



**FIRSTACH MERCHANT AGREEMENT
TERMS AND CONDITIONS**

This Merchant Agreement and Merchant Application are entered into this _____ day of _____, _____ by and between _____ (the "**Merchant**") and **MPK, INC. DBA FirstACH** with offices at 9693 Gerwig Lane, Suite A, Columbia, MD 21046 (the "**Processor**").

WITNESSETH:

WHEREAS, Merchant is a _____ authorized to do business in the State of _____ and with offices located at _____; and

WHEREAS, the Automated Clearing House ("**ACH**") network is a nationwide electronic funds transfer system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions; and

WHEREAS, Merchant has requested Processor to permit it to initiate or arrange for the initiation of electronic debit and/or credit entries to be processed by and through Processor via the ACH; and

WHEREAS, Processor is willing to accommodate Merchant by processing for ultimate delivery to participant banks and financial institutions the electronic entries by means of its ACH originating banks, and/or the National Automated Clearing House Association ("**NACHA**") to the accounts of Merchant's customers (the "**Customers**"), at such participant financial institution; and

WHEREAS, Processor is willing to process and transmit Merchant's electronic debit and/or credit entries subject to the following terms and conditions:

NOW, THEREFORE, in consideration of the mutual premises contained herein, Merchant and Processor agree as follow:

1. GENERAL. Submission of a transaction for processing by Merchant to Processor shall be considered acceptance of all the provisions of this agreement. Merchant acknowledges that it is primarily liable to Processor for any credit entries originated and for any debit entries returned.
2. PROCEDURES.
 - (a) Merchant shall prepare and submit all electronic entries to Processor in accordance with the terms, conditions and specifications set forth on Processor's website at www.firstach.com.
 - (b) Processor may transmit the electronic credit and/or debit by electronic communication or by such means Processor, in its sole discretion, deems appropriate to convey Merchant entries. Each entry or file shall be delivered to Processor not later than 24 hours prior to the daily ACH receiving deadline. Processor shall not be liable for interruption of communication facilities, errors in transmission, suspension in payments by another financial institution, war, emergency conditions, or any other causes beyond the reasonable control of Processor.
 - (c) All banking information transmitted via an unsecured electronic network must be either encrypted using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology, or transmitted via a secure session utilizing a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128-bit RC4 encryption technology.
 - (d) Merchant shall be responsible for the correctness, both as to content and form, of all information submitted to Processor. If any information is not readable, out of balance, or unprocessable, it shall be Merchant's sole responsibility to correct and resubmit the information to Processor.
 - (e) Merchant shall not initiate an electronic credit and/or debit entry with respect to any Customer until Merchant has obtained a signed written agreement from the Customer, in a form reasonably acceptable to Processor, with a copy

thereof given to the Customer, authorizing Merchant to make prearranged debits from the Customer's account (the "**Authorization**"). Merchant shall retain the original or a copy of the Authorization received by Merchant as prescribed in the Rules and, upon Processor's request, shall promptly furnish to Processor an original or a copy of such Authorization. Should Merchant wish to change the amount or date of billing of an electronic debit entry in respect of any Customer, it shall first obtain a new Authorization.

