

Statement of Work

Village of Oak Park, IL
July 25th, 2024



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Project Overview

Passport will provide Village of Oak Park, IL (“Client”) with Pay Station Payment Processing to provide the Client a fully integrated payment processing solution supporting all major card networks, various payment methods, and reconciled settlements into the Client’s bank accounts.

Passport will perform architecture, design, implementation, and information transfer services for the project.

Statement of Work

Configurations

Payment Merchant Solutions

Passport will provide Payment Merchant Solutions (“PMS”) for the Client’s Flowbird (Cale) pay stations, eliminating the need for an external provider. The Client will act as the Merchant of Record for transaction processing. All transactions will be processed via Passport’s Merchant

Processing services. Passport will enable the following card types to be used by all integrated applications.

- Visa
- Mastercard
- Discover
- American Express

The Client will be responsible for paying all merchant processing fees, as outlined in the Order Form.

Passport Payments

Passport Payments is an extension of Passport's Operating System and contains the following components:

Settlement

Settlement is the process of moving funds from the end user's card issuing bank account to the merchant's account. Settlement of transactions through the Flowbird (Cale) pay stations takes 2-3 business days to complete. Flowbird (Cale) will be responsible for submitting batch files to complete settlement for transactions through the Flowbird (Cale) pay stations.

Passport provides net settlement, which means Passport will calculate the total credit and debit card proceeds less Passport merchant processing fees, refunds and any adjustments, such as chargebacks. When possible, Passport will net out transaction fees from the settlement as well so that The Client does not need to receive a separate invoice for those fees. If refunds, adjustments and applicable fees result in a negative settlement amount for the batch period, Passport will initiate a debit to the client's bank account.

Remittance

Funds will be remitted to The Client, less the gateway, merchant processing, and transaction fees, on a monthly basis.

Reporting & Reconciliation

At launch, settlement reporting will be emailed to the Client.

Once available, Passport's powerful back-office system will merge source settlement data pulled in from the Passport payment platform with session activity from the mobility platform. The output will be a robust set of Financial and Management reports that streamlines reconciliation,

revenue recognition, and dispute management activities. Back-office reporting capabilities will include:

- Settlement Period Summary
- Transaction Reporting by Settlement Schedule
- Dispute Reporting

Dispute Management

Disputes are initiated by the cardholder or financial institution with a card network. They occur when a cardholder or financial institution disputes a purchase made on their card or when proper acceptance and authorization were not obtained. Once the dispute is accepted by the card network, it becomes a chargeback.

The Client can access reporting on chargebacks as they are received from the card networks in the back-office and will be notified of new chargebacks via email to specified accounts. The Client may choose to respond to chargebacks with compelling evidence to try to get the chargeback reversed.

The Client understands that arbitration of chargebacks will be the responsibility of The Client.

Third Party Responsibilities

TPS will be responsible for the configuration of the Flowbird (Cale) pay stations with the new merchant processing credentials, provided by Passport. Passport will be available to support both The Client and TPS during the implementation and testing process. Post launch, TPS will also be responsible for ensuring Flowbird's daily submission of payment batches to the processing platform.

Assumptions & Notes

While performing these services, Passport will rely upon the concerted engagement, direction, authorization, approvals or other information provided by the Client's primary stakeholder and technical teams.

The Client's Project Manager and respective team will be responsible for contributing to and reviewing Weekly Status Reports and reporting Project issues.

Additional Client responsibilities include:

- Providing operational information in a timely manner.
- Providing a list of stakeholders for preliminary implementation
- Making a good faith effort to facilitate the continued progress of the implementation.
- Perform user acceptance testing to confirm the accuracy of configured attributes in the system
- Provide written approval on each aspect of the system

Deliverables or activities not specifically identified as in scope throughout this document are by definition out of scope, unless accompanied by an approved Scope Change Order.

Project Change Control

Changes may be required to manage unanticipated or new information that may arise during the course of the implementation and delivery of this solution that impacts an existing (or creates a new) deliverable, restriction, milestone, or dependency. This Project Change Control process is meant to enforce a process to ensure changes are tracked and approved appropriately throughout the project.

Process

- A Passport representative will complete a Scoping Change Order form describing the exchange to be evaluated.
- Passport will perform an impact assessment (cost, schedule, risk, etc) and provide a recommendation for how to achieve the Client's objectives in the context of the latest information.
- The Client will decide whether or not to proceed with Passport's recommendation or to suggest an alternative approach.
- If the Change Request is approved by the Client and returned back upon full execution, then the Change Request document will be incorporated as part of the Statement of Work.

