



## PAYMENT PROCESSING ADDENDUM TERMS AND CONDITIONS FOR SUB-MERCHANTS

**WHEREAS**, Shop Owner (“**Sub-Merchant**”) and Florists’ Transworld Delivery, Inc. (“**Payment Facilitator**”) have entered into the FTD Credit Card Processing Agreement (the “**Agreement**”) which sets forth, among other things, terms and conditions under which Payment Facilitator will provide to Sub- Merchant services that facilitate Sub-Merchant’s acceptance of credit and debit card payments for goods and services provided to Cardholders;

**WHEREAS**, Payment Facilitator is party to an agreement with Banc of America Merchant Services, LLC (“**Acquirer**”) and Bank of America, N.A. (“**Bank**”) under which Acquirer and Bank provide payment processing and Card Organization sponsorship services to Payment Facilitator on behalf of Sub- Merchant and other sub-merchants of Payment Facilitator;

**WHEREAS**, as a condition of providing services to Payment Facilitator on behalf of Sub-Merchant, Acquirer and Bank require that Payment Facilitator include certain terms and conditions in the Agreement relating to the payment processing services being provided to Sub-Merchant, that Acquirer and Bank be made a party to such Agreement, and Payment Facilitator has chosen to incorporate such terms via this Payment Processing Addendum (this “**Addendum**”).

**ACCORDINGLY**, in consideration of the mutual promises made and the mutual benefits to be derived from this Addendum, Payment Facilitator and Sub-Merchant agree to supplement the Agreement as follows:

1. **DEFINITIONS.** All capitalized terms used in this Addendum shall have the meanings given to them herein or in the Appendix A attached to this Addendum. If any capitalized term is also defined in the Agreement, for purposes of this Addendum it shall only have the meaning given to it herein or in the Appendix A to this Addendum attached hereto and incorporated herein.

2. **CONFLICTING TERMS.** If any terms or conditions of this Addendum conflict with any terms or conditions of the Agreement, the terms and conditions of this Addendum will supersede and control. If any terms or conditions of this Addendum or the Agreement conflict with any terms of the Card Organization Rules, the Card Organization Rules will supersede and control. No alterations or strike- outs to this Addendum shall apply or be accepted.

3. **PREFACE.**

Visa U.S.A., Inc. (“**Visa**”) MasterCard Worldwide (“**MasterCard**”), American Express, (“**AXP**”) and DFS Services LLC (“**Discover Network**”) are examples of payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. After a Card purchase is made at the Sub-Merchant’s point of sale (which is facilitated by the Payment Facilitator), Banks or payment acquirers acquire the associated Sales Drafts from Payment Facilitator and then electronically transfer the Sales Drafts through the appropriate Card Organization to the Issuers. These Issuers then bill their Cardholders for the transactions. In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments. The Acquirer then funds the Payment Facilitator, which in turns funds the Sub-Merchant pursuant to the terms set forth in the Agreement.

Each Card Organization has developed Card Organization Rules that govern their acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. The Card Organizations have also developed rules governing “Payment Facilitators” (MasterCard) and “Payment Service Providers” (Visa, American Express and Discover) and their relationships with sub-merchants such as Sub-Merchant. In addition, Sub-Merchant is bound by Card Organization Rules. The Card Organization Rules and Applicable Law give Cardholders and Issuers certain rights to dispute transactions long after payment has been made.

Payment Facilitator does not decide what transactions are charged back and does not control the ultimate resolution of the Chargeback. While Payment Facilitator and Acquirer can attempt to reverse a Chargeback to the Issuer, they can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, the Cardholder may be able to successfully charge back a Card transaction even though Sub-Merchant has provided its goods or services and is otherwise legally entitled to payment.

As set forth in the Agreement, Sub-Merchant is responsible for Chargebacks and adjustments associated with the transactions that Payment Facilitator submits for processing for goods or services provided by Sub-Merchant.

4. **PARTIES TO THE AGREEMENT.** Sub-Merchant and Payment Facilitator acknowledge and agree that Acquirer and Bank are hereby made parties to the Agreement, and each shall have the right to enforce against Sub-Merchant all terms and conditions of the Agreement, including this Addendum and any future amendments or addenda to which they are a party, that are set forth therein.

5. **[INTENTIONALLY DELETED]**

6. **CARD ORGANIZATION COMPLIANCE**

a) At all times during the term of the Agreement, Sub-Merchant shall comply with all Applicable Law and all Card Organization Rules applicable to merchants and Card acceptance as may be amended by the Card Organizations from time to time. To the extent applicable to Sub-Merchant, Sub-Merchant shall also comply with all Applicable Law and Card Organization Rules applicable to the handling of Cardholder Data, including but not limited to the Payment Card Industry Data Security Standard (“**PCI DSS**”), Payment Application Data Security Standard (“**PADSS**”), Cardholder Information Security Program (“**CISP**”) (Visa), Site Data Protection (“**SDP**”) program (MasterCard), American Express Data Security Operating Policy (“**DSOP**”) and Discover Information Security and Compliance (“**DISC**”) program. Sub-Merchant is responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on web sites such as <http://usa.visa.com/merchants/> and <http://mastercardmerchant.com>, as those links may change from time to time.

b) The Card Organizations have the right to enforce any provisions of the Card Organization Rules and to prohibit Sub-Merchant and/or Payment Facilitator from engaging in any conduct such Card Organizations deem could injure or create a risk of injury to the Card Organization, including injury to reputation, or that could adversely affect the integrity of the interchange system and/or the Card Organization’s confidential information. Sub-Merchant agrees that it will not take any action that could interfere with or prevent the exercise of this right by the Card Organizations.

c) Sub-Merchant acknowledges and agrees that the Card Organizations are the sole and exclusive owners of their respective Marks and Sub-Merchant shall not contest the ownership of such Marks for any reason. Card Organizations may at any time, immediately and without advance notice, prohibit Sub-Merchant from using any of their respective Marks for any reason. Sub-Merchant shall at all times comply with the Card Organization Rules regarding the use of the Card Organization-owned Marks.

7. **REPORTING.** Sub-Merchant shall promptly provide to Payment Facilitator, Acquirer, and Bank, upon request, all information reasonably requested regarding Sub-Merchant or its business, including but not limited to: the current address of each of its offices, all “doing business as” (DBA) names used by Sub-Merchant, a complete description of goods sold and services provided to Cardholders, and the names and domiciliaries of Sub-Merchant’s principals. Sub-Merchant agrees that, to the extent allowed by Applicable Law, Payment Facilitator, Acquirer, or Bank may provide all such information and any other Sub-Merchant information to a Card Organization upon request.

8. **SETTLEMENT.** Payment Facilitator, and not Acquirer or Bank, is solely responsible for remitting settlement funds to Sub-Merchant. Sub-Merchant’s funds for MasterCard/Visa/American Express/ Discover Network transactions will be processed and transferred to the Settlement Account after Payment Facilitator receives settlement funds for such transactions from Acquirer or Bank (or, in the case of American Express, after Payment Facilitator receives settlement funds from American Express). Other restrictions or limitations on settlement may be set forth in the Agreement.

9. **REFUNDS/EXCHANGES (CREDITS).** No refunds, Credits, exchanges, or adjustments relating to an electronic commerce (i.e., Internet) Card transaction shall be submitted by Sub-Merchant to Acquirer and instead shall be handled by Payment Facilitator as set forth in the Agreement.

10. **RETRIEVAL REQUESTS/CARDHOLDER DISPUTES.** All Retrieval Requests and Cardholder disputes shall be handled between Payment Facilitator and Sub-Merchant as set forth in the Agreement.

11. **CHARGEBACKS.** Chargebacks shall be handled between Payment Facilitator and Sub-Merchant as set forth in the Agreement.

12. **SUB-MERCHANT CHANGES.** If Sub-Merchant seeks to change its ownership or ownership structure, it must execute, and Payment Facilitator must approve, Payment Facilitator’s standard General Assignment of Accounts form or such other documentation that Payment Facilitator requires. Sub-Merchant must immediately notify Payment Facilitator of any change to the information on file with Payment Facilitator in the Sub-Merchant profile, including: (i) any new lines or types of business; (ii) change in name; (iii) the opening, closing or liquidation of business or any location; (iv) voluntary or involuntary party to a bankruptcy case; and/or (v) entry into a loan or other agreement with a Person that seeks to affect this Agreement. Payment Facilitator retains the right to terminate this Addendum or the Agreement if Sub-Merchant fails to notify Payment Facilitator of any change to the information in the Sub-Merchant profile.

13. **SERVICES.** Subject to Card Organization Rules, Services may be performed by Payment Facilitator or its agents, including, without limitation, its respective Affiliates, including the provision of terminals or other equipment and local support functions in connection with this Addendum.

Services under this Addendum shall only be provided to Sub-Merchants who have merchant outlets located within the 50 United States, including the District of Columbia, and U.S. military bases, U.S. embassies, U.S. territories, or U.S. consulates located in a foreign territory.

**14. MERCHANT PROVIDERS; ACCESS.**

a) Before Sub-Merchant engages any Merchant Provider, Sub-Merchant must provide to Payment Facilitator in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. Sub-Merchant covenants that it will not use, allow the use of, or provide to any Merchant Provider access to any Cardholder data, Services, or Payment Facilitator systems or software until Sub-Merchant receives Payment Facilitator approval and, if required, confirmation of registration of that Merchant Provider with applicable Card Organizations. Sub-Merchant must ensure that its Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with the Agreement, all applicable Card Organization Rules (including but not limited to PCI DSS, PADSS, CISP, SDP, and DISC), and Applicable Law, including without limitation, those provisions requiring security of Cardholder data. Sub-Merchant may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules and Applicable Law. Sub-Merchant is responsible for all costs and expenses associated with review, approval, certification (and recertification as may be required by the Card Organization Rules) and registration of any Merchant Providers

b) Upon request and reasonable notice, Sub-Merchant will provide and will ensure that Merchant Providers provide to Payment Facilitator, Acquirer, Bank, the Card Organizations, and their respective representatives prompt access to Sub-Merchant's and their Merchant Providers' facilities and records, and will fully cooperate with such parties, for the purposes of (i) performing any inspection and copying books or records pertaining to the transactions contemplated under this Addendum, and (ii) ensuring Sub-Merchant's compliance with its obligations under this Addendum. Sub-Merchant must have written agreements with its Merchant Providers requiring such access to its Merchant Providers' facilities and records. Further, Sub-Merchant will provide to Payment Facilitator, Acquirer, and Bank all information necessary to establish a merchant identification (MID).

**15. AMENDMENTS**

a) Sub-Merchant agrees to follow all requirements of this Addendum in connection with each Card transaction and to comply with all applicable Card Organization Rules. Payment Facilitator is responsible for the card acceptance policies and procedures of Sub-Merchant. Therefore, from time to time, Payment Facilitator, Acquirer, or Bank may amend this Addendum or the Agreement by providing you with at least 20 days' prior written notice. However, to comply with the Card Organization Rules or for security reasons, Payment Facilitator, Acquirer, or Bank may require that certain changes to this Addendum or the Agreement become effective on shorter notice.

b) In addition to any other remedies available to Payment Facilitator under the Agreement or this Addendum, Sub-Merchant agrees that should any Event of Default occur under the Agreement (whether or not formally declared), Payment Facilitator, Acquirer, or Bank may, with or without notice, amend this Addendum or the Agreement or cause processing and/or settlement funding to be suspended, until it or they have had reasonable opportunity to investigate such event.

**16. [INTENTIONALLY DELETED]**

**17. FEES.** Fees to be paid to Payment Facilitator for the Services shall be set forth in the Agreement.

**18. REPRESENTATIONS; WARRANTIES; COVENANTS; LIMITATIONS ON LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES**

Without limiting any other warranties hereunder, Sub-Merchant represents, warrants and covenants to Payment Facilitator, Acquirer, and Bank as follows:

a) Sub-Merchant validly exists, in good standing and free to enter into the Agreement;

b) each statement made on the Application or other information provided to Payment Facilitator in support of the Agreement is true and correct;

c) Sub-Merchant is not doing business under a name or style not previously disclosed to Payment

Facilitator;

- d) Sub-Merchant has not changed the nature of its business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different Merchant Category Code under Card Organization Rules, in a way not previously disclosed to Payment Facilitator;
- e) Sub-Merchant will use the Services only for its own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person;
- f) Sub-Merchant has not filed a bankruptcy petition not previously disclosed to Payment Facilitator;
- g) Sub-Merchant owns and controls the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction;
- h) Sub-Merchant will not at any time during the term of this Addendum, or until all amounts due under this Addendum have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person without consent of Payment Facilitator;
- i) Sub-Merchant has not and will not submit or facilitate the submission of Card transactions for processing on behalf of any party other than itself.
- j) Sub-Merchant shall not accept Cards via its website(s) for the purchase or trade of photographs, video imagery, computer-generated images, cartoons, simulation, or any other media or activities including, but not limited to, activities listed under "Brand Protection" as defined in the Card Organization Rules
- k) Sub-Merchant will not attempt to transfer its financial liability for each Card transaction by requiring or incenting any Cardholder to waive his or her dispute rights;
- l) to the extent Sub-Merchant interacts with the Cardholder, Sub-Merchant will prominently and unequivocally inform the Cardholder of the identity of the Sub-Merchant at all points of interaction so that the Cardholder readily can distinguish the Sub-Merchant from any other party, such as a supplier of products or services to Sub-Merchant, including Payment Facilitator;
- m) Sub-Merchant must ensure that the Cardholder understands who is responsible for the Card transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the Card transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Card transaction; and
- n) Sub-Merchant shall at all times cooperate with Payment Facilitator, Acquirer, and Bank and provide such parties with all necessary information and assistance required or requested by them to provide the Services and maintain compliance with the Card Organization Rules and Applicable Law.

**19. NO WARRANTIES.** THIS AGREEMENT IS A SERVICE AGREEMENT. PAYMENT FACILITATOR, ACQUIRER, AND BANK DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO SUB-MERCHANT OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY, INCLUDING ACQUIRER OR BANK.

**20. RELATIONSHIP/NO LIABILITY.** SUB-MERCHANT ACKNOWLEDGES AND AGREES THAT IT'S SERVICE PROVIDER IN CONNECTION WITH THE AGREEMENT AND THIS ADDENDUM IS PAYMENT FACILITATOR AND NOT ACQUIRER OR BANK. ACCORDINGLY, SUB-MERCHANT SHALL SEEK NO RECOURSE AGAINST ACQUIRER OR BANK, AND NEITHER ACQUIRER NOR BANK SHALL HAVE ANY OBLIGATION OR LIABILITY WHATSOEVER TO SUB-MERCHANT, UNDER OR IN CONNECTION WITH THE AGREEMENT, THIS ADDENDUM, OR SERVICES PERFORMED HEREUNDER, INCLUDING WITHOUT LIMITATION FOR ANY DAMAGES (DIRECT, INDIRECT, OR OTHERWISE) ARISING OUT OF THE AGREEMENT OR THIS ADDENDUM.

**21. CONFIDENTIALITY.**

- a) In addition to any confidentiality obligations set forth in the Agreement, unless Sub-Merchant obtains consents from Payment Facilitator and each applicable Card Organization, Issuer and Cardholder, Sub-Merchