

### 365 Payment Processing Terms

These 365 payment processing terms (the “**Processing Terms**”) form an agreement between the Customer and 365 Retail Markets, LLC and Avanti Markets, LLC (collectively “**365**”) for the supply of processing services to facilitate the acceptance of Card payments (collectively, the “**Payment Processing Service**”). These Processing Terms govern the authorization, conveyance and settlement of Transactions utilizing the Payment Processing Service. By entering into these Processing Terms, Customer is agreeing to comply with Payment Network Rules as they pertain to payments Customer receives through the Payment Processing Service. Capitalized terms not otherwise defined in the body of these Processing Terms are defined in the Glossary at the end.

Bank is not a party to these Processing Terms, but it is a third party beneficiary hereunder and entitled to enforce the terms hereof versus Customer.

#### 1. Payment Network Rules and Acceptance Requirements.

Customer shall comply with all Payment Network Rules applicable to Customer, such as they are from time to time, and such other procedures as 365 establishes relating to Customer’s acceptance of Cards. Without limitation, Customer agrees:

#### 2. Bona Fide Transactions.

Customer shall not submit any Transaction that is not a good faith Transaction. A “good faith” Transaction means a Transaction that is (i) between the Customer and its End User, (ii) for the sale of goods and/or services (or a refund for such a sale) that are Customer’s property or that Customer has the legal right to sell, (iii) submitted on behalf of Customer (and not on behalf of any third party), and (iv) legal, authorized by the End User, non-fraudulent or otherwise damaging to the Payment Network(s), and (v) enforceable, collectible, and in full compliance with these Processing Terms, applicable law, and the Payment Network Rules.

#### 3. Minimum/Maximum Thresholds For Card Acceptance; Surcharges.

Except as expressly permitted by law, Customer shall not (i) set a dollar amount above or below which Customer refuses to honor Cards or (ii) impose or require the End User to pay any fee or charge (including, without limitation, any surcharge or finance charge or any of the fees payable by Customer under these Processing Terms) in connection with or as a condition of the use or acceptance of a Card.

#### 4. Payment Processing Service Provider.

Subject to the Payment Network Rules, 365 reserves the right to provide some or all of the Payment Processing Service through its affiliates and/or other third party service providers.

#### 5. Taxes.

Customer shall not add any tax or surcharge to Transactions, unless applicable law expressly allows or requires the Customer to impose such tax or surcharge. If any tax or surcharge amount is allowed, such amount shall be included in the Transaction amount and shall not be collected separately.

#### 6. Use of Card Account Information.

If Customer collects, stores, uses or discloses any Card Information, Customer shall comply with the Security Standards, including but not limited to, the Payment Card Industry Data Security Standards (“**PCI DSS**”) and shall provide a qualified third party certification of such compliance, when requested by 365. Customer shall use only Third Party Servicers that are compliant with Security Standards in connection with the storage, processing, or transmission of Card Information.

Customer shall not request or use Card Information for any purpose except in respect of payment for its goods or services or to provide a refund for goods or services previously sold, unless required by the Payment Network Rules. Customer agrees that: (i) it will not use the Card Information for any purpose that it knows or should know to be fraudulent or in violation of any Payment Network Rules; (ii) it will not sell, purchase, provide or exchange in any manner or disclose Card Information to anyone other than 365, Bank, any Payment Network, or in response to a government request; and (iii) it will be compliant with the Security Standards and will cooperate in a forensic investigation if so required.

Customer has exclusive responsibility for security of Transaction Data and other information on Customer systems or those under its control. Customer shall comply with all applicable laws, Payment Network Rules, and rules in connection with Customer collection, storage and disclosure of any personal, financial, or Transaction information.

Customer shall maintain adequate security so as to prevent a breach of Transaction Data. In the event of any actual or suspected breach of data in possession or control of Customer or one of its Third Party

Servicers, Customer shall immediately notify 365 thereof and also comply with all applicable laws and Payment Network Rules concerning the breach.

Customer shall obtain from each End User all consents required under the Payment Network Rules and applicable law for the collection, use, storage and disclosure of any and all information provided by End Users or obtained by Customer or its agents or Third Party Servicers under the Customer relationship with its End User or otherwise. Customer shall indemnify and hold 365 and Bank harmless from and against any liability arising on account of or in relation to the failure by Customer to obtain such consents from End Users.

Customer grants 365 and Bank the right to collect, store, use and disclose all Transaction Data in order to provide the Payment Processing Service, which shall occur subject to the 365 privacy policy posted at the 365 Site.

#### 7. Authorizations and Transactions.

Customer shall obtain an authorization through the Payment Processing Service (each an “**Authorization**”), in accordance with these Processing Terms, for each Transaction. 365 reserves the right to refuse to process any Transaction Data presented by Customer unless it includes a proper authorization.

Customer shall not submit a Transaction for any purpose other than a current Transaction. Transactions shall not represent the collection of a dishonored check or the collection, transfer or refinancing of any existing or prior debt or obligation. Customer shall not attempt to recharge an End User for an item that has been the subject of a Chargeback by the End User, even with the End User’s consent. Customer agrees to submit a single Transaction for the full amount of each sale. Customer shall not split a single Transaction into two (2) or more Transactions, except to allow for partial payment by prepaid or gift Card. Customer shall not submit any Transaction which it knows or should have known is unenforceable or uncollectable.

#### 8. Time of Payment.

At the time Customer accepts a Card for any goods or services, the goods shall have been provided or shipped or the services actually rendered to the End User, except as specifically stated otherwise in the Application.

#### 9. Cash Advances.

Customer shall not disburse or advance any cash to an End User (except as authorized by the Payment Network Rules) or to itself or any of its representatives, agents, or employees in connection with a Transaction, nor shall Customer accept payment for effecting credits or issuing refunds to an End User.

#### 10. Discrimination.

Unless permitted by the Payment Network Rules, Customer shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of any Payment Network relative to any other Payment Network.

#### 11. Refunds/Credits.

Any Transaction submitted to Bank to credit an End User’s Card account represents a refund for a prior Transaction submitted to Bank using the same Card. Customer shall maintain and publish a return/refund policy described in reasonable detail which shall apply equally to all Card Transactions.

#### 12. Installment Plans.

Unless specifically stated in its Application or otherwise approved in writing by 365 in advance, Customer shall not accept Cards in connection with installment sales plans. If the End User pays in installments or on a deferred payment plan, as previously approved by 365, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the dates the End User agreed to be charged. All installments and deferred payments, whether or not they have been submitted to 365 for processing, shall be deemed to be a part of the original Transaction.

#### 13. Recurring Transactions (such as Subscription Plans).

For recurring Transactions, if any, Customer must (i) obtain the End User’s consent to periodically charge the End User on a recurring basis for the goods or services purchased; (ii) retain this permission for the duration of the recurring services and provide it upon request to 365, Bank, or the issuing bank of the End User’s Card; and (iii) retain written documentation or electronic substitutes acceptable under applicable law specifying the frequency of the recurring charge, and the duration of time during which such charges may be made, and the amount or range of amounts that may be charged. Customer shall not submit any recurring transaction after receiving: (i) a cancellation notice from the End User (so long as such notice was timely provided three (3) or more days prior to the anticipated Transaction date); or (ii) notice from 365, Bank or any Payment Network that the Card is not to be honored. Customer shall include in its Transaction

Data the indicator that the Transaction is a recurring Transaction.

14. Customer Identification.

Customer agrees to prominently and unequivocally inform the End User of the identity of the Customer at all points of interaction.

15. Payment Network Marks.

Customer is authorized to use the Visa and MasterCard logos or marks only on Customer's promotional materials and website to indicate that Visa and MasterCard cards are accepted as funding sources for Transactions processed with the Payment Processing Service.

16. Chargebacks.

Customer shall use all reasonable methods to resolve disputes with the End User. Should a Chargeback dispute occur, Customer shall promptly comply with all requests for information from 365, Bank or a Payment Network. Customer shall not attempt to recharge an End User for an item that has been charged back, even with the End User's consent. Customer has full liability for the amount of any and all successful Chargebacks (and may have conditional liability for such Chargebacks prior to their final adjudication pursuant to the Payment Network Rules).

17. Refunds.

Customer is required to maintain a refund policy if Customer limits refund or exchange terms or other specific conditions for Card Transactions. Customer's policy must be clearly provided to the End User prior to the sale and as part of the sale confirmation process. Proper disclosure would include wording that is prominently displayed and states "NO REFUND, EXCHANGE ONLY" or something similar and includes any applicable terms. Qualifying Customer's refund or exchange terms does not completely eliminate Customer's liability for a refund because consumer protection laws and Payment Network Rules frequently allow the End User to still rightfully dispute these items. If, under Customer's refund policy, Customer allows a refund, Customer shall implement such refund within three (3) days of approving the End User's request for such refund or such shorter time as applicable law may require. The amount of a refund cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the End User for shipping charges that the End User paid to return merchandise. Customer shall not accept any payment from an End User as consideration for issuing a refund.

18. Settlement.

19. Settlement Funds.

Subject to 365' rights under these Processing Terms and the Payment Network Rules, settlement funds received from Payment Networks for Customer pursuant to these Processing Terms (the "**Settlement Funds**") are received by 365 or Bank, in its capacity as the acquiring bank for settlement to the Deposit Account of the Customer. When held by Bank prior to settlement, such funds will not constitute a deposit, will bear no interest, charges or fees, and may not be eligible for insurance from the Federal Deposit Insurance Corporation.

In the event 365 takes possession of Settlement Funds, Customer appoints 365 as its agent for such purpose and shall release End User from any liability in respect thereof.

20. Split of Settlement for Third Party Servicer Fees

If Customer is party to a Third Party Servicer Processing Terms, Customer hereby directs 365 and Bank to settle the fees applicable under the Third Party Servicer Processing Terms (the "**Third Party Servicer Fees**") directly to the Third Party Servicer designated by Customer, as offsets from Settlement Funds payable to Customer under these Processing Terms. Customer hereby directs 365 to obtain from each such Third Party Servicer such information as is necessary to calculate and cause Bank to split Customer settlements hereunder to pay such fees. Third Party Servicer shall be a third party beneficiary under these Processing Terms in respect of this provision entitled to enforce this provision versus the Customer. If the Third Party Servicer Fees exceed the Settlement Funds in any given settlement, none of 365 or Bank shall be under any obligation to settle any amount to Third Party Servicer that would not otherwise be owing hereunder as Settlement Funds.

21. Settlement Calculation.

Transaction settlement will generally be based on gross sales, less credits /refunds, adjustments, the applicable fees due 365, Chargebacks, returns, refunds and any other amounts that Customer owes 365,

Bank or Payment Networks.

## 22. Provisional Debit / Credit.

All deposits, credits, and other payments to the Deposit Account are subject to our final audit, Chargebacks, returns, reversals and Payment Network's imposed dues, assessments, fees and fines. Customer agrees that 365 may debit /credit the Deposit Account for any deficiencies, overages, fees and pending Chargebacks, returns, reversals and any pending Payment Network's assessments, fees and fines, including any pending Security Standards-related fees, fines and/or assessments.

## 23. 365 Regulatory Status

365 is not a bank, money transmitter or other money services business. 365 is a payment processor for bills of the Customer and acts as agent of Customer in the receipt of Transaction payments of Customer invoices by End Users pursuant to the terms of these Terms. Funds received by 365 not insured by 365 or any third party, except the Federal Deposit Insurance Corporation, to the extent that an ordinary commercial bank account benefits from its insurance. 365 reserves the right to monitor use of the Payment Processing Service to ensure compliance with these Terms. If it is determined Customer is not in compliance with these Terms, 365 reserves the right to take appropriate action including, but not limited to, assessing additional fees or suspension or termination of the supply of Product. Customer acknowledges that such monitoring of use may include determining whether or not the Payment Processing Service is accessed under the account from multiple IP addresses, as well as noting excessive use or other irregularities.

## 24. CUSTOMER RELEASE OF END USER ON PAYMENT TO 365 OR BANK

CUSTOMER AGREES THAT UPON 365 OR BANK RECEIVING A PAYMENT TRANSACTION FROM AN END USER OF THE CUSTOMER, AS OF THE RECEIPT BY 365 OR BANK OF SUCH AMOUNT, END USER IS THEREBY IMMEDIATELY RELEASED FROM ANY LIABILITY TO THE CUSTOMER IN RESPECT OF THE AMOUNT PAID. THE END USER OF THE CUSTOMER IN EACH TRANSACTION IS NAMED AS A THIRD PARTY BENEFICIARY UNDER THIS AGREEMENT WITH THE CUSTOMER SO THAT THE END USER CAN ENFORCE THE TERMS HEREOF AGAINST THE CUSTOMER IN SO FAR AS THE CUSTOMER ATTEMPTS TO COLLECT A GIVEN TRANSACTION PAYMENT ALREADY MADE TO 365. NO DELAY IN PAYMENT BY 365 ON A GIVEN TRANSACTION AMOUNT TO CUSTOMER, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION SEIZURE OF 365 ASSETS OR BANKRUPTCY OF 365, SHALL SERVE TO DIMINISH THE FOREGOING OR ENTITLE CUSTOMER TO COLLECT ANY AMOUNT FROM A END USER IN RESPECT OF WHICH PAYMENT HAS BEEN MADE BY A END USER TO 365 UNDER THE TERMS OF THIS AGREEMENT.

## 25. Term and Termination.

Customer can terminate these Processing Terms on not less than ninety (90) days prior written notice to 365. Any party may terminate these Processing Terms in the event that another party is in material breach hereof and such party has not cured the breach within thirty (30) days following notice thereof. 365 reserves the right to terminate these Processing Terms on any termination or expiration of the Third Party Servicer Processing Terms. 365 may also terminate these Processing Terms at any time for any reason or for no reason on notice to Customer. Further, 365 may terminate these Processing Terms at any time upon written notice to Customer as a result of any of the following events: (i) irregular Transactions by Customer, excessive Chargebacks, or any other circumstances which, in 365's sole discretion, may increase 365' or Bank's exposure for Chargebacks or otherwise present an unreasonable anticipated financial, reputational, or legal risk to any of them; (ii) Customer breaches or otherwise fails in any material respect in performance or observance of any term, covenant, condition, or agreement contained in these Processing Terms or the Third Party Servicer Processing Terms, including, without limitation, the funding or establishing of any reserve account which 365 or Bank may require; (iii) a case or other proceeding shall be commenced by or against Customer in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Customer, or of all or any substantial part of the assets, domestic or foreign, of Customer, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against Customer (including, without limitation, an order for relief under the Bankruptcy Code) shall be entered; (iv) any Payment Network notifies 365 or Bank that it is no longer willing to accept Customer's Transaction Data or requires 365 or Bank to terminate or limit these Processing Terms; (v) Customer or any person owning or controlling Customer's business is listed

in one or more databases of terminated or high risk Customers maintained by the Payment Network; or (vi) Customer or any of its agents engages in fraud, dishonesty conduct that creates or could tend to create harm or loss to the goodwill of any Payment Network, 365, Bank or American Express, or which otherwise may impose undue risk of harm to any Payment Network, 365, Bank or American Express. Neither 365 nor Bank shall be liable for any losses to Customer as a result of any termination of these Processing Terms.

Termination does not affect any party's respective rights and obligations under these Processing Terms as to Transaction Data submitted before termination.

#### 26. Reserve Account.

At the discretion of 365 or Bank, they shall create a reserve account (the "**Reserve**") in order to protect Bank and/or 365 from actual or potential liabilities hereunder. The Reserve will be in an amount determined by Bank or 365 in their sole and absolute discretion to cover anticipated Chargebacks, returns, unshipped goods and/or unfulfilled services or credit risk based on Customer's processing history. Where Bank and 365 wish for a Reserve to be established but in different amounts, the higher amount shall govern. The Reserve may be raised, reduced or removed at any time by Bank or 365. Where the Reserve is not adequately funded, Customer shall pay all amounts requested by 365 or Bank for the Reserve within three (3) business day of a request for such amounts, or at their discretion Bank and 365 may build the Reserve by off-sets from Settlement Funds or by debiting the Deposit Account, or any other account of the Customer, by means of the ACH Consent. The Reserve will be held after the last Transaction is processed under these Processing Terms for such time as 365, in its discretion, deems reasonable.

Customer grants each of 365 and Bank a security interest in and lien on any and all funds held in any Reserve, and also authorizes 365 and Bank to make any withdrawals or debits from the Reserve, without prior notice to Customer, to collect amounts that Customer owes 365 or Bank under these Processing Terms, including without limitation for any reversals of deposits or transfers. Customer will execute any additional documentation required for 365 and Bank to perfect their security interests in any funds in the Reserve. This security interests survive for as long as funds are in the Reserve; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. Customer irrevocably assigns to 365 all rights and legal interests to any interest or other earnings that accrue or are attributable to the Reserve.

#### 27. Information About Customer's Business.

##### 28. Initial Information.

365 reserves the right to request any information and documentation from Customer during the application phase and at any time thereafter during the term of these Processing Terms including, without limitation, information and documentation regarding Customer, its beneficial owners, Customer's business and financial information. Further, 365 reserves the right to withhold and/or direct Bank to withhold performance hereunder until requested information has been provided, reviewed, verified and accepted by 365.

##### 29. Additional Financial Information.

Further, upon five (5) days' written notice at any time, Customer agrees to furnish to 365 and Bank such financial statements and financial information as 365 or Bank may request relating to Customer, Customer's creditworthiness and Customer's ability to fulfill its financial and other obligations under these Processing Terms.

##### 30. Audit Rights.

With prior notice and during Customer's normal business hours, 365' or Bank's duly authorized representatives may visit Customer's business premises and may examine Customer's books and records that pertain to Customer's Transactions or Customer's compliance with these Processing Terms.

##### 31. Other Information.

Customer agrees to provide 365 at least thirty (30) days' prior written notice of its intent to change current product lines or services, Customer's trade name, or the manner in which Customer accepts payment Instruments. If 365 determines such a change is material to its relationship with Customer, 365 may refuse to process Transaction Data submitted subsequent to the change or terminate these Processing Terms. Customer agrees to provide 365 with prompt written notice if Customer is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Customer's signature on these Processing Terms authorizes 365 and Bank to perform any credit check deemed necessary with respect to Customer.

Customer will also provide 365 with prompt written notice of (i) any adverse change in Customer's financial condition, (ii) any planned or anticipated liquidation or substantial change in the basic nature of Customer's business, (iii) any transfer or sale of any substantial part (25% or more in value) of Customer's total assets, or (iv) if Customer or Customer's parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of Customer or Customer's parent. Customer will also notify 365 of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Customer's total assets not later than three (3) days after Customer obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

### 32. Disclaimers and Limitation of Liability.

#### (16)(a) NO WARRANTIES.

THE PAYMENT PROCESSING SERVICE IS PROVIDED ON AN "AS-IS", "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 365 AND BANK DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, MADE TO Customer OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES THAT THE PAYMENT PROCESSING SERVICE OR THE OPERATION OF THE PAYMENT PROCESSING SERVICE WILL BE INTERRUPTION OR ERROR FREE AND ANY OTHER WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY PAYMENT PROCESSING SERVICE OR ANY GOODS OR SERVICES PROVIDED INCIDENTAL TO THE PAYMENT PROCESSING SERVICE, INCLUDING WITHOUT LIMITATION ANY GOOD OR SERVICE PROVIDED BY A THIRD PARTY SERVICE.

#### (b) LIMITATION OF LIABILITY.

UNDER NO CIRCUMSTANCES WILL 365'S OR BANK'S CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, EXCEED THE TOTAL FEES PAID TO 365 BY Customer UNDER THIS AGREEMENT (NET OF PAYMENT NETWORK FEES, THIRD PARTY FEES, INTERCHANGE, ASSESSMENTS, PENALTIES AND FINES) FOR THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE TIME THE LIABILITY AROSE. IN NO EVENT WILL 365 OR BANK, THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS AND SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT, EACH OF WHICH IS HEREBY EXPRESSLY EXCLUDED BY AGREEMENT OF Customer, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER 365 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT OR THE APPLICATION SHALL NOT BE PROHIBITED BY THIS SECTION. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES TO WHICH THE UNIFORM COMMERCIAL CODE DOES NOT APPLY. Customer agrees not to make any claim or take any action (i) against 365 or Bank in relation to these Processing Terms or (ii) against any third party with whom 365 or Bank has contracted in relation to these Processing Terms, other than in accordance with the terms and subject to the limitation on liability set forth herein.

### 8. Indemnification.

Neither 365 nor Bank is a party to the relationship between Customer and its End User in respect of a Transaction or otherwise ("**Customer Relationship**"). Customer shall defend, indemnify and hold harmless 365 and Bank and their respective owners, directors, officers, employees, agents, assigns and successors-in-interest ("**Indemnified Parties**") from any and all liability, damages, losses, claims, demands, actions, causes of action and costs (including attorneys' fees and expenses) (collectively "**Liability**") arising from or in relation to the Customer Relationship or any of Customer's goods or services, including any and all costs associated with the legal defense related to such Liability.

Additionally, Customer shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all Liability arising out of or resulting from: (i) any breach of any warranty, covenant or agreement

by Customer under these Processing Terms; (ii) Customer's performance under these Processing Terms including, without limitation, performance, non-performance, or defect in performance, any statement, misstatement, representation or misrepresentation made by Customer; (iii) the negligent or willful acts or omissions of Customer or Customer's agents and/or employees; (iv) any statements, claims, representations or warranties made by Customer or Customer's agents and/or employees, relating to Customer's goods or services or any other matter; (v) any third party indemnifications 365 or Bank is obligated to make as a result of Customer's actions including, without limitation, any indemnification of any Payment Network or Card issuer; (vi) acts or omissions of Third Party Servicers; and (vii) any dispute between Customer and an End User, Third Party Servicer or other third party.

#### 9. Fair Credit Reporting Act Consumer Disclosure And General Authorization.

In connection with Customer procuring the Payment Processing Service, Customer understands that a consumer report as defined in the Federal Fair Credit Reporting Act as amended ("**FCRA**"), 15 U.S.C. 1681 and following, may be obtained by 365 or Bank from a consumer reporting agency ("**CRA**"). Customer understands that this report may include information with respect to public record information, criminal records, motor vehicle operation history, education records, names and dates of previous employers, reason for termination of employment and work experience, and/or creditworthiness, capacity and standing, character, general reputation, personal characteristics, or mode of living. Such information may be used to evaluate whether Customer is an appropriate candidate for the Payment Processing Service and this determination may be adverse to Customer. The information obtained will not be provided to any parties other than to designated authorized representatives of 365 or Bank. Customer further understands that the CRA may not give out information about Customer to 365 or Bank without Customer's written consent. Customer hereby authorizes 365 and Bank now, or at any time while it is party to an agreement with 365 or Bank or otherwise engaged with 365 or Bank, to obtain a consumer report on Customer. This authorization does not include the release of Customer's medical information. A copy, fax or scan of this consent shall be considered as effective and valid as the original. Customer understands that, in the event any adverse action is taken against Customer based in whole or in part on the consumer report, Customer shall be provided with the name of the CRA and a copy of the report as well as a description of Customer's rights under the FCRA.

On request, California, Minnesota, and Oklahoma residents can obtain a copy of any consumer credit report requested by 365 or Bank.

On request, New York residents can be informed if a consumer credit report has been requested on Customer by 365 or Bank as well as the name of the agency providing the report.

Customer has read and understands the above and authorizes 365 and Bank to perform the above investigations.

#### 10. Fees.

Customer shall pay the fees for the Payment Processing Service agreed to by Customer in a separate addendum. Once such addendum is accepted by Customer, it shall constitute part of these Processing Terms, together with any amendments thereto. Notwithstanding the foregoing, no rights or obligations with respect to the Payment Processing Service shall arise until such time as the fees have been agreed to by Customer and 365. Fees shall be paid by means of off-sets from settlements to Customer hereunder. If settlements due to Customer are not sufficient, fees shall be paid by means of the ACH consent or such other means as 365 may prescribe. Fees are payable no later than the end of the month during which they accrued. Customer shall pay interest at the rate of one and one-half percent per month on any fees not paid when due, but in no event more than the highest rate of interest legally allowable.

#### 11. ACH Consent.

Customer desires to effect settlement of Settlement Funds and other credits and debits hereunder to/from the Deposit Account by means of Automated Clearing House ("**ACH**") and/or wire transfer. In accordance with this desire, Customer authorizes 365 and Bank and/or their affiliates to initiate debit and credit entries to the Deposit Account (the details of which are set out in the Application) for settlement of the Settlement Funds, for payment of fees and other liabilities under these Processing Terms, and as otherwise instructed by Customer. Customer agrees to maintain sufficient funds in Deposit Account to cover debit transactions. Customer states that it has authority to agree to such transactions and that the Deposit Account indicated is a valid and legitimate account for the handling of these transactions. This authority is to remain in effect until 365 receives written notice from Customer revoking it. Customer also certifies that the appropriate

authorizations are in place to allow Customer to authorize this method of settlement. All changes to the identification of the Deposit Account under this authorization must be made in writing in accordance with the Processing Terms. Customer understands that, if the information supplied as to the ABA Routing Number and Deposit Account Number of the Deposit Account is incorrect, and funds are incorrectly deposited, 365 will attempt to assist Customer in the recovery of such funds but neither 365 nor Bank has any liability as to restitution of the same. 365' assistance in recovering the funds, where available, will be billed to Customer at 365' current hourly rate for such work. Customer acknowledges that the origination of ACH transactions to the Deposit Account must comply with the provisions of U.S. law. This consent shall be referred to in these Processing Terms as the "**ACH Consent**".

12. Miscellaneous.

33. Application.

Customer represents and warrants that statements made on its Application are true as of the date submitted and shall remain true thereafter.

34. Confidentiality.

The terms of these Processing Terms are confidential information of 365 and they shall not be disclosed to any third party other than Bank by Customer or any person or entity acting on behalf of Customer without prior written consent of 365.

35. Section Headings.

The section headings of these Processing Terms are for convenience only and do not define, limit, or describe the scope or intent of these Processing Terms.

36. Assignment.

Without notice to Customer or Customer's consent, 365 may assign these Processing Terms and its rights and obligations hereunder and/or may delegate its duties hereunder, in whole or in part to an entity qualified under Payment Network Rules to perform 365' obligations under these Processing Terms. Further, without notice to Customer or Customer's consent, another Visa and MasterCard member may be substituted for Bank. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Payment Network Rules. Customer cannot assign or transfer its rights or delegate its responsibilities under these Processing Terms without 365' prior written consent, which consent may be withheld in 365' sole and absolute discretion. Any transfer of voting control of Customer or Customer's parent shall be considered an assignment or transfer of these Processing Terms. Any assignment of these Processing Terms other than as provided herein shall be null and void. Failure to obtain 365 consent may result in a termination of these Processing Terms. Any permitted assignee or successor entity must provide such additional information and execute such additional documentation or take any further actions as 365 may request in order to ensure continued processing of Transactions under these Processing Terms. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of Customer's assets or business shall have any right to continue, assume or assign these Processing Terms.

37. Parties.

These Processing Terms binds Customer and its respective heirs, representatives, and permitted and approved successors (including those by merger and acquisition) or any permitted assigns.

38. Bank Rights.

Without prejudice to the rights of 365, each of Bank and American Express have the right to enforce any of the rights of 365 under these Processing Terms.

39. Severability.

Should any provision of these Processing Terms be determined to be invalid or unenforceable under any law, rule, or regulation, including any Payment Network Rule, such determination will not affect the validity or enforceability of any other provision of these Processing Terms.

40. Waivers.

No term or condition of these Processing Terms may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced. 365' or Bank's waiver of Customer's breach of any term or condition of these Processing Terms shall not be deemed a waiver of



any subsequent breach of the same or another term or condition.

#### 41. Entire Processing Terms.

These Processing Terms represents the entire understanding between Customer on the one hand and 365 and Bank on the other with respect to the matters contained herein and supersedes any prior agreements between the parties. For purposes of clarity, these Processing Terms does not supersede any Third Party Servicer Processing Terms between Customer and a Third Party Servicer. Customer agrees that in entering into these Processing Terms it has not relied on any statement of 365 or its representatives. The parties acknowledge and agree that (i) these Processing Terms applies only to Transaction Data generated within the United States; and (ii) this is a contract for commercial services.

#### 42. Notices.

Except as otherwise provided in these Processing Terms, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Transactions) shall be in writing. If to Customer, notices may be delivered by courier or sent by U.S. mail postage prepaid to Customer's address appearing in the Application or by any electronic means, including but not limited to the e-mail address Customer has provided on the Application. If to 365, notices shall be delivered by courier or sent by U.S. mail postage prepaid to the address set out on the 365 Site.

Either party may advise the other of a change in its address / email address by providing written notice as set forth herein. Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, (ii) if sent by facsimile machine, when the confirmation copy is generated, and (iii) if sent by email, when sent provided no "undeliverable" message was received. Notices sent to Customer's last known address (including e-mail address), as indicated in our records, shall constitute effective notice to Customer under these Processing Terms.

#### 43. Governing Law; Waiver of Jury Trial; Arbitration.

These Processing Terms will be governed by and construed in accordance with the laws of the State of Michigan without reference to conflict of law provisions. Any action, proceeding, arbitration hearing or mediation relating to or arising from these Processing Terms must be brought, held, or otherwise occur in the State of Michigan. PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY CLAIM MAY BE RESOLVED BY BINDING ARBITRATION AND THAT (i) Customer IS GIVING UP ITS RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM ALLEGED AGAINST 365, Bank, OR RELATED THIRD PARTIES; (ii) Customer IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY CLAIM ALLEGED AGAINST 365, Bank OR RELATED THIRD PARTIES; (iii) Customer IS GIVING UP ITS RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A BANK OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT OR ARBITRATION FILED AGAINST 365, Bank AND/OR RELATED THIRD PARTIES. Any claim, dispute, or controversy ("**Claim**") by either Customer, 365 or Bank against the other, or against the officers, directors, employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents, successors, or assigns of the other, arising from or relating in any way to these Processing Terms or to the relationship formed between the parties as a result of these Processing Terms, including Claims regarding the applicability of this arbitration clause or the validity of the entire Processing Terms, shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association ("**AAA**") in the County in, Michigan where 365 is located. All Claims are subject to arbitration, no matter what theory they are based on. This includes Claims based on contract, tort (including intentional tort), fraud, agency, Customer's, 365' or Bank's negligence, statutory or regulatory provisions, or any other source of law. Claims and remedies sought as part of a class action, private attorney general, or other representative action are subject to arbitration on an individual (non-class, non-representative) basis only, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. Customer and 365 will agree on another arbitration forum if the AAA ceases operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between Customer and 365 and/or Bank. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The prohibition against class action contained in this Section shall be non-severable from the remainder of this Section. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the AAA in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party

in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the AAA may be obtained and Claims may be filed at any [AAA office](#), [www.adr.org](http://www.adr.org), or 335 Madison Avenue, New York, NY 10017, telephone 1-800-778-7879. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in these Processing Terms shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, Customer MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

#### 44. Compliance with Laws.

In performing its obligations under these Processing Terms, each party agrees to comply with all laws and regulations applicable to it. Customer further agrees to cooperate and provide information requested by Bank or 365 to facilitate their compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury. Without limiting the foregoing, Customer acknowledges and agrees that "restricted transactions" as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulations GG, as they may be amended from time to time ("**Restricted Transactions**") issued thereunder are prohibited from being processed under these Processing Terms or through the Payment Processing Service. Customer represents and warrants that it will not submit such Restricted Transactions for processing. Customer further acknowledges and agrees that it will not use the Payment Processing Service for Transactions involving any person or entity listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)) or the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)) or the processing and acceptance of Transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control or in connection with illegal activity of any kind.

In the event a suspected restricted Transaction is identified, such Transaction may be blocked or otherwise prevented or prohibited. In such event, the relationship created by these Processing Terms may be terminated and other remedies available under these Processing Terms or otherwise may be sought.

#### 45. Force Majeure.

Neither 365 nor Bank will be liable for delays in processing or other non-performance caused by events such as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, non-performance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this provision will affect or excuse Customer's liabilities and obligations for Chargebacks, refunds, or unfulfilled products and services.

#### 46. Amendment.

These Processing Terms may be amended at any time by 365 upon thirty (30) days notice to you. Notwithstanding the foregoing, in the event the terms of these Processing Terms must be amended pursuant to a change required by the Payment Network Rules or any third party with jurisdiction over the matters described herein, such amendment will be effective immediately. Your electronic signature or continued submission of Transactions following such notice will be deemed to be your acceptance of such amendment.

##### (o) Third Party Beneficiaries.

365' and Bank and Bank's affiliates and any persons used by either of them in providing the Payment Processing Service are third party beneficiaries of these Processing Terms and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in these Processing Terms, the parties do not intend for any persons to be third party beneficiaries of these Processing Terms and nothing in these Processing Terms is intended to confer upon any person any rights or remedies.

##### (p) Survival.

Any provision that is reasonably necessary to accomplish or enforce the purpose of these Processing

Terms shall survive and remain in effect in accordance with its terms upon the termination of these Processing Terms. For greater certainty, but without limitation, the following shall survive termination hereof: all obligations of Customer to pay or reimburse 365 or Bank for any fees, costs, expenses, Chargebacks or other liability associated with Customer Transactions or Customer's use of the Payment Processing Service; restrictions on Customer's use of Card Information; Customer's indemnification obligations; Customer's representations and warranties; disclaimers and limitations on liability; 365' and Bank's rights in respect of Third Party Servicer Fees, the Deposit Account, the Reserve, and audits; 365' and Bank's rights and obligations related to Transaction Data submitted prior to termination; the Sections on ACH Consent, Confidentiality, Section Headings, Assignment, Parties, Bank Rights, Severability, Waivers, Entire Processing Terms, Notices, Governing Law, Waiver of Jury Trial, Arbitration, Compliance with Laws, Force Majeure, Amendment, Third Party Beneficiaries, Survival, Relationship Between the Parties, Tax, Glossary and other definitions herein.

(q) Relationship Between the Parties.

The parties shall perform their duties under these Processing Terms as independent contractors. Nothing contained herein will be deemed to create any other relationship between the parties. It is agreed that no party will represent itself to be the joint venturer, co-owner, partner, employer or employee of another party. The parties agree that, except as specifically provided in these Processing Terms, no party grants any other party the power or authority to make or give any agreement, statement, representation, warranty or other commitment on behalf of another party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of another party, or to transfer, release or waive any right, title or interest of such another party.

13. Tax.

365 is obligated to collect and report certain taxpayer information to the United States Internal Revenue Service ("IRS"). Therefore, upon request, Customer shall provide 365 with the appropriate taxpayer information covered by IRS Form W-9 (or the appropriate versions of Form W-8, if applicable). 365 may, in accordance with applicable law and from time to time during the term of these Processing Terms, request Customer to recertify its taxpayer information hereunder. Furthermore, Customer shall be responsible for any IRS penalties accruing based on the actions or inactions of Customer.

14. Customer's Representations and Warranties.

Without limiting any other warranties hereunder, Customer represents and warrants: (i) Customer is validly existing, in good standing and free to enter into these Processing Terms; (ii) Customer is not doing business under a name or style not previously disclosed to 365; (iii) Customer has not changed the nature of its business, Card acceptance practices, delivery methods, return policies or types of goods or series sold requiring a different merchant category code under Payment Network Rules, in a way not previously disclosed to 365; (iv) Customer will use the Payment Processing Service only for its own proper business purposes and will not resell, directly or indirectly, any part of the Payment Processing Service to any person; (v) Customer has not filed a bankruptcy petition not previously disclosed to 365; (vi) Customer owns and controls the Deposit Account and no third party security interest or lien of any type exists regarding the Deposit Account or any Card Transaction; and (vii) Customer will not at any time during the terms of these Processing Terms, or until all amounts due under these Processing Terms have been paid in full, grant or pledge any security interest or lien in the Reserve, Settlement Funds, or Deposit Account to any person without 365' written consent which consent may be withheld in 365' sole and absolute discretion.

Customer further represents and warrants it had the opportunity to seek, and was not prevented or discouraged by 365 or Bank from seeking, independent legal advice prior to the execution and delivery of these Processing Terms and that, in the event Customer did not avail itself of that opportunity prior to executing these Processing Terms, Customer did so voluntarily without any undue pressure. Customer agrees that Customer's failure to obtain independent legal advice shall not be used by Customer as a defense to the enforcement of its obligations under these Processing Terms.

15. American Express Card® Acceptance.

In addition to other applicable provisions of these Processing Terms, the following provisions apply to Customer's acceptance of American Express Cards: (a) These Processing Terms governs Customer's acceptance of American Express Cards under American Express's "**OptBlue Program**". If and when the Transactions submitted by American Express Card holders exceed the charge volume eligibility criteria for

the OptBlue Program, American Express may require Customer to convert to a direct card acceptance agreement (“**Card Acceptance Processing Terms**”) with American Express. If this occurs, upon such conversion, (i) Customer will be bound by American Express’s then-current Card Acceptance Processing Terms; and (ii) American Express will determine the pricing and other fees payable by Customer under the Card Acceptance Processing Terms; (b) Customer’s participation in the OptBlue Program is subject to the approval of American Express. Customer authorizes 365 and/or its affiliates to submit Transactions to, and receive settlement on such Transactions from, American Express on behalf of Customer; (c) Customer shall not assign to any third party any payments due to it for American Express Card Transactions, and all indebtedness arising from such Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Customer may sell and assign future receivables to 365, its affiliated entities and/or any other cash advance funding source that partners with 365 or its affiliated entities; (d) American Express shall have third-party beneficiary rights, but not obligations, to enforce the terms of these Processing Terms applicable to American Express Card acceptance against Customer; (e) Customer may opt out of accepting American Express Cards under these Processing Terms by providing 30 days’ notice to 365 without directly or indirectly affecting its rights to accept other Payment Network Cards; (f) Except as provided in Sub-Section 15(g) below, 365 may disclose to American Express information regarding Customer and Customer’s Transactions to American Express, and American Express may use such information to (i) perform its responsibilities in connection with American Express Card acceptance, (ii) promote American Express, (iii) perform analytics and create reports, and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of American Express Card acceptance, and to provide important transactional or relationship communications from American Express. American Express may also use such information about Customer obtained in connection with these Processing Terms at the time of setup to screen and/or monitor Customer in connection with American Express marketing and administrative purposes; (g) Customer may opt-out of receiving American Express commercial marketing communications about products and services by selecting the opt-out option on its Application or subsequently by providing written notice to its primary relationship contact at 365. Customer may continue to receive such communications from American Express after opting out while American Express updates its records to reflect Customer’s opt-out choice; and (h) Customer may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Customer has fully paid for such Chargeback, and it otherwise has the right to do so. Customer shall comply with the Card Acceptance Processing Terms and American Express Payment Network Rules and shall cease the use or display thereof on any termination of the OptBlue Program for Customer or these Processing Terms.

#### 16. Glossary.

In these Processing Terms, the following terms have the definitions indicated below:

“**American Express**” means American Express Travel Related Services Company, Inc.

“**American Express Customer Operating Guide**” means the rules and regulations [available at https://merchant-channel.americanexpress.com/merchant/en\\_US/merchant-regulations/](https://merchant-channel.americanexpress.com/merchant/en_US/merchant-regulations/) (or any successor or replacement website), as they may be amended from time to time by American Express.

“**Application**” is a statement of your financial condition, a description of the characteristics of your business or organization, and related information you have previously or concurrently submitted to us, including credit and financial information, to induce us to enter into these Processing Terms with you and that has induced us to process your Transactions under the terms and conditions of these Processing Terms.

“**Bank**” means the acquiring bank that is a member of Payment Networks and assisting 365 in processing Transactions hereunder.

“**Card Information**” is information related to an End User or the End User’s Card, that is obtained by Customer from the End User’s Card, or from the End User in connection with his or her use of a Card (for example a security code, a PIN number, or the End User’s zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include the Card account number and expiration date, the End User’s name or date of birth, PIN data, security code data (such as CVV2 and CVC2) and any data read, scanned, imprinted, or otherwise obtained from the Card, whether printed thereon, or magnetically, electronically or otherwise stored thereon.

“**Card**” means any account or evidence of an account issued to a Cardholder under license from a Payment Network, any or representative or member of a Payment Network, that Customer accepts as payment from

Cardholders for goods or services. Cards include, but are not limited to, credit and debit/check cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts and any other payment instrument with an embedded microcomputer EMV chip.

**"Cardholder"** (also referred to as **"Card Member"** in some Payment Network materials) means the person whose name is embossed upon the face of the Card and who purports to be the person in whose name the Card is issued.

**"Chargeback"** is a reversal of a Transaction you previously presented to 365 pursuant to Payment Network Rules.

**"End User"** is the person or entity to whom a Card is issued or who is otherwise authorized to use a Card.

**"Deposit Account"** means a deposit account of the Customer to and from which Settlement Funds and fees and other Customer liabilities hereunder shall be deposited or withdrawn, as applicable.

**"EMV"** means Europay, MasterCard and Visa.

**"Payment Network Rules"** are the bylaws, rules, and regulations and the American Express Customer Operating Guide, as they each exist from time to time, of the Payment Networks. Visa and Mastercard Rules can be viewed here: <https://usa.visa.com/support/small-business/regulations-fees.html> and [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf)

**"Payment Network"** is any payment method provider whose payment method is accepted by 365 for processing, including, but not limited to, Visa, U.S.A., Inc., MasterCard International, Inc., American Express, Discover Financial Services, LLC and other credit and debit card providers, debit network providers, gift card and other stored value and loyalty program providers. Payment Network also includes the Payment Card Industry Security Standards Council.

**"365 Site"** means [PROCESSOR / ISO SITE];

**"Security Standards"** are all rules, regulations, standards or guidelines adopted or required by the Payment Networks or the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Card Information, including but not limited to the Payment Card Industry Data Security Standards ("**PCI DSS**"), Visa's Cardholder Information Security Program ("**CISP**"), Discover's Information Security & Compliance Program ("**DISC**"), American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program ("**SDP**"), Visa's Payment Application Best Practices ("**PABP**"), the Payment Card Industry's Payment Application Data Security Standard ("**PA DSS**"), MasterCard's POS Terminal Security program and the Payment Card Industry PIN Entry Device Standard, in each case as they may be amended from time to time. Detailed information about PCI DSS, can be found at the PCI DSS Counsel's website: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org). Detailed information about Visa's CISP program can be found at Visa's CISP website: [www.visa.com/cisp](http://www.visa.com/cisp). Detailed information about Mastercard's SDP program can be found at the Mastercard SDP website: [www.mastercard.com/sdp](http://www.mastercard.com/sdp). Detailed information about DISC can be found at Discover DISC website: <http://www.discovernetwork.com/fraudsecurity/disc.html>. Detailed information can be found at American Express' website: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

**"Third Party Servicer"** means a third party retained by Customer to assist in the supply, marketing or delivery of its products or services or that assists Customer in the collection, storage, use or disclosure of marketing, Transaction Data or other data, which third party has been approved in advance by 365. \_\_\_\_\_ is an approved Third Party Servicer.

**"Transaction Data"** is the written or electronic record of a Transaction, including but not limited to an authorization code or settlement record, as well as the associated End User information, Card Information, and information concerning the commercial transaction between the End User and the Customer that gives rise to the Card Transaction.

**"Transaction"** is an actual or attempted transaction conducted between an End User and Customer utilizing a Card.