Timeline Effects

- Upon approval by all parties, the impact assessment associated with such a change request shall augment any prior commitments or estimates of timeline and pricing in this

Statement of Work, which shall no longer apply. Passport will use commercially reasonable efforts to maintain the timeline and cost associated with this Statement of Work, augmented by any and all Change Request(s) approved by all parties.

Acceptance

Please indicate your acceptance of this Statement of Work by signing below. Both Parties must approve any changes to this Statement of Work in writing. These changes may result in additional costs.

Client

Authorized Name: _____
Title: _____
Signature: _____
Date: _____

Passport Labs, Inc.

128 S. Tryon St. Suite 2200 Charlotte, NC 28202

Authorized Name: _____
Title: _____
Signature: _____
Date: _____



AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT AND SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Amendment to the Professional Services Agreement and Software License and Support Agreement (“**Amendment**”) is made as of the date of last signature herein (“**Amendment Effective Date**”) by and between the Village of Oak Park (“**Village**”) and Passport Labs, Inc. f/k/a PassportParking, Inc. (“**Contractor**”), and amends that Professional Services Agreement and Software License and Support Agreement between the parties dated September 6, 2018 (the “**Agreement**”). All capitalized terms not otherwise defined in this Amendment will have the meanings assigned to them in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree to modify the Agreement as follows:

- 1. Exhibit C (“Cost Elements and Pricing”) of the Agreement is amended by adding the following to the section titled “CITATION AND PERMIT SERVICES”:

Merchant Processing Rate Per Card Present Transaction	2.5% + \$0.30 per transaction
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- 2. A new exhibit titled (“Provider Agreement Addendum”) attached to this Amendment shall be added to the Agreement as Exhibit E.
- 3. Except as expressly amended herein, the remainder of the Agreement remains in full force and effect.

Passport Labs, Inc.

Village of Oak Park, IL

By:

By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:



EXHIBIT E
PROVIDER AGREEMENT ADDENDUM

This Provider Agreement Addendum (the “Addendum”), is an addendum to, and supplements, the Agreement. This Addendum sets forth the terms and conditions by which Provider shall participate in, and Passport shall facilitate Provider’s participation in, the programs affiliated with Mastercard, VISA, Discover, American Express, and Other Networks, which enable holders of Cards to purchase goods and services from Provider through the use of such Cards. Capitalized terms not defined in this Addendum, including Exhibit A attached hereto, shall have the meaning assigned to them in the Agreement.

1. Operating Regulations. Provider agrees to comply, and to cause third parties acting as Provider’s agent (“Agents”) to comply, with the Card Network’s and other payment network’s by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the PCI-DSS, the VISA Cardholder Information Security Program, the Mastercard Site Data Protection Program, the American Express Data Security Requirements (DSR), and any other program or requirement that may be published and/or mandated by the Card Networks or payment networks (collectively “Operating Regulations”). Provider also agrees to comply with all applicable state, federal, and local laws, rules, and regulations (“Laws”). Without limiting the foregoing, Provider agrees that it will fully comply with any and all confidentiality and data security requirements of the USA PATRIOT Act (or similar Law) and anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury’s Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, the Provider Suppliers of Provider.

2. Application; Change in Business. Provider represents that all information supplied by Provider in connection with its application or other request for services is complete and accurate. Provider authorizes Passport and its agents and representatives to conduct due diligence on Provider and its Agents, including without limitation, a credit check, background investigation, reference checks, OFAC searches, Know Your Customer compliance check and any additional investigation necessary to comply with applicable Laws and Operating Regulations. Provider agrees to cooperate with Passport and provide requested information to complete the due diligence inquiry. In accordance with Section 326 of the USA PATRIOT Act, Passport is required to review and record information from the documents used in identifying new merchant customers, including Provider’s information. The preceding sentence is

intended to inform Provider of Passport’s procedures and of Passport’s responsibility under the USA PATRIOT Act.

3. Card Acceptance. Provider must accept all Cards and complete all Card transactions in accordance with the Operating Regulations. Provider has identified to Passport the products and/or services for which it intends to accept Cards as payment. For all payments processed through a Passport platform, Passport assumes responsibility to accept all Cards and complete all Card transactions in accordance with the Operating Regulations. Should the Provider use the Merchant Account provisioned under this Addendum to process card transactions using a vendor not provisioned by Passport, the Provider assumes responsibility to accept all Cards and complete all Card transactions in accordance with Operating Regulations. Provider also agrees that it shall only complete and deliver to Passport sales transactions produced as the direct result of bona fide sales made by Provider to Cardholders for such identified products and/or services, and that it is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Provider, or for any purposes related to any illegal or prohibited activity, including but not limited to pornography, money laundering, or the financing of terrorist activities.

