transaction Records that were not originated as a result of a Transaction between Cardholder and Merchant, or that was not in the ordinary and customary business of Merchant, as identified to M&T in Merchant’s Application,

vi. Present for processing or entry into an interchange, directly or indirectly Transaction Records that Merchant knows or should have known to be fraudulent or not authorized by Cardholder,

vii. Receive payments of cash or anything else of value directly from Cardholder with respect to goods or services that are included on Transaction Records or credit slips generated by Merchant in connection with the use of a Card,

viii. Make cash disbursements to Cardholders,

ix. Receive cash or anything else of value from Cardholder for the purpose of processing a credit to Cardholder’s account,

x. Accept Cardholder payments for previous Card charges,

xi. Require Cardholder to complete a postcard or similar document that includes Cardholder’s account number, Card expiration date, signature or other Card account data in plain view when mailed,

xii. Add tax to a Transaction unless required by Law,

xiii. Present for processing Transaction Records for a Transaction that was previously charged back to M&T and returned to Merchant, irrespective of Cardholder approval,

xiv. Use arbitrary or estimated amounts to obtain Authorization, except as specifically permitted in the Rules,
20. SPECIAL PROVISIONS FOR PIN DEBIT CARDS

For each Transaction accepted where Cardholder uses a debit Card with a PIN, Merchant must:

i. Treat transactions from different Card issuers in the same manner,

ii. Obtain Authorization and process each Transaction electronically,

iii. Issue a receipt to Cardholder for each Transaction with the Card account number masked so that only the last four digits appear with the masked digits appearing as non-numeric characters such as asterisk,

iv. Include applicable tax in the total Transaction amount for which Authorization is requested,

v. Secure all terminals and institute appropriate controls to prevent employees and others from submitting refunds and voids that do not reflect bona fide returns or credits for prior Transactions,

vi. Within one business day of the Transaction, balance each location to the system for each business day each location is open,

vii. Pay applicable adjustment and annual fees that a network may charge,

viii. Not manually enter Card account number,

ix. Not complete a PIN debit Card Transaction without Cardholder first entering its PIN,

x. Not obtain PINs verbally or in written form,

xi. Not obtain voice Authorization or imprinter procedure for PIN debit Card Transactions,

xii. Not process a credit Card Transaction to provide a refund on PIN debit Card Transactions,

xiii. Not establish a minimum or maximum Transaction amount,

xiv. Not collect separately in cash; and

xv. Not require additional personal information to complete Transaction unless the circumstances appear suspicious. Signatures are not required for PIN debit Card Transactions.

21. THIRD PARTY SERVICES

If Merchant elects to receive any part of the Merchant Services that are provided through M&T by a third party ("Third Party Product") Merchant will use the Third Party Product and any of its related software and services subject to the following terms and conditions.

A. Upon electing to use a Third Party Product, Merchant shall execute any additional agreements that govern the Third Party Product as required by such third party.

B. M&T and its third party providers reserve the right to make changes to the Third Party Product, schedule interruptions of service for maintenance activities and on prior notice to Merchant, terminate the Third Party Product.

C. M&T and its third party providers may create, develop, apply for, obtain and otherwise use and enjoy any logos, trademarks and trade names with respect to Third Party Products and may apply for and obtain trademark, patent and copyright protection for it.

D. Merchant may not modify, publish, transfer, sell or create derivative works, or in any way exploit any of the content of Third Party Products in whole or in part, whether copyrighted, trademarked, proprietary or otherwise and any changes to or deletion of trademarks, author attribution or copyright notice is prohibited.

E. M&T or its third party providers are the owners of all right, title and interest in and to the Third Party Products and nothing transfers to Merchant any rights in or to the Third Party Products except as expressly set out in this Agreement.
F. On receipt of notice from M&T or on termination of this Agreement, Merchant will immediately cease use of all Third Party Products.

G. Unless expressly set out in this Agreement, M&T has no obligation to provide support or maintenance for the Third Party Product.

H. Merchant is solely responsible for interpreting Laws and regulations applicable to its business and its use of Merchant Services, including all Third Party Products and services.