- (f) Processor shall transmit and process the electronic entries initiated by Merchant in accordance with the rules of NACHA as are currently in effect and as amended from time to time (the "**Rules**") which are found at www.fms.treas.gov/ach. Merchant agrees to comply with the Rules in addition to the provisions contained in this Agreement. Merchant agrees to assume the responsibilities of an "Originator" under the Rules. Merchant is responsible for maintaining a current version of the Rules and for being aware of all updates and changes to the Rules. In the event that the operation rules of a local or regional automated clearing house, or the arrangements between Processor and a correspondent bank, are more restrictive than, or are at variance with, the Rules, Merchant shall comply with such rules. Merchant acknowledges that entries that violate the laws of the United States may not be initiated.
 - (g) Merchant shall maintain a demand deposit account (the "**Merchant's Deposit Account**") with a bank to which Processor shall credit amounts received in collection of electronic debit entries. All such credits are provisional and Processor may charge the Merchant's Deposit Account, as well as any other account of Merchant for the amount of a returned or rejected electronic debit entry. Merchant authorizes Processor to debit the Merchant's Deposit Account on the day the returned or rejected electronic debit entry is received by Processor or thereafter. Merchant shall maintain a sufficient balance in the Merchant's Deposit Account to cover returned or rejected electronic debit entries. Merchant shall pay to Processor the amount of any returned or rejected electronic debit entry which for any reason cannot, in part or in whole, be debited against the Merchant's Deposit Account. Processor may require Merchant to maintain a separate account with a balance sufficient to cover returned or rejected electronic entries as further described in Section 12 of this Agreement. Processor is not obligated to process any electronic credit entry unless the Merchant's Deposit Account contains a balance in collected funds sufficient to pay all electronic credit entries submitted by Merchant. If Processor should elect to process any electronic credit entry for which it has not received final settlement, the amount of such entry, at the option of Processor, shall therefore become immediately due and payable by Merchant to Processor, and Processor shall have the right to charge the amount thereof to the Merchant's Deposit Account or claim a refund from Merchant.
 - (h) Merchant understands that Processor shall be relying upon Merchant's compliance with this Agreement in order that Processor may comply with federal and state laws and regulations in respect of electronic funds transfers.
3. **PAYMENT AND FEES.** Merchant shall compensate and agrees to pay Processor for providing the services indicated herein in accordance with the ACH Merchant Application. These fees may be changed from time to time by Processor upon written notice to Merchant. Merchant authorizes Processor to debit the Merchant's Deposit Account, as well as any other account of Merchant for any such charges or fees.
 4. **REGULATORY FINES OR PENALTIES.** The Merchant shall compensate and agrees to pay Processor for any regulatory fines or penalties imposed by NACHA or any other regulatory body resulting from violation of Rules by the Merchant. The Merchant shall compensate and agrees to pay the Processor a risk investigative fee in the amount of 10% of the batch under investigation if the batch is held for investigation due to suspicious activity or exceeding the volume and average ticket data provided by the Merchant. Merchant authorizes Processor to debit the Merchant's Deposit Account, as well as any other account of Merchant for any such charges or fees.
 5. **FINANCIAL INFORMATION.** Merchant agrees to furnish Processor with such financial statements and information concerning Merchant, its owners, principals, partners, proprietors or affiliates as Processor may from time to time request.
 6. **NOTIFICATION BY MERCHANT; CHANGE IN BUSINESS.** Merchant agrees to provide prompt written notice to Processor in the event Merchant is subject to any of the following: a) a restraining order, decree, injunction, or judgment in any proceeding or lawsuit alleging fraud or deceptive practice on the part of Merchant; b) bankruptcy filing or petition; c) federal or state tax lien; d) filing of or the threat of filing of litigation against Merchant which could have a material effect on the operations of Merchant; e) any administrative or enforcement proceeding commenced by any State or Federal regulatory agency, including any banking or securities agency. Merchant agrees to provide Processor 60 days prior written notice of its intent to transfer or sell 10% or more of its total stock or assets and/or to liquidate or change the basic nature or its business or products.
 7. **SUCCESSORS AND ASSIGNS; TRANSFERABILITY.** This Agreement shall inure to the benefit of and be binding upon Merchant, Processor, and their respective successors and assigns. This Agreement is not transferable by Merchant without written consent of Processor. Any attempt by Merchant to assign its rights or delegate its obligations shall be void without the prior written consent of Processor.