4. Provider Prohibitions. Provider shall not i) require a Cardholder to complete a postcard or similar device that includes the Cardholder’s account number, card expiration date, signature, or any other Card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that Provider impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Provider, v) disburse funds in the form of cash unless Provider is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Provider), or Provider is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back and subsequently returned to Provider, irrespective of cardholder approval, vii) accept a Visa consumer credit Card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a Card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check.

5. Transaction Processing. Upon receipt of Provider’s sales data for Card transactions, Passport will process

Provider's sales data to facilitate the funds transfer between the various Card Networks and Provider. Passport will initiate payment to an account designated by Provider, on a periodic basis as agreed to by Provider and Passport, of the total face amount of each sales transaction acquired and accepted hereunder, less all applicable payment processing fees, Passport Product or Services fees, and applicable Card Network fees, dues, and assessments (including interchange fees), subject to the terms and conditions of this Addendum, the Operating Regulations, and applicable law, after Passport receives payment for such sales transactions. Passport may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Provider pursuant to this Addendum, if it had acquired the sales transaction or claim. Provider acknowledges and agrees that Passport is not responsible for any action or inaction taken by the financial institution or other entity that issued the Card(s) to the Cardholders or the processor of such Card(s), provided that Passport was acting in compliance with Operating Regulations for the transactions Passport facilitated through its platforms. Provider agrees that Passport may set off any amounts due under this Addendum from amounts owed to Provider. In addition, Passport is hereby authorized by Provider, to charge, or to permit third parties to charge, amounts due under this Addendum by making an ACH debit to Provider's account.

6. Exception Items. Provider agrees to reacquire and pay Passport the amount of any sales transaction, and Passport shall have the right at any time to charge Provider's account therefore with notice via Passport's Service Delivery Process, for any return, chargeback, compliance case, any other Card Network action, or if the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local or otherwise; or if Passport has not received payment for any sales transaction, notwithstanding Passport's prior payment to Provider for such sales transaction. Provider may instruct Passport in the defense of chargebacks, compliance cases and similar actions, and Provider agrees that it will promptly provide any such instructions to Passport. When Passport has determined it has all necessary information and instructions, Provider hereby authorizes Passport to resolve chargebacks and respond to retrieval requests and other inquiries without further consulting Provider.

7. Provider Suppliers. Provider shall not use a Provider Supplier in connection with the Services or the processing of any Card transactions through the Merchant Account provisioned under this agreement, unless such Provider Supplier has been approved in advance by Passport.

8. Cardholder Information. Provider shall not disclose, sell, purchase, provide, or exchange Cardholder name, address, account number or other information to any

third party other than to Passport or a Card Network for the purpose of completing a sales transaction unless specifically permitted by the Operating Regulations. Provider represents and warrants that neither it nor its Provider Suppliers shall retain or store any Cardholder Sensitive Authentication Data or Cardholder Data (as such terms are defined under PCI-DSS) subsequent to the authorization of a sales transaction, nor any other data prohibited to be retained or stored by the Operating Regulations and/or this Agreement.

9. **Intentionally Omitted.**

10. Fees. Provider agrees to pay Passport the fees, expenses and all other amounts set forth in the Addendum or in the Provider Price Schedule, which is provided by Passport to Provider from time to time during the term. Passport may change or add fees and/or charges upon notice to Provider via Passport's Service Delivery Process, and such fees and/or charges shall be immediately payable by Provider when assessed by Passport. Should additional fees or charges be deemed commercially unreasonable, Provider has the option to terminate this Agreement within fifteen (15) days or notice of change in fees by providing written notice to Passport.

11. Card Network Assessments. Notwithstanding any other provision of this Agreement, Provider shall be responsible for all amounts imposed or assessed to Provider in connection with this Agreement by Passport, Member Bank and Card Networks. Such amounts include, but are not limited to, fees, fines, assessments, penalties, loss allocations, etc in connection with this Agreement. Amounts shall automatically become effective upon notice to Provider via Passport's Service Delivery Process and shall be immediately payable by Provider when assessed by Passport.

12. No Exclusivity. Passport reserves the right to enter into other agreements pertaining to the Services with others, including without limitation other merchants.