22. DEVICES
A. M&T will deliver and install devices or cause them to be delivered and installed at Merchant’s locations. Merchant will bear the cost of installation and is responsible for arranging for installation of necessary communication lines. Charges associated with line installation maintenance are Merchant’s responsibility. Communication lines must conform to the manufacturer’s specifications for each device and to M&T’s reasonable requirements.

B. All devices are and will remain M&T property and will not be deemed to be fixtures for any purpose. M&T has the right to remove any device in Merchant’s possession. M&T cannot guarantee the functionality of any device not provided by M&T or those devices purchased by or previously used by the customer. In the event such customer-owned devices fail to operate in accordance with M&T-provided services, the customer will be required to purchase devices through M&T.

C. Merchant will promptly notify M&T of:

   i. Loss of or damage to a device,
   ii. Loss arising out of the use or operation of a device; and
   iii. Apparent failure, malfunction, or breakdown of a device or of the authorization or draft capture system.

D. Merchant may use and operate devices only in accordance with the manufacturer’s specifications and in the manner authorized by M&T. Only authorized personnel may access the devices.
F. If Merchant is required to return a device to M&T, it will follow M&T’s instructions.

G. Merchant may not remove devices from their locations without first obtaining M&T’s written consent.

H. Merchant may not make or permit its employees to make any alterations, attachments, additions or modifications to the Devices.

I. Merchant grants to M&T and its agents, the right access Merchant’s locations for so long as any device is on premises or deemed to be Merchant’s possession, at any time during Merchant’s normal business hours to install, replace, inspect, relocate, maintain, remove or otherwise access any device and related apparatus, including without limitation telephone line connections. M&T is not responsible for damage or injury to persons or property caused by an act of omission of its agents. Unless otherwise agreed in writing, M&T has no support or maintenance obligations for the devices.

23. TRANSARMOR℠ SERVICE


If Merchant elects to utilize the TransArmor Service, the Terms and Conditions of this Section 23 shall apply in addition to all other Terms and Conditions.

The TransArmor℠ Service provided, transactions processed and other matters contemplated under this Section are subject to all other Terms and Conditions of this Agreement, as applicable, except to the extent the terms of this Section 23 directly conflict with another provision of this Agreement, in which case the terms of this Section will control.

1 Definitions. Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 23 or as defined elsewhere in this Agreement.

2 Grant of License Bank grants to Merchant a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this
Service Marks (as identified in the TransArmor℠ Rules and Procedures) in the United States in accordance with this Addendum, including without limitation the TransArmor℠ Rules and Procedures. Any rights with respect to the TransArmor Service not expressly granted by Bank in this Section 23 are deemed withheld.

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

4 Responsibilities of Merchant. Merchant is responsible to comply with the following regarding Merchant’s use of the TransArmor℠ Service:

i. Merchant is required to comply with the Association Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). Merchant must ensure that all third parties and software use by Merchant in connection with Merchant’s payment processing is compliant with PCI DSS. Use of the TransArmor℠ Service will not, on its own, cause Merchant to be compliant or eliminate Merchant’s obligations to comply with PCI DSS or any other Association Rule. Merchant must demonstrate and maintain Merchant’s current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to [Merchant’s] business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Association Rules and PCI DSS.

ii. Use of the TransArmor Service is not a guarantee against an unauthorized breach of Merchants’ point of sale systems or any facility where Merchant processes and/or stores transaction data (collectively, “Merchant Systems”).

iii. Merchant must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout its Merchant Systems including replacing existing Card numbers on its Merchant Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.

iv. Merchant must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.

v. Any point of sale device, gateway and/or value added reseller “VAR” use by Merchant in connection with the TransArmor Service must be certified for use with the TransArmor Service.

vi. If Merchant sends or receives batch files containing completed Card transaction information to/from Bank, Merchant must use the service provided by Bank or its third party providers to enable such files to contain only Tokens or truncated information.

vii. Merchant must use truncated report viewing and data extract creation within reporting tools provided by Bank.
viii. Merchant is required to follow rules or procedures Bank may provide to Merchant from time-to-time related to Merchant’s use of the TransArmor Service (“TransArmor℠ Rules and Procedures”). Bank will provide Merchant with advance written notice of any such rules or procedures or changes to such rules or procedures.

ix. Merchant has no right, title or interest in or to the TransArmor℠ Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to Merchant. Merchant shall not take any action inconsistent with the stated title and ownership in this Addendum. Merchant will not file any action, in any forum that challenges the ownership of the TransArmor℠ Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. Bank has the right to immediately terminate this Section 23 and Merchant’s access to and use of the TransArmor℠ Service in the event of a challenge by Merchant. No additional rights are granted by implication, estoppel or otherwise.

x. Merchant will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; or (iii) sell, license or otherwise distribute the TransArmor℠ Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor℠ Service as a standalone program or in any way independently from the TransArmor℠ Service. If any portion of the TransArmor℠ Service contains any copyright notice or any other legend denoting the proprietary interest of Bank or any third party, Merchant will not remove, alter, modify, relocate or erase such notice or legend on such item.

xi. Merchant will only use the TransArmor℠ Service for its internal business purposes in a manner consistent with this Agreement.

xii. Merchant will use only unaltered version(s) of the TransArmor℠ Service and will not use, operate or combine the TransArmor Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Addendum.

xiii. Merchant will promptly notify Bank of a breach of any terms of this Addendum.

5 Amendment; Termination. The TransArmor℠ Service being provider hereunder is coterminous with the Merchant Agreement. Unless prohibited by applicable law, Bank may modify this Section 23 by providing written notice of such modifications to Merchant.

The TransArmor℠ Service being provided under this Section 23 may be terminated upon thirty (30) days written notice from one party to the other party.

In addition to any termination rights in the Merchant Agreement, Bank may terminate this Addendum immediately if Merchant’s material breach of the terms contained in this Addendum remains uncured for ten (10) days following Merchant’s receipt of written notice of such breach from Bank.

6 TransArmor℠ Limited Warranty. Bank warrants that the Token returned to Merchant, as a result of using the TransArmor℠ Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Bank is referred to herein as the “Limited Warranty” and is subject to the Terms and Conditions set forth in this Addendum. To be eligible for the Limited Warranty, Merchant must maintain a processing relationship with Bank and be in compliance with all the terms of the Agreement, including this Addendum, and any other agreement relating to Cards eligible for the
TransArmor℠ Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Bank agrees to indemnify and hold Merchant harmless from direct damages, including third party claims, resulting from Bank’s breach of the Limited Warranty provided however, that Bank’s liability to Merchant is limited as set forth in Section 14 of the Merchant Services Terms and Conditions with respect to a Transaction for the Limited Warranty. The express remedy for Bank’s breach of the Limited Warranty set forth in this paragraph constitutes Bank’s entire liability and Merchant’s sole and exclusive remedy for Bank’s breach of the Limited Warranty. The Limited Warranty is void if (i) Merchant uses the TransArmor℠ Service in a manner not contemplated by, or in violation of, the Agreement, including this Section 23, or any other agreement relating to Cards eligible for the TransArmor℠ Service or (ii) Merchant is negligent or engages in intentional misconduct.

7 TransArmor℠ Disclaimer. IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE TRANSARMOR℠ SERVICE:

EXCEPT AS EXPRESSLY PROVIDED IN THIS Section 23, M&T AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE TRANSARMOR℠ SERVICE INCLUDING NONINFRINGEMENT OR THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE TRANSARMOR SERVICE.

8 Third Party Beneficiary. Bank has been granted the right by First Data to sublicense the TransArmor℠ Service and the TransArmor℠ Service Marks to Merchant. As such, First Data is a third-party beneficiary of this Section 23 with the right to receive all benefits that Bank receives under this Section 23 and the right to initiate enforcement of the terms of this Section 23 including applicable terms of the Merchant Agreement against Merchant at First Data’s sole discretion. “First Data” means First Data Resources, LLC (or FDR) (including its successors or assigns).

24. EUROPAY, MASTERCARD, VISA (“EMV”)

Effective as of October 1, 2015, merchants may be liable for card-present fraud if they are presented with a chip card and cannot read the chip data based on their point-of-sale technology. Although not a mandatory initiative, merchants are urged to consider upgrading their terminals or software to solutions that can support chip technology to avoid receiving chargebacks with no rebuttal rights. M&T Bank is not liable for merchants failure to upgrade devices.

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