



THE TERMS AND CONDITIONS TO THE PARTNER PROGRAM AGREEMENT (the “Agreement”) are provided and agreed to as of the date the last of the parties to the Agreement has signed it (the “Effective Date”) by and between FORTIS PAYMENT SYSTEMS, LLC, (together with its permitted successors and assigns, the “Company” or “FORTIS”), and the entity stated on the signature page (the “Partner”).

WHEREAS, the Company is engaged in the business of providing credit card services and other forms of electronic funds transfers services and related equipment to businesses (collectively, the “Merchants”) through Banks; and

WHEREAS, Partner engages in the business of marketing services to businesses; and

WHEREAS, Partner desires to provide to FORTIS, certain services as provided below, all in accordance with the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in this Agreement, each of the parties hereto hereby agrees as follows:

1. Term.

(a) The initial term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall expire on the date that is three (3) years after completion of the Certification (as defined herein); *provided, however*, that, following the Initial Term, this Agreement shall thereafter automatically renew for successive one (1) year terms (each, a “Renewal Term”), unless either party delivers written notice of termination to the other party not less than one hundred eighty (180) days prior to the end of the Initial Term or the then-current Renewal Term, in which case this Agreement shall expire on the last day of the Initial Term or the last day of the Renewal Term then in effect, as the case may be. The Initial Term and any Renewal Terms are referred to collectively as the “Term”.

(b) Notwithstanding Section 1(a), the Term of this Agreement may be terminated early pursuant to specific Sections within this Agreement, in which case the Term shall end on the date set forth in a written notice of termination sent by either party.

(c) Upon termination, cancellation, or expiration, Partner will continue to earn Commission for any Approved Merchants as described in this Section. Partner shall be entitled to continue receiving the Commissions as set forth on Schedule B (as such may be amended by the parties hereto from time to time pursuant to the Section 16(c) of this Agreement) for so long as (x) such Approved Merchant continues to utilize the Company’s Payment Processing Services pursuant to the applicable Merchant Agreement, and (y) the Company continues to receive its corresponding compensation from the Bank related to such applicable Merchant Agreement; *provided, however*, that all further Commission payments to Partner hereunder shall immediately cease in any instance where (A) the Company is no longer receiving, for any reason whatsoever (other than as a result of the Company’s assignment of such right to receive such compensation), its corresponding compensation from the Bank (*i.e.* if the Company doesn’t get paid, then Partner doesn’t get paid), or (B) this Agreement is terminated by the Company pursuant to this Agreement.

(d) Partner shall not delegate any of its duties or obligations under this Agreement.

2. Relationship of the Parties.

(a) Company hereby appoints Partner, and Partner hereby accepts such appointment, as a marketing and sales representative of Company for the purpose of providing Partner Services. The parties understand that the Company reserves the right to enter into similar agreements with others

(b) The parties hereto expressly acknowledge and agree that Partner’s relationship with the Company is solely that of an independent contractor and that this Agreement does not create a partnership, joint venture or agency relationship between them. Neither party shall have the authority to

offer or agree to assume any obligations or commitments in the name of, on behalf or binding upon the other party, other than as expressly set forth herein.

(c) The relationship established under this Agreement is solely limited to the provision of services as described in this Agreement. The method of performance of services hereunder by Partner subject to the terms and conditions of this Agreement, shall be solely within the control of the Partner. Partner may employ such competent and qualified personnel as it deems necessary to perform its obligations under this Agreement; provided, however, that Partner shall be fully liable to Company for any and all acts or omissions of such employees. Partner shall maintain control over the day-to-day job duties of its employees, and will have the exclusive right and obligation to supervise, direct, and control Partner's employees in order to conduct its business, discharge its fiduciary responsibilities, or comply with any Federal, state, or local laws, rules or regulations. The Company may not direct such employees, and the Partner takes full responsibility for paying all compensation and expenses of its employees.

(d) Company shall be Partner's preferred provider of Payment Processing Services. Partner shall introduce Company to prospective Merchants for Payment Processing Services prior to the submission to any other entity that offers similar services to that of Company. If Company cannot deliver the Payment Processing Services in a commercially reasonable manner or such prospective Merchant does not meet Company's qualification standards, then Partner may introduce an individual prospective Merchant to a competitor of Company.

3. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party hereto without the prior written consent of the other party, provided, either party may assign this Agreement without the other party's consent, to a successor in interest by way of a merger, acquisition, sale of all or substantially all of its assets, or other corporate reorganization, provided, however, that the assignee must assume all obligations of the assignor under this Agreement in writing and such assignee shall have the financial capability to assume all obligations hereunder. Furthermore, in the event of an acquisition event, Company and Partner agree to discussions in consideration of any material impact to the business relationship.

(b) In the event that Partner wishes to sell or receives an offer for the purchase of all or any portion of Partner's Portfolio, including, without limitation, its right to receive Commissions hereunder, Partner shall procure a bona fide written offer, signed by the prospective purchaser and containing all terms of the offer (the "Offer") and shall promptly notify Company in writing of the terms of the Offer. Company shall then have the option to elect within 30 days after receipt of the terms of the Offer to purchase that portion of Partner's Portfolio covered by the Offer on the same terms and conditions set forth in the Offer. If Company declines to exercise this option or does not provide Partner notice of its election to decline or exercise such option within such 30-day period, Partner shall be entitled to sell that portion of Partner's Portfolio set forth in the Offer to the third party and on the terms set forth in the Offer, provided that such third-party also completes and executes the Partner's Assignment of Commission form. If such sale is not made within 60 days after the expiration of the 30-day period set forth in this section or Partner's receipt of a notice from Company that Company declines to exercise the option set forth in this section, whichever comes sooner, Partner's Portfolio shall automatically again become subject to the restrictions on transfer stated herein

4. Partner's Duties and Responsibilities. Partner shall utilize its best efforts in the performance of its obligations hereunder, which shall include:

(a) Promotion of Program. Partner will actively promote the Payment Processing Services as the preferred Payment Processing Service to its customer base and through all marketing channels. Partner will promote only Payment Processing Services of the Company and no other provider of similar services to its clients unless (a) a Merchant specifically requests another provider or (b) the Company is unable to approve a Merchant for Payment Processing Services. Neither of these two exclusions may be as a result of proactive efforts by Partner. In support of the program and to help drive adoption, Partner will:

(i) Allow Company to participate as a top-level participant at all user events where prospective Merchants and/or channel partners are present, and Company will be included as part of an internal Partner team member(s).

(ii) Develop and drive a promotion for the Company's Payment Processing Services at least once per quarter during the Term and any Renewal Term of this Agreement to all Partner's new and prospective clients.

(iii) Provide the Company with a list of Partner's clients, which the Company will hold as Partner's Confidential Information, so Company may market and sell Payment Processing Services directly to Partner's customers.

(b) Promotional Materials; Trademarks

(i) In performing its obligations under this Agreement, Partner shall utilize only such marketing and promotional materials as have been provided to Partner by the Company, or that have been previously approved by the Company in writing. In no event shall Partner use or distribute any marketing or promotional materials that are in any way false, misleading or inaccurate. Without limiting the generality of the foregoing, all marketing and promotional materials used by Partner shall comply with all consumer protection laws, including, without limitation, all applicable provisions of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601*et seq.*) *provided, however*, that Partner shall have no liability to the Company with respect to any materials provided by the Company to Partner (unless any such materials have been altered by Partner or any of its Affiliates or sub-agents). Company will provide marketing and sales support to Partner during the Term of the Agreement.

(ii) Partner shall not display the names and/or trademarks of the Company on any promotional materials without the Company's prior written approval as to the form and content of such display.

5. Company Duties and Responsibilities.

(a) Approval / Disapproval of Merchant Applications. The Company shall approve or disapprove, subject to such limitations as it may choose to impose, the application of each prospective merchant to become an Approved Merchant. All decisions regarding the acceptance and/or conditions of acceptance of any such application, the entering into a Merchant Agreement with a Merchant, rejecting any such application, or refusing to accept one or more applications for any reason whatsoever, shall be in the sole and absolute discretion of the Company. The Company and the Bank, in their sole and absolute discretion, may cancel any Merchant Agreement in accordance with its terms and provisions as they deem appropriate, without prior consultation with or notice to Partner.

(b) Underwriting and Boarding. The Company shall review each prospective merchant referred by Partner hereunder to determine, in the Company's sole discretion, whether such prospective merchant meets the Company's underwriting requirements and other applicable criteria. The Company shall be responsible for all underwriting and boarding functions with respect to Approved Merchants.

(c) Payment Obligations. The Company shall comply with its obligations to pay compensation to Partner as set forth in this Agreement.

(d) Promotional Materials. The Company represents and warrants to Partner that all materials provided by Company to Partner for distribution to Merchants and prospective merchants shall comply with all applicable laws, including, without limitation, all applicable provisions of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(e) Support Services. Partner shall have capable personnel trained to market and discuss the Payment Processing Services and shall provide first level support, including help desk and troubleshooting services to its Merchants. Partner shall be responsible for such personnel's acts or omissions with respect to the provision of such support services. For purposes of this Agreement, "first level support" means answering and logging calls about problems related to the Payment Processing Services and attempting to resolve basic problems using documented instructions from Company. Company shall have capable personnel trained to market and discuss the Payment Processing Services. Company shall be responsible for its personnel's acts and omissions with respect to the provision of such maintenance and support services. Support beyond first level support means providing in-depth technical support with respect to the Payment Processing Services.

6. Mutual Responsibilities.



(a) Compliance with Laws. Each party shall perform its duties and obligations hereunder in compliance with all applicable Federal, state and local laws, rules and regulations.

(b) Compliance with Network Rules. Each party shall comply with all applicable Network Rules, including but not limited to those of VISA and MasterCard (including authorized, legitimate and proper use of VISA, MasterCard and affiliated credit card marks and names), as such rules and regulations may be amended from time to time.

(c) Each party agrees to comply with all privacy and security requirements under the Payment Card Industry Data Security Standards the “PCI Standards”) with regards to each party's use, access and storage of any Cardholder's non-public personal information (“Cardholder Data”) in the course of its performance under this Agreement. Without limiting the generality of the foregoing, neither party shall use or disclose any Cardholder Data to any third person except as required in the performance of its obligations under this Agreement. Each party agrees to implement the safeguards set forth in the PCI Standards, as amended from time to time, to prevent unauthorized use or disclosure of any Cardholder Data.

7. Compensation of Partner. Subject to the terms and conditions of this Agreement, Partner shall be entitled to receive from the Company as compensation for the services rendered by Partner to the Company hereunder, the following;

(a) Commission.

(i) FORTIS shall pay Partner a percentage of Profit (“Commission”) in the percentages set forth in the applicable Schedules.

(ii) All Commissions shall be paid monthly on the basis of the prior month's Profits.

(iii) FORTIS shall pay such Commissions within twenty-one (21) days after FORTIS receives such Profit from the Bank.

(iv) Partner shall be solely responsible for all expenses and costs related to its activities, obligations and duties hereunder, including without limitation, all taxes, fees, and assessments of any kind.

(v) Unless Profits are actually received by FORTIS from its Bank for the applicable Approved Merchant, FORTIS shall have no obligation whatsoever to pay any compensation under this Agreement or otherwise to Partner with respect to such Approved Merchants.

(vi) If a third-party reseller or VAR needs to be compensated, Partner will receive an override payment of 10% of the net processing revenue. Company agrees to compensate Partner's third-party resellers or VARs directly for Approved Merchants so long as that the third-party reseller or VAR has an executed agreement with the Company's Payments Processing Services

(b) Company shall have the right, upon not less than thirty (30) days written notice to Partner, to increase or supplement the Costs on Schedule A so as to pass through any fees, fines, regulatory costs or other costs imposed by any third party, including but not limited to any Bank, Network or third party processor; *provided, however*, that (x) such third party costs shall be uniformly imposed by the Company upon all similarly situated Partners of the Company; and (y) this Section 7(b) shall not apply to any such third party costs imposed solely as a result of the Company's gross negligence or willful misconduct.

(c) Right to Offset. The Company may set off against any Commission otherwise owing to Partner under this Section 7 for any sums that are due and owing from any obligation or liability of Partner to the Company or any other sums otherwise owed by Partner or its Affiliates to the Company or its Affiliates. Such right of setoff may be exercised by FORTIS at any time and without notice to Partner.

(d) New Merchant Bonus. During the Term of this Agreement, and subject to the additional terms contained herein, Partner may be eligible to receive a bonus for each new Merchant referred by Partner in the prior month and that is utilizing Company's Payment Processing Services pursuant to a Merchant Agreement (each a "New Merchant Bonus"). In the event that (a) a Merchant ceases utilizing Fortis's services (for whatever reason), (b) a Merchant's merchant agreement with Fortis is terminated, or (c) a Merchant's processing volume is materially reduced or its monthly minimum is reduced, within the first twelve (12) months a New Merchant Bonus is paid, then (i) Partner shall repay the New Merchant Bonus for that Merchant to Fortis within thirty (30) days written notice of such occurrence; or (ii) Fortis may, in its discretion, deduct or set off the corresponding New Merchant Bonus paid to Partner for that Merchant against any Commission(s) otherwise owed to Partner. Notwithstanding the above, Fortis will review Partner's portfolio of Merchants quarterly and retains the right to change, amend, modify, suspend or terminate the New Merchant Bonus in its sole discretion.

8. Non-Solicitation.

(a) Commencing on the Effective Date and ending on the date that is three (3) years after the last date that Partner receives any compensation under this Agreement for any reason (the "Non-Solicitation Period"), neither Partner nor any of its Affiliates, associated entities, successors or assigns shall, subject to the provision below, directly or indirectly, (i) solicit any Merchant for purposes of any Person other than the Company providing Payment Processing Services to any such Merchant; or (ii) in any manner persuade or influence any Merchant to cease any business relationship with the Company or any of its Affiliates; or (iii) in any manner interfere with the contractual rights and interests of the Company and/or the Bank under any Merchant Agreement; or (iv) solicit or attempt in any manner to persuade or influence any employee or agent of the Company or any of its Affiliates to work for, or provide services to any Person other than the Company, or in any other manner persuade or influence such employee or agent to cease his or her employment or agency relationship with the Company or any of its Affiliates; provided, that, notwithstanding the foregoing, the parties hereto acknowledge and agree that it shall not be a violation of this Section 8(a) for Partner to contact or solicit any Merchant for purposes of providing products or services to such Merchant other than Payment Processing Services.

(b) Upon a breach by Partner or its Affiliates of Section 8(a) of this Agreement (subject to the proviso set forth in this Section 8(b) of this Agreement), Partner hereby agrees to pay damages to the Company in an amount equal to Five Thousand Dollars (\$5,000) for each Merchant that terminates its relationship with the Company or any of its Affiliates as a result of said breach. Partner acknowledges and agrees that it would be extremely difficult or impracticable to fix the actual damages resulting from Partner's breach of Section 8(a) hereof, and therefore, Partner shall pay such damages not as a penalty, but as a reasonable estimate of the loss actually sustained by the Company as a result of said breach. The damages payable to the Company under this Section 8(b) shall be without prejudice to the rights of the Company to exercise any other rights or remedies available to the Company under this Agreement or under applicable law.

9. Confidentiality.

(a) During the Term and for a three (3) years thereafter, Partner will not, other than on behalf of the Company and in connection with the performance of its obligations under this Agreement, use or disclose such Confidential Information, either directly or indirectly, to any Person without the prior written consent of the Company. Upon termination of this Agreement, for any reason, Partner will promptly return to the Company all Confidential Information in its possession, custody or control, without keeping any-copies thereof.

(b) In the event that Partner is requested or becomes legally compelled to disclose any Confidential Information, Partner will provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 9(b) and Partner will cooperate with the Company in such efforts. In the event that a protective order or other remedy is not obtained, or the Company waives compliance with the provisions of this Section 9(b), Partner will furnish only that portion of any Confidential Information which is legally required to be disclosed.

(c) Company represents to Partner that Company shall maintain in confidence and not use or disclose to any third party, other than in connection with the performance by the Company of its obligations under this Agreement or in the enforcement of Company's rights or Partner's obligations under this Agreement, and only to the extent reasonably necessary for such purposes, any financial information of Partner provided by Partner to Company pursuant to this Agreement or obtained by or made available to Company pursuant to this Agreement including, but not limited to, Section 6(d) above.

10. Equitable Relief.

(a) If either party breaches, or threatens to breach, any of the provisions of Sections 8 or 9 of this Agreement, in addition to any other rights the Company may have, including a claim for damages, the Company shall have the right to have the provisions of Sections 8 or 9, as the case may be, specifically enforced, and Partner's breach or threatened breach enjoined, by any court of competent jurisdiction, without presentment of a bond (such requirement being expressly waived by Partner), it being agreed that any breach or threatened breach of Sections 8 or 9 of this Agreement would cause irreparable harm to the Company in that money damages would not provide an adequate remedy.

(b) Partner acknowledges and agrees that the restrictions contained in Sections 8 or 9 of this Agreement are reasonable and valid in geographical and temporal scope and in all other respects. If any provision of Sections 8 or 9 of this Agreement shall be invalid or unenforceable to any extent, the remainder of Sections 8 or 9 shall not be affected and shall be enforced to the maximum extent permitted under applicable law.