13. Default. The following events shall be considered an "Event of Default":

(i) Provider becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Provider, or Provider makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or

(ii) Provider fails to pay or reimburse the fees, expenses or charges referenced herein when they become due; or

(iii) Provider is in default of any terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; or

(iv) Passport reasonably believes that there has been a material deterioration in Provider's financial condition; or

(v) A Card Network or the Acquirer has indicated its desire for Passport to terminate this Addendum with Provider, or is otherwise refusing to process Provider's sales transactions; or

(vi) Provider ceases to do business as a going concern, or there is a change in ownership of Provider which changes the identity of any person or entity having, directly or indirectly, more than 30% of either the legal or beneficial ownership of Provider; or

(vii) Provider transactions result in chargebacks in excess of 0.5% of total transactions processed within any consecutive three-month window for transactions initiated outside of a Passport application.

Upon the occurrence of an Event of Default, Passport may at any time thereafter terminate this Agreement by giving Provider written notice thereof. However, except in instances where immediate termination is required by any Card Network, or if Passport reasonably believes that the Event of Default poses material risk to it or involves a violation of applicable law, Provider will have 30 days following Passport's notice to cure an Event of Default under Section (ii), (iii), or (iv) prior to termination under this section. Termination of Provider for any reason shall not relieve Provider from any liability or obligation to Passport, and Provider shall immediately secure an independent processor to provide payment processing services at its sole cost and expense. In addition, Provider shall reimburse Passport for any damage, loss or expense incurred by Passport as a result of a breach by Provider, including any damages set forth in any addendum and/or schedule and/or exhibit hereto and including all past due, unpaid and/or future invoices for services rendered by Passport in connection with this Agreement. All such amounts shall be due and payable by Provider upon demand. Passport shall also have the option to require Provider to reacquire all outstanding sales transactions acquired by Passport hereunder. In addition to, and not in limitation of the foregoing, Passport may refuse to provide the Services in the event it has not been paid for the Services as provided herein.

14. Intentionally Omitted.

15. Taxes. Any applicable sales, use, excise or other taxes (other than Passport's income taxes) payable in connection with or attributable to the Services provided to the Provider per this Agreement shall be paid by Provider.

Passport may, but shall not have the obligation to, pay such taxes. In the event Passport pays such taxes, Provider shall immediately reimburse Passport or Passport may, at Passport's sole option, charge Provider's Account.

16. Payment. Provider shall always maintain an open Account. Provider irrevocably authorizes Passport to debit and/or credit the Account to settle any and all fees and other amounts due Passport under this Agreement, and such authority shall remain in effect for a period of one (1) calendar year following the date of termination of this Agreement, regardless of whether Provider has notified Passport of an Account Change as defined below. Provider shall have thirty (30) days from the date of the transaction to dispute any amount credited/debited by Passport. The Parties will work together in good faith to resolve such dispute. Provider shall always maintain the Account with sufficient cleared funds to meet its obligations under this Agreement. In the event Provider desires an Account Change, Provider shall give Passport 30 days prior written notice, and Passport shall use reasonable commercial efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Passport actually makes such Account Change on Passport's system. In no event shall Passport have any liability for any amounts directed to an Account that has been designated by any purported representative of Provider or its Provider Supplier at any time during the term of this Agreement, regardless of any Account Change. All amounts due Passport under this Agreement shall be paid without set-off or deduction, and shall be due from Provider as of the date Passport originates an ACH debit transaction record to Provider's Account. Any fees not collected from Provider by Passport when due shall bear interest at one (1) percentage point per month but in no event more than the highest rate permitted by law. The acceptance by Passport, Passport's affiliate or other financial institution of Provider's closing (or termination of) its Account shall not constitute a mutually agreed upon termination of this Agreement. Without limiting the generality of any other provision of this Agreement, Passport is hereby authorized by Provider to charge amounts due under this Agreement i) against each day's sales transactions ii) against any reserve; or iii) by making an ACH debit to Provider's Account.

17. Intentionally Omitted.

18. Indemnification.

A. Subject to the other limitations, terms and conditions of this Agreement, Passport shall indemnify, defend, and hold harmless Provider, and its directors, officers, employees, affiliates and agents from and against all third party proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Provider,

its directors, officers, employees, affiliates and agents to the extent resulting from or arising out of Passport's gross negligence, or willful misconduct.