8. WARRANTIES AND REPRESENTATIONS.

(a) Merchant represents and warrants to Processor that, in cases of electronic entries:

- (i) Each electronic entry initiated by Merchant is for a sum due and owing Merchant directly or as an authorized agent;
- (ii) Each electronic entry initiated by Merchant is in accordance with a valid Authorization held by Merchant which the Merchant can produce upon request, and Merchant has complied with the Rules with respect to same, including retention of the original or a copy of each Authorization;
- (iii) PPD and CCD authorization is in the form of a written document detailing the parameters of the transaction and signed by the account holder;
- (iv) ARC authorization is in the form of a signed original check; RCK authorization is in the form of a signed original check returned for insufficient or uncollected funds;
- (v) TEL is in the form of a recorded voice authorization detailing the parameters of the transaction,;
- (vi) WEB transactions require the Merchant to make commercially reasonable efforts to validate the identity of the customer initiating the transaction, have a record of a valid authorization from the customer for the transaction submitted, and have a fraudulent transaction detection system in place to screen each transaction submitted.
- (vii) Merchant is solely responsible for and is complying with the laws and regulations governing the initiation of preauthorized electronic debits, including but not limited to the Electronic Fund Transfer Act of 1978 and Federal Reserve Regulation E, in particular sections 205.10 (b) and (d), as currently in effect and as the same may be amended from time to time; and
- (viii) At the time an electronic entry is processed by Processor and any receiving banks, the relevant Authorization shall not have been terminated; provided, however, that this warranty shall not apply if, at the time of processing the electronic entry, the receiving bank has actual knowledge of a termination of the Authorization.

(b) Processor is relying upon Merchant's representations, including those set forth in the ACH Merchant Application, with respect to average transaction size, monthly volume, product type, and transaction types in pricing the service and approving this Agreement. Any material differences between the representations on the application and the transactions submitted may result in funds being held in the Reserve Account (as defined in Section 12) and fees being increased and/or the termination of this Agreement.

9. INDEMNITY. Merchant hereby agrees to indemnify and hold harmless Processor against and in respect of any claim, demand, proceedings, losses, liabilities, fines, expenses (including attorney's fees and costs), and damages, including consequential, special, and punitive damages, arising from Merchant's failure to comply with: (a) this Agreement (including any breach of its representations or warranties hereunder); (b) the Rules (including but not limited to any failure by Merchant to perform its obligations as Originator); and (c) any other agreement(s) between Merchant and Customer.

10. LIMITATION OF LIABILITY. The obligations and responsibilities of Processor shall be limited to those specified in this Agreement or amendments hereof. Processor shall not be obligated or responsible with respect to any act or failure to act by a correspondent bank, NACHA, a regional or local automated clearing house, or any other third party. IN NO EVENT SHALL PROCESSOR BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF PROCESSOR IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. TERM AND TERMINATION. This Agreement shall remain in full force and effect for an initial term of one (1) year and shall be automatically extended for successive one (1) year periods on the terms and conditions expressed herein, or as may be amended, unless Merchant gives written notice of termination at least 60 days prior to the expiration of the initial term or any extension or renewals thereof. Notwithstanding anything to the contrary set forth herein, if Merchant terminates this Agreement in breach of this section, all monthly fees assessed to Merchant under this Agreement for the remainder of the then existing term of the Agreement, including a minimum monthly fee commitments, shall be immediately due and payable to Processor, and Merchant hereby authorizes Processor to accelerate the payment of all such monthly fees and to deduct the total amount from the Merchant's Deposit Account or, if sufficient funds are not available in the Merchant's Deposit Account, the Reserve Account, or to otherwise withhold the total amount from amounts due to Merchant from Processor immediately on or after the effective date of termination. If the Merchant's Deposit Account or the Reserve Account does not contain sufficient funds for the debit or the amount cannot be withheld from amounts due Merchant, Merchant shall pay Processor the amount due within ten (10) days of the date of Processor's invoice for the same. The payment of accelerated monthly fees described here is not a penalty, but is rather hereby agreed by the parties to be a reasonable amount of liquidated damages to compensate Processor for its termination expenses and all other

damages under the circumstances in which such amounts would be payable. Such amounts shall not be in lieu of but in addition to any payment obligations for services already provided hereunder, which shall be an additional cost, and any and all damages to which Processor may be entitled hereunder. Termination of this agreement shall not affect Merchant's obligations which have accrued prior to termination or that relate to any electronic entry submitted prior to termination. Notwithstanding the foregoing, in the event of a breach by Merchant of this Agreement, Merchant's insolvency, receivership, or voluntary or involuntary bankruptcy, the institution of proceedings therefore, any assignment for the benefit of Merchant's creditors, charge backs of transactions as unauthorized exceed 1% of the number of transactions submitted, or if in the opinion of Processor Merchant's financial condition has become impaired, then Processor, at its option, may terminate this Agreement immediately without notice.