11. Default by Partner. Any of the following shall constitute a default by Partner under this Agreement:

(a) Partner's material breach of this Agreement, including, without limitation, any falsification of information or deliberate omission of information on any document, or any information provided under this Agreement or as requested by FORTIS from time to time;

(b) Any action of Partner (or any failure of Partner to act) which, in the reasonable determination of FORTIS, involves malfeasance, fraud, theft, embezzlement or serious moral turpitude, or which, if generally known, would or might have an adverse effect on FORTIS or its business or reputation;

(c) Partner's conviction (including pleas of guilty or *nolo contendere*) of a felony;

(d) Partner's failure to place at least the number of Approved Merchants (if specified in Schedule B) with FORTIS during the term of this Agreement, or, in the alternative to termination of this Agreement, FORTIS may revise the Commission share percentage specified in Schedule B in FORTIS's discretion;

(e) Any misrepresentation or breach of warranty or covenant of Partner under this Agreement, and/or

(f) any unauthorized assignment of this Agreement by Partner. In the event of termination of FORTIS's agreement with any of its Banks for any reason with whom any Approved Merchant has been placed, including, without limitation, a default by FORTIS, then this Agreement and any right to compensation for such Approved Merchants placed with such Bank shall also automatically terminate.

(g) Breach of Network Rules. The Company may immediately terminate this Agreement upon written notice to Partner in the event that Partner materially violates any of the Network Rules relating to the performance of Partner's duties and obligations hereunder (and fails to timely cure, if cure is permitted), in which event all further Residual payments to Partner pursuant to this Agreement shall immediately cease, and the Company shall have no further obligation to Partner with respect to such payments.

12. Termination by Regulatory Order. It is expressly acknowledged and agreed by Partner that this Agreement may be terminated by the Company upon the occurrence of any of the following:

(a) Regulatory Order. The Company may immediately terminate this Agreement upon written notice to Partner in the event that any of the Partner, the Company and/or the Bank becomes subject to any change in a statute, law, rule, regulation, policy or other official pronouncement of any state or federal

government entity, regulatory agency or of any Network that would prohibit the Partner, the Company and/or the Bank from continuing the business and or activities described, in this Agreement.

13. Effect of Termination. Upon expiration or termination of this Agreement for any reason:

(a) Partner shall (i) immediately discontinue its promotion and marketing of the Company's Payment Processing Services and (ii) except to the extent preservation or retention is necessary to assert any claim or defense with respect to any then existing breach or alleged breach of this Agreement, promptly return or destroy all materials.

(b) the Company and/or the Bank, as the case may be, shall retain the exclusive right to provide Payment Processing Services to all Approved Merchants submitted by Partner pursuant to this Agreement, and all corresponding Merchant Agreements shall remain the exclusive property of the Company and/or the Bank;

(c) the terms and conditions set forth in this Agreement that, by their nature or their express terms (including but not limited to the Partner's confidentiality and non-solicitation obligations), would continue beyond such expiration or termination of this Agreement shall remain in full force and effect following such expiration or earlier termination.

14. Indemnification. Partner, on one hand, and Company, on the other, hereby agree to defend, indemnify and hold harmless each other and its members, officers, directors, employees, agents, insurers, representatives, predecessors, successors and assigns, from all liabilities, losses, claims, damages, costs, and expenses (including reasonable attorneys' fees) whenever arising or incurred that are caused or are alleged to have been caused, directly or indirectly, by or as a result of (i) any failure to comply with any applicable law, rule or regulation, or obligations hereunder, (ii) any act of fraud, willful or intentional misconduct or gross negligence committed by the either party, or any of its respective employees or agents; and (iii) any and all claims, actions, suits, proceedings, investigations, demands, assessments and judgments incident to any of the foregoing.

The rights and obligations of this Section 15 shall survive the termination of this Agreement indefinitely.

15. LIMITATION OF LIABILITY.

(a) EXCEPT AS SET FORTH HEREIN, NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS OR GOODWILL, LOSS OF DATA, OR FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, UNDER ANY THEORY OF LIABILITY, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S CUMULATIVE LIABILITY TO ONE ANOTHER OR TO ANY THIRD PARTY UNDER ANY CLAIM (INCLUDING BUT NOT LIMITED TO FOR INDEMNITY) WHETHER OR NOT ARISING OUT OF THIS AGREEMENT EXCEED THE FEES PAID TO PARTNER BY COMPANY IN THE THREE MONTHS PRECEDING THE MONTH IN WHICH THE CAUSE OF ACTION ARISES. THE PARTIES RECOGNIZE AND HEREBY AGREE THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED-FOR BASES OF THIS AGREEMENT AND HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO PARTNER'S BREACH OF SECTION 8 (NON-SOLICITATION) OR SECTION 9 (CONFIDENTIALITY) OF THIS AGREEMENT.

(B) EXCEPT AS TO PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE OR CONSIDERED IN DEFAULT UNDER THIS AGREEMENT WHEN THE DELAY OF PERFORMANCE IS CAUSED BY CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL AND OCCURRING WITHOUT ITS FAULT OR NEGLIGENCE, INCLUDING FAILURE OF SUPPLIERS, SUBCONTRACTORS, AND CARRIERS, INCLUDING, BUT NOT LIMITED TO, ACTS OF CIVIL OR MILITARY AUTHORITIES, NATIONAL EMERGENCIES, FIRE, FLOOD, ACTS OF GOD, INSURRECTION, AND WAR, PROVIDED THE PARTY INVOLVING THIS SECTION IMMEDIATELY PROVIDES NOTICE THEREOF TO THE OTHER AND DOES EVERYTHING REASONABLY POSSIBLE TO RESUME ITS PERFORMANCE THEREUNDER.

(c) THIS AGREEMENT IS A SERVICE AGREEMENT AND, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE COMPANY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES. EXPRESS OR IMPLIED, MADE TO PARTNER, MERCHANTS OR ANY OTHER PERSON OR ENTITY, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY. FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

16. Miscellaneous.

(a) Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective representatives, heirs, successors and assigns; *provided, however*, that Partner shall not assign any of its rights or obligations hereunder (except as expressly provided elsewhere) without the prior written consent of the Company, which consent may be withheld in the Company's sole and absolute discretion. Any attempted assignment by Partner without the Company's prior written consent shall be null and void, and shall constitute a material breach of this Agreement. The Company may, without the consent of Partner, assign any of its rights and obligations under this Agreement to any third party

(b) Entire Agreement.

(i) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, understandings and contracts between the parties with respect to the subject matter hereof.

(ii) Notwithstanding the foregoing, unless expressly agreed to by the parties, the parties acknowledge that they may be parties to other existing agreements related to the referral or solicitation of Merchants or prospective merchants, or may be parties to such other agreements in the future, and the parties further acknowledge and agree that this Agreement shall NOT supersede or replace any such other agreements, each of which shall remain in full force and effect with respect to any Merchants solicited by Partner and referred to the Company thereunder.

(iii) In the event of any inconsistency between any provision of this Agreement, and any applicable Card Rule, the applicable Card Rule shall be afforded precedence and shall prevail.

(c) Amendment; Waiver. This Agreement may not be amended or modified at any time except by a written instrument executed by the Company and the Partner. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at any time.

(d) Notices. Any notice, demand, request or written communication which may be required to be given by either party to or upon the other under this contract shall be given by hand delivery, certified mail, return receipt requested, or nationally reputable overnight courier service. If to the Partner, to the undersigned and to the address first written above. If to the Company, to the undersigned at the Company's principal place of business with a copy to: Varnum LLP, Attn.: Ziyad Hermiz, 260 East Brown St. Ste 150, Birmingham, Michigan 48009, zihermiz@varnumlaw.com. Notices shall be effective on the date hand delivered, three (3) days after the date deposited with the U.S. Postal Service for certified mail, or one (1) day after the date deposited with a nationally reputable overnight courier, as the case may be.

(e) BINDING ARBITRATION. EXCEPT AS SET FORTH IN SECTION 10 OF THIS AGREEMENT, ANY DISPUTE OR CLAIM BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE FULLY AND FINALLY RESOLVED BY BINDING ARBITRATION IN THE STATE OF DELAWARE IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES AND PRACTICES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") FROM TIME TO TIME IN FORCE AND EFFECT. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE AND IS THE EXCLUSIVE REMEDY FOR THE RESOLUTION OF SUCH DISPUTES UNDER THIS AGREEMENT, THERE SHALL BE A SINGLE ARBITRATOR. WHO MUST BE (I) A LAWYER ENGAGED FULL-TIME IN THE PRACTICE OF LAW AND A MEMBER IN GOOD STANDING OF THE STATE BAR OF MICHIGAN AND (II) ON THE AAA REGISTER OF ARBITRATORS. WITHIN THIRTY (30) DAYS OF THE CONCLUSION OF THE ARBITRATION HEARING. THE ARBITRATOR

SHALL PREPARE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. JUDGMENT ON THE WRITTEN AWARD MAY BE ENTERED AND ENFORCED IN ANY STATE OR FEDERAL COURT LOCATED IN THE CITY OF DETROIT AND COUNTY OF WAYNE. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS SO SELECTED, TO THE EXCLUSION OF ANY OTHER COURT WHICH MIGHT HAVE HAD JURISDICTION APART FROM THIS SECTION 16(d), WAIVE ANY DEFENSE OF LACK OF IN PERSONAM JURISDICTION: OF SUCH COURTS AND AGREE THAT SERVICE OF PROCESS IN ANY ACTION BEFORE SUCH COURTS MAY BE MADE BY MAILING IT TO THE PARTY TO BE SERVED AT THE ADDRESS PROVIDED FOR IN THIS SECTION 16(e) HEREOF. IT IS MUTUALLY AGREED THAT THE WRITTEN DECISION OF THE ARBITRATOR SHALL BE VALID, BINDING, FINAL AND NONAPPEALABLE; *PROVIDED* HOWEVER, THAT THE PARTIES HERETO AGREE THAT THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO AWARD PUNITIVE DAMAGES AGAINST ANY PARTY TO SUCH ARBITRATION. THE ARBITRATOR SHALL REQUIRE THE NON-PREVAILING PARTY TO PAY THE ARBITRATOR'S FULL FEES AND EXPENSES OR, IF IN THE ARBITRATOR'S OPINION THERE IS NO PREVAILING PARTY, THE ARBITRATOR'S FEES AND EXPENSES WILL BE BORNE EQUALLY BY THE PARTIES THERETO. EACH OF THE PARTIES HERETO FURTHER AGREES THAT IT WILL NOT BECOME A MEMBER OF ANY CLASS-WIDE LITIGATION OR ARBITRATION AND WILL NOT INITIATE ANY CLASS ACTION- LITIGATION OR ARBITRATION AGAINST THE OTHER PARTY.

(f) GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO ANY JURISDICTION'S PRINCIPLES OF CONFLICT OF LAWS.

(g) Construction and Interpretation. This Agreement has been negotiated by the parties hereto, and legal or equitable principles that might require the construction of this Agreement, or any provision of this Agreement against the party drafting this Agreement will not apply in any construction or interpretation of this Agreement.

(h) Schedules and Exhibits. Any schedules and exhibits referred to herein and attached hereto are hereby expressly incorporated herein in their entirety and made a part of this Agreement. All defined terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in any schedule and/or exhibit referred to herein, except that, in the event of any conflict between any of the provisions of such schedule and/or exhibit and the provisions of this Agreement, the provisions of this Agreement shall prevail.

(i) Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.

(j) Headings. The Section headings contained in this Agreement are for reference purposes, only and shall not affect the meaning or interpretation of this Agreement.

(k) Counterparts; Copies. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Copies or facsimiles of this Agreement shall have the same force and effect for all purposes as the original. The signatures to this Agreement may be evidenced by facsimile or PDF copies reflecting one or more parties signatures hereto, and any such facsimile or PDF copy shall be sufficient to evidence the signature of such party or parties as if it were an original signature.

17. Definitions.

"Affiliate" shall mean, (i) with respect to any Person that is a business entity, any other Person that, directly or indirectly; through one or more intermediaries, controls, is controlled by or is under common control with, such person; and (ii) with respect to any Person that is an individual, any other Person that is such individual's partner joint venturer, co-owner, agent, representative, employee or family member. For purposes of this definition, "control" (including, with its correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person that is a business entity, shall include the possession, directly or indirectly, of the power to vote more than fifty percent (50%) of the securities having voting power for the election of directors of such business entity or otherwise to direct or cause the direction of the management and policies of that person, including by



ownership or control of more than fifty percent (50%) of the capital or profits interest of such entity, whether through the ownership of voting securities, by contract or otherwise.

“Approved Merchant” means a Merchant solicited and referred by Partner pursuant to the terms of this Agreement and that is utilizing the Company’s Payment Processing Services pursuant to a Merchant Agreement approved by the Company and the Bank.

“Bank” for purposes of this Agreement means members of Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc, National Automated Clearing House or any other Network or issuers of Payment Instruments, a payment processor or ISO, or any other third-party with which the Company may, from time-to-time, enter into a sponsorship, marketing, referral, or similar agreement that is applicable to the services provided by Company under this Agreement.

“Certification” occurs once integration of Company’s Payment Gateway into Partner’s system is complete and at least five (5) Merchant accounts have been successfully tested and out of beta (i.e. live). Additionally, the parties shall mutually agree in writing that the requirements of Certification have been completed.

“Cardholder” means a Person to whom a Payment Instrument is issued or who is otherwise authorized to use a Payment Instrument.

“Confidential Information” means all of the Company’s proprietary, secret or confidential information or data, including but not limited to any such information relating to (a) the Company and its Affiliates’ operations, business methods, business and marketing plans, sales, financial information, products or services; (b) any Merchants of the Company or its Affiliates; (c) the Company’s Payment Processing Services; (d) pricing information; (e) Merchant Agreements; (f) Merchant accounts and records, including account numbers; (g) Merchant or customer lists; (h) details regarding the functioning of computer and software programs and systems, software source documentation and computer access codes; (i) instruction and/or procedural manuals; (j) the terms and conditions of this Agreement; and (k) any other material proprietary information that the Company does not publicly disclose and that is identified to Partner as “confidential”; *provided, however*, that Confidential Information shall not include information that: (i) is already known to the receiving party free of any restriction at the time it is obtained; (ii) is subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) is or becomes publicly available through no wrongful act of the receiving party; or (iv) is or was independently developed by the receiving party without reference to any Confidential Information of the other.

“Merchant” means a Person that establishes a merchant account with the Company pursuant to a Merchant Agreement, and to which the Company is providing Payment Processing Services.

“Merchant Agreement” means the merchant processing application form submitted by a prospective merchant and approved by the Company and/or the Bank to establish a merchant account with a Merchant for Payment Processing Services, together with the Company’s Merchant Program Guide.

“Merchant Program Guide” means the Company’s Merchant Services Program Terms and Conditions as may be in effect from time-to-time, a current copy of which has been provided to Partner.

“Network” means any of VISA, MasterCard, American Express, DFS Services, LLC (Discover), NACHA and all other applicable credit card issuers or networks having proprietary rights to and clearing and oversight responsibilities with respect to any Payment Instrument used to effect, payment- related transactions for which any Payment Processing Services are provided pursuant to this Agreement.

“Network Rules” means the by-laws, regulations and requirements that are promulgated by any Network.

“Partner’s Portfolio” means the Approved Merchants of Partner and all Commission and other compensation relating to the Approved Merchants of Partner.

“Partner’s Services” means best efforts to promote the Company’s Payment Processing Services to prospective Merchants and in support of creating and maintaining Approved Merchants. Partner shall



perform the services of the Referral Program and/or Reseller Program. It is understood that Partner may operate under one or both programs.

“Payment Instrument” is a payment card or account, or evidence of a payment card or account, authorized and established between a Cardholder and a Network and accepted by merchants from such Cardholder as payment for a good or service. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates and credit accounts.

“Payment Processing Services” means (i) all services necessary to authorize, data capture, process, settle and reconcile transactions effected by Merchants with Cardholders using Payment Instruments; (ii) all services necessary to authorize, data capture and process (and when permitted by the applicable Network, settle and reconcile) transactions effected by Merchants with Cardholders using Payment Instruments; (iii) check guarantee and electronic check acceptance services; and (iv) other related products and services provided to Approved Merchants in connection with (i) through (iii) above, including point of sale terminal equipment and other electronic payments at the point of sale.

“Person” means any individual, corporation, general or limited partnership, limited liability company, limited liability partnership, joint venture, estate, trust, association, organization, governmental body or other entity or body.

“Profit” means any revenue net of expenses (as specified herein) as may be reported by a Bank with respect to card payment transactions from Approved Merchants. More specifically, “Profit” means (A) Revenues generated by card payment transactions from Approved Merchants during the immediately preceding month less (B) the related costs to be charged to Partner for such Approved Merchants, all as set forth and defined on Schedule A and any costs that FORTIS and Partner may subsequently agree to in writing (e.g. marketing or promotion). For purposes of this Agreement, “Revenues” shall mean, with respect to an Approved Merchant, those amounts set forth in Schedule A that a Bank pays to FORTIS arising from or relating to an Approved Merchant’s card transactions and which are paid to FORTIS (which are subject to change from time to time by FORTIS and/or the Banks).

Partner: _____

COMPANY: Fortis Payment Systems, LLC

Sign: _____

Sign: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____