B. Except to the extent caused by Passport's gross negligence or willful misconduct, Provider shall indemnify, defend, and hold harmless Passport, and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Passport, its directors, officers, employees, affiliates and agents resulting from or arising out of the Services in this Agreement, Provider's processing activities, the business of Provider or its customers, any sales transaction acquired by Passport, any noncompliance with the Operating Regulations (or any rules or regulations promulgated by or in conjunction with the Card Networks) by Provider or its agent (including any Provider Supplier), any Data Incident, any infiltration, hack, breach, or violation of the processing system of Provider, its Provider Supplier, or any other third party processor or system, or by reason of any breach or nonperformance of any provision of this Agreement on the part of the Provider, or its employees, agents, Provider Suppliers, or customers.

C. The indemnification of each party shall survive the termination of the Agreement. The indemnified party shall (i) provide prompt written notice of any claim to the indemnifying party; (ii) cooperate with all reasonable requests of the indemnifying party; and (iii) surrender exclusive control of the defense and settlement of any third party claim to the indemnifying party provided that the indemnifying party will obtain the indemnified party's written consent prior to agreeing to any settlement or agreement that requires the indemnified party to make any admission of fault or to pay any amounts in connection with such settlement or agreement that are not fully paid for by the indemnifying party. The indemnified party shall not unreasonably withhold or delay any consent required under this Section. The indemnified party may elect to participate in the action with an attorney of its own choice at its own expense.

19. Review of Settlement Activity and Reports; Notice of Failure by Passport. Provider agrees that it shall review all reports, notices, and invoices prepared by Passport or its agent and made available to Provider, including but not limited to reports, notices, and invoices provided via Passport's online reporting tool. Passport reserves the right to send some or all of the reports and/or invoices and/or notices of any pricing changes permitted under this Agreement via communication methods utilized as

components of its Service Delivery Process which method Passport may change from time to time with notice via Passport's Service Delivery Process. Provider expressly agrees that Provider's failure to notify Passport that Provider has not received any settlement funds within ten (10) business days from the date that settlement was due to occur, or fails to reject any report, notice, or invoice within thirty business days from the date the report or invoice is made available to Provider, shall constitute Provider's acceptance of the same. In the event Provider believes that Passport has failed in any way to provide the Services, Provider agrees to provide Passport with written notice, specifically detailing any alleged failure, within 30 days of the date on which the alleged failure first occurred.

20. Choice of Law; Jurisdiction; Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina without regard to conflicts of law provisions. The parties hereby consent and submit to service of process, personal jurisdiction, and venue in the state and federal courts in Mecklenburg County, North Carolina, and select such courts as the exclusive forum with respect to any action or proceeding arising out of or in any way relating to this Agreement, and/or pertaining in any way to the relationship between Provider and Passport.

21. Limit of Liability.

A. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, PASSPORT DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND PROVIDER HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.

B. Without limiting the foregoing, neither party shall be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by the other party) suffered by such party, its customers, or any third party in connection with the Services provided hereunder. However, nothing in the foregoing sentence is in any way intended, and shall not be construed, to limit (i) Provider's obligation to pay any fees, assessments or penalties due under this Agreement, including but not limited to those imposed by telecommunications services providers or the Card Networks; or (ii) any damages due from Provider related to the failure by Provider to exclusively receive the Services from Passport to the extent required by the

Agreement, and/or (iii) Provider's obligation to indemnify Passport pursuant to section 19. In no event shall Passport be liable for any damages or losses (i) that are wholly or partially caused by the Provider, or its employees, agents, or Provider Suppliers that should have been reported to Passport pursuant to Section 20, (ii) that first occurred, whether or not discovered by Provider, more than 30 days prior to Passport's receipt of written notice from Provider or (iii) that were caused due to errors in data provided by Provider to Passport.

- C. Passport's liability related to or arising out of this Agreement shall in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Provider or (ii) fees paid to and retained by Passport for the particular Services in question for the three calendar months immediately preceding the date on which Passport received a written notice from Provider detailing Passport's material nonperformance under this Agreement. For avoidance of doubt, the cap on Passport's liability set forth in the immediately preceding sentence will not limit Passport's obligation to settle funds due to Provider under this Agreement.
- D. No cause of action, regardless of form, shall be brought by either party more than one year after the cause of action arose, other than one for the nonpayment of fees and amounts due Passport under this Agreement. In the event that Provider has a claim against Member Bank in connection with the Services provided under this Agreement, Provider shall proceed against Passport (subject to the limitations and restrictions herein), and not against Member Bank, unless otherwise specifically required by the Operating Regulations.
- E. Passport and Provider recognize and agree that any limitations of liability set forth in this Agreement are fair and reasonable.