12. RETURNED ITEMS AND CHARGEBACKS. If a Customer or Merchant disputes any electronic entry, if an electronic entry is returned for any reason by the receiving financial institution, or if Processor has any reason to believe an electronic entry is questionable, not genuine, or otherwise unacceptable, the amount of such electronic entries may be deducted from any payment due Merchant or may be charged against the Merchant's Deposit Account or the Reserve Account. If any such amount is uncollectible through withholding from payments due or through charging the Merchant's Deposit Account or the Reserve Account, Merchant shall upon demand by Processor pay Processor the full amount of the electronic entries.
13. RESERVE ACCOUNT. Merchant agrees that Processor may at its option, establish a reserve account (the "**Reserve Account**") to secure the performance of Merchant's obligations under this Agreement. The Reserve Account may be funded through any or all of the following: a) deposit of immediately available funds by Merchant promptly upon reasonable request of Processor; b) transfer of funds by Processor into the Reserve Account withdrawn from any of the accounts maintained by Merchant or Merchant's guarantor, if any, with any designated depository or other financial institution (the "**Financial Institutions**"); or c) proceeds of electronic entries. Merchant authorizes Processor to make such withdrawals at such times and in such amounts, as it may deem necessary hereunder. Merchant and Merchant's guarantor hereby instruct the Financial Institutions to honor any such requests made by Processor under this provision. Merchant and Merchant's guarantor shall hold harmless the Financial Institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Processor. Processor may deduct from the Reserve Account any amount owed to Processor pursuant to this Agreement. Upon the later of (i) the expiration of any potentially applicable chargeback rights in respect of any transaction processed under the rules and regulations of NACHA (ii) the period necessary to secure the performance of Merchant's obligations under this Agreement, Processor shall attempt to return an amount equal to the remaining funds in the Reserve Account, if any, to Merchant. To the extent Processor is unable to remit an amount equal to such remaining funds to the account identified in the Agreement and Merchant makes no claim in writing to Processor with respect to its right to receive payment of such remaining funds, then, one (1) year following termination of this Agreement, Merchant shall be deemed to have waived all of its right to receive payment of such remaining funds and Processor shall be entitled to retain an amount equal to such remaining funds as additional consideration for the Services. Merchant shall not receive any interest for funds held in Reserve Account.
14. DEFAULT/SECURITY INTEREST. Upon failure by Merchant to meet any of its obligations under this Agreement, any of the accounts referred to in the Agreement or any other accounts belonging to Merchant or Merchant's guarantor held by any designated depository (or by any other financial institution) may be debited without notice to Merchant, and Merchant and Merchant's guarantor gives Processor a security interest in all such accounts for these purposes. Merchant's and Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from Processor, and Merchant's agreement to hold such institutions harmless and to indemnify them are described in Section 12. Merchant also agrees that, in the event of a default by Merchant, Processor has a right of setoff and may apply any of Merchant's balances or any other monies due Merchant from Processor towards the payment of amounts due from Merchant under the terms of this Agreement. The rights stated herein are in addition to any other rights Processor may have under applicable law.
15. CHOICE OF LAW/ATTORNEY'S FEES/VENUE. Should it be necessary for Processor to defend or enforce any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Processor for all costs and expenses, including reasonable attorney's fees, as a result of such collection or legal action. MERCHANT WAIVES TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT. All disputes and controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of or relating to this Agreement, the relationships which result from this Agreement, the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement shall be governed by the laws of the State of Maryland notwithstanding any conflicts of laws rules, and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of other parties. All actions arising out of or relating to this Agreement shall be brought in the courts of the State of Maryland sitting in Howard County, which courts shall have exclusive jurisdiction.
16. AMENDMENTS. This Agreement may be amended only in writing signed by Processor and Merchant, except that (a) the fees, charges, and/or discounts may be changed at Processor's discretion, and (b) Processor may mail Merchant either a notice describing amendments to this Agreement or an entirely new agreement, which amendments or new agreement shall be binding upon Merchant if it submits electronic entries after the effective date of such amendment or new agreement set forth in Processor's notice.
17. WAIVER. No provision of this Agreement shall be deemed waived by any party unless such waiver is in writing and signed by the party against whom enforcement is sought. No failure to exercise, and no delay in exercising on the part of any party hereto, any