22. Regulatory Remedial Right. Passport may suspend or cease providing any Service in this Agreement if: (i) in Passport's reasonable opinion, such Service, or the business of Provider, violates or would violate the Operating Regulations, or any federal, state or local statute or ordinance, or any regulation, order or directive of any governmental agency or court; (ii) Provider is accused by any federal, state or local jurisdiction of a violation of any applicable statute or ordinance or any regulation, order or directive of any governmental agency or court, or if Passport reasonably believes, based upon the opinion of its legal counsel, that Provider may be in violation of any of the foregoing; and/or (iii) in Passport's reasonable opinion, Provider's activities may result in increased regulatory scrutiny or reputational harm. Passport may also suspend or cease providing any Service in this Agreement to Provider if

directed to do so by Member Bank, Acquirer, or a Card Network.

23. Conversion; Deconversion. To the extent applicable, Provider shall take all necessary steps to, and shall, promptly convert to Passport's system for the Services in this Agreement not later than 90 days after the execution of this Agreement. Passport agrees that it shall not charge Provider for Passport's standard and customary internal testing and conversion preparation only, in connection with Provider's initial conversion to Passport's system at the commencement of this Agreement, and as determined by Passport in its sole reasonable discretion. The foregoing shall not be deemed to limit Provider's obligation to pay any third party fees and expenses incurred by Passport in connection with Provider's conversion, which shall remain the sole responsibility of Provider. Provider agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by Passport, its affiliates and/or agents) in connection with and/or related to Provider's conversion from Passport at the termination of this Agreement and/or related to any conversion or programming effort affecting the Services after Provider's initial conversion to Passport.

24. Use of Confidential Information. Notwithstanding anything to the contrary herein, Passport may use, disclose, share and retain any information provided by Provider and/or relevant to the Services, during the term and thereafter: (a) with any affiliates, agents, or partners of Passport; (b) in response to subpoenas, warrants, court orders or other legal processes; (c) in response to lawful requests from law enforcement agencies or government entities; (d) to comply with applicable laws or regulations; (e) with Passport's affiliates, partners and agents, (f) to perform analytic services for Passport, Acquirer and/or others including but not limited to analyzing, tracking and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving Passport's products and services; and/or (g) to offer or provide the Services hereunder.

25. Compliance with Law. Provider represents and warrants to Passport that it will comply with all applicable federal, state and local laws and regulations in connection with Provider's receipt of the Services and/or applicable to Provider's business operations. Passport will comply with federal, state and local laws and regulations applicable directly to Passport in its provision of the Services.

26. Security and Data Incidents. Passport will be responsible for the security, quality, accuracy, and adequacy of all transactions originated in its applications and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security,

quality, maintenance, and delivery of such data. For any transactions originated at a point of sale outside a Passport or Passport affiliate application, Provider will assume full responsibility for the security, quality, accuracy, and adequacy of all transaction and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Provider represents and warrants to Passport that it has implemented and will maintain secure systems for maintaining and processing information and for transmitting information to Passport. Passport shall have no liability whatsoever for the security or availability of any communications connection used in connection with the Services provided hereunder. Provider acknowledges that Passport is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including without limitation any Provider Supplier of Provider. Provider shall notify Passport immediately if Provider becomes aware of or suspects a Data Incident. Provider agrees to fully cooperate, to the extent permitted by applicable law, with Passport and any Card Network with respect to any investigation and/or additional requirements related to a suspected Data Incident.

27. Audits. At any reasonable time upon reasonable notice to Provider, Provider shall allow Passport to review the files held and the procedures followed by Provider at any or all of Provider's offices or places of business which are directly related to this Agreement. Provider will provide requested information to Passport necessary to complete its audit.

28. System Requirements and Upgrades. Provider agrees that the Services shall be provided in accordance with Passport's then current systems, standards and procedures and that Passport shall not be required to perform any special programming, to provide any special hardware or software or to implement any other system, program or procedure for Provider. Unless otherwise agreed in writing by Passport, all sales transaction, settlement and other data and information used in connection with the Services shall be provided to Passport in Passport's then current data formats and by means of Passport's then current telecommunications configurations and protocols. Passport may make changes in the Services based upon, but not limited to, technological developments, legislative or regulatory changes, or the introduction of new services by Passport. Provider shall comply with all time deadlines, equipment and software maintenance and upgrading requirements to the extent required by the Card Networks and/or Operating Regulations. Provider shall use best efforts to comply with all other time deadlines, equipment and software maintenance and upgrading requirements which Passport may reasonably impose on Provider from time to time.

29. Title to the Services. Provider agrees it is acquiring only a nontransferable, non-exclusive right to use the Services. Passport shall at all times retain exclusive title to the Services, including without limitation, any materials delivered to Provider hereunder and any invention, development, product, trade name, trademark, service mark, software program, or derivative thereof, developed in connection with providing the Services or during the term of this Agreement.

30. Intentionally Omitted.

31. Maximum Amounts. Provider may set a maximum transaction amount to accept a Card that provides access to a credit account, under the following conditions: Provider is i) a department, agency or instrumentality of the U.S. government; ii) a corporation owned or controlled by the U.S. government; or iii) an entity whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between Mastercard, VISA, or any other Card Network.

32. Additional Agreement. In the event that more than \$1,000,000 in Visa transactions and/or \$1,000,000 in Mastercard transactions (or such other amount provided by the Operating Regulations) ("Benchmark Amount") is to be processed through and on behalf of Provider in any twelve (12) month period, Passport will present to Provider a "Merchant Services Agreement for Sub-Merchants" with Acquirer. Should Acquirer and Provider fail to enter into an agreement within sixty (60) days from presentation to Provider, Passport reserves the right to terminate this Agreement.

33. American Express Program. Capitalized terms in this Section 33 are defined in the American Express Merchant Requirements.

- Provider hereby authorizes Passport to submit Transactions to, and receive settlement from, American Express on behalf of the Provider. If Provider is placed in the American Express Program, Provider shall be responsible for complying with the provisions set forth in Exhibit B attached hereto and the American Express Merchant Operating Guide for all transactions initiated in the Passport application, which can be located at <http://www.americanexpress.com/merchantopguide>.
- Acquirer may disclose Transaction Data, Merchant Data, and other information about the Provider to American Express; and American Express may use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including marketing

purposes within the parameters of the Agreement. American Express may use the information from the Agreement at the time of setup to screen and/or monitor Provider in connection with Card marketing and administrative purposes.

- Provider may be converted from the American Express Program to a direct Card acceptance relationship with American Express if and when Merchant has either (i) greater than \$1,000,000 in Charge Volume in a rolling twelve (12) month prior or (ii) greater than \$1,000,000 in Charge Volume in any three (3) consecutive months (hereinafter “High CV Merchant”). Upon conversion, (i) the Provider will be bound by American Express’ then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by the Provider for Card acceptance.
- Provider shall not assign to any third party any payments due to it under the Agreements, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at its Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the Merchant may sell and assign future Transaction receivables to Acquirer, its affiliated entities and/or any other cash advance funding source that partners with Acquirer or its affiliated entities, without consent of American Express.
- Third-party beneficiary rights may be conferred to American Express, but not obligations to the Merchant Processing Agreement, providing American Express the ability to enforce the terms of the Agreement against the Provider in association with the American Express Program only.
- Provider may elect to opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept other payment products by notifying Passport.
- Passport may terminate the Provider’s to accept American Express Cards if it breaches any of the provisions in this Section or Exhibit B.
- Acquirer has the right to immediately terminate Provider from the American Express Program for cause, fraudulent or other activity, or upon American Express’ request.
- Provider may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless Chargeback has been exercised, the Provider has fully paid for such Charge, and it otherwise has the right to do so.

Exhibit A

Definitions

For the purposes of the Agreement, the following terms shall have the meanings set forth below:

“Acquirer” means WorldPay, LLC, the merchant acquirer for the sales transactions contemplated by this Agreement.

“Account” means an open checking account at a financial institution acceptable to Passport which Passport can access through the ACH system.

“Account Change” means a change in the Account or the financial institution where the Account is located.

“ACH” shall mean the Federal Reserve's Automated Clearing House (“ACH”) system.

“American Express” shall mean American Express Travel Related Services, Inc.

“Card Network” means VISA, Mastercard, Discover, American Express, or any Other Network, as the same are defined herein.

“Cards” shall mean Mastercard, VISA, Discover and Other Network cards, account numbers assigned to a cardholder, or other methods of payment accepted by Passport, for which pricing is set forth in the Agreement.

“Cardholder” shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.

“Data Incident” shall mean any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

“Discover” shall mean Discover Financial Services, LLC.

“Member Bank” shall mean a member of VISA, Mastercard and/or Other Networks, as applicable, that provides sponsorship services in connection with this Addendum.

“Mastercard” shall mean Mastercard International, Inc.

“Other Network” shall mean any card association other than VISA, Mastercard, or Discover or any electronic payment

network that is identified in the Provider Price Schedule, which is provided by Passport to Provider from time to time, and in which Provider participates hereunder.

“PCI-DSS” shall mean the Payment Card Industry Data Security Standard.

“Provider Supplier” shall mean a third party other than Passport or Member Bank used by Provider in connection with the Services received hereunder, including but not limited to, Provider’s software providers, equipment providers, and/or third party processors.

“Service” shall mean any and all services described in, and provided by Passport pursuant to, this Addendum.

“Service Delivery Process” means Passport’s then standard methods of communication, service and support, including but not limited to communication via an online portal, email communication, statement notices, other written communications, etc.

“VISA” shall mean VISA USA, Inc.

Exhibit B

American Express Program

General Merchant Requirements

A. Card Acceptance. Provider (referred to herein as “Merchant”)

must accept the Card as payment for goods and services (other than those goods and services prohibited under Section 3.3, “Prohibited Uses of the Card” of the Merchant Requirements) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant’s Establishments under the Agreement.

B. Treatment of the American Express Brand.

Except as expressly permitted by Applicable Law, Merchant must not:

1. indicate or imply that it prefers, directly or indirectly, any Other Payment Products over the Card,
2. try to dissuade Card Members from using the Card,
3. criticize or mischaracterize the Card or any of American Express’ services or programs,
4. try to persuade or prompt Card Members to use any Other Payment Products or any other method of payment (e.g., payment by check),
5. impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check,
6. suggest or require Card Members to waive their right to dispute any Transaction,
7. engage in activities that harm the American Express business or the American Express Brand (or both),
8. promote any Other Payment Products (except Merchant’s own private label card that Merchant issues for use solely at Merchant’s Establishments) more actively than Merchant promote the Card, or
9. convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

Merchant may offer discounts or in-kind incentives from Merchant’s regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by Applicable Law): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant’s customers, (ii) the discount or in-kind incentive is offered to all of Merchant’s prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, Mastercard, Discover,

JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this Section B., “Treatment of the American Express Brand”.

C. Treatment of the American Express Marks.

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant’s acceptance of the Card and display our Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from Processor) indicate that American Express endorse Merchant’s goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using our Marks upon termination of the Agreement.

D. Treatment of American Express Card Member Information.

Any and all Card Member Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Card Member Information, nor use nor store it, other than to facilitate Transactions at Merchant’s Establishments in accordance with the Agreement.

E. ARBITRATION AGREEMENT (as to Claims involving American Express).

In the event that Merchant or Passport (herein referred to as “Processor”) is not able to resolve a Claim against American Express, or a claim against Processor or any other entity that American Express has a right to join, this section explains how Claims may be resolved through arbitration. Merchant 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, neither Merchant nor Processor nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, Processor, and American Express 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 this Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator’s decisions are final and binding, and the arbitrator’s final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights Merchant, Processor, 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 Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. 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 selects the organization and Merchant selects 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 the federal judicial district where Merchant's headquarters is located or New York, NY, at Merchant's election.

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, Processor, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Processor or American Express and cannot be used in any other case except to enforce the award as between Merchant, Processor 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 Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that Merchant, Processor, and American Express do not waive the right to appeal that decision.

iii. Previously Filed Claims/No Waiver. Merchant, Processor, 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, Processor, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, 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 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 this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this arbitration agreement.

v. Split Proceedings for Equitable Relief. Merchant, Processor, 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 shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an award of reasonable attorneys' fees and costs to be paid by the party against whom enforcement is ordered.

vi. Small Claims. American Express will not elect arbitration for any Claim Merchant 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 Arbitration Agreement 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 Merchant's headquarters or Merchant's 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 Merchant's 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 Merchant 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 Program 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 Merchant is 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 xii. 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) Merchant includes Merchant's 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 against Processor or any other entity that American Express has the right to join, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.

F. Establishment Closing. If a Merchant closes any of its Establishments, Merchant must follow these guidelines:

- Notify payment processing company immediately.
- Policies must be conveyed to the Card Member prior to completion of the Charge and printed on the copy of a receipt or Charge Record the Card Member signs. See Section 4.8, "Return and Cancellation Policies" of the Merchant Requirements for additional information.
- If not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Charge Record and on websites and catalogs).
- Return and cancellation policies must be clearly disclosed at the time of sale.

- For Advance Payment Charges or Delayed Delivery Charges, delivery of the goods or services which have already charged to the Card Member is required or Credit must be issued for any portion of the Charge for the goods or services not delivered.