right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of any other right, power, or privilege.

18. CREDIT HISTORY; EXCHANGE OF INFORMATION. Merchant authorizes Processor to order a credit report on Merchant or any owner, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant. Merchant hereby authorizes Processor or any depository institution to release any financial information concerning Merchant or its accounts to Processor. Subsequent credit reports may be ordered in connection with updating, renewing or continuing this Agreement. Upon the written request of any individual who is the subject of a consumer credit report, Processor shall provide the name and address of the consumer credit reporting agency furnishing such report, if any. Processor may exchange information about Merchant, Merchant's owners, principals, partners, proprietors, officers, shareholders, managing agents and guarantors with other financial institutions, network organizations and any other relevant party. Merchant hereby authorizes Processor to disclose information concerning Merchant's activity to any network organizations, or any of their Processor financial institutions, or any other party without any liability whatsoever to Merchant.
19. PRESS RELEASE. Upon execution of this Agreement, Processor shall have the right to publish a press release announcing the business relationship between Processor and Merchant formed by this Agreement; provided, however, that Merchant shall be given the opportunity to review the language of such press release prior to its publication, and Processor shall honor all requests by Merchant to amend such language that Processor, in its sole discretion, deems reasonable.
20. SEVERABILITY; HEADINGS. If any provision of this Agreement or portion thereof is held to be unenforceable, such a determination shall not affect the remainder of this Agreement. Paragraph headings are included for convenience only and are not used in interpreting this Agreement.
21. NOTICES. All notices required by this Agreement shall be in writing and shall be sent by facsimile, overnight carrier, or regular or certified mail. All notices sent to Processor shall be effective upon actual receipt by the Corporate Secretary of First Ach, 9693A Gerwig Lane, Columbia, Maryland 21046. Any notices sent to Merchant shall be effective upon sending such notice to the address provided by Merchant in the ACH Merchant Application or to any other e-mail or physical address to which notices, statements, and/or other communications are sent to Merchant hereunder. The parties hereto may change the name and address of the person to whom notices or other documents required under this Agreement must be sent at any time by giving written notice to the other party.
22. MERGER. This Agreement, including the ACH Merchant Application, constitutes the entire agreement between Merchant and Processor and supersedes all prior memoranda or agreements relating thereto, whether oral or in writing.
23. EFFECTIVE DATE. This Agreement shall become effective only upon the earlier of execution by Merchant or submission of an electronic entry by Merchant.
24. DESIGNATION OF DEPOSITORY. The financial institution set forth in ACH Merchant Application is designated by merchant as a depository institution ("**Depository**") for funds from electronic entries. Such financial institution must be a processor of an Automated Clearing House Association. Merchant authorizes payment for indebtedness purchased hereunder to be made by paying Depository therefore with instructions to credit Merchant's accounts. Depository and Processor may charge any of Merchant's accounts at Depository for any amount due under this Agreement. Processor must approve in writing any proposed changes to the account numbers or to the Depository.
25. FINANCIAL ACCOMODATION. The acquisition and processing of sales slips hereunder is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced, and Processor shall be excused from performance hereunder.

For Merchant:

Signed

Name (Printed)

Title

Date

For FirstACH:

Signed

Name (Printed)

Title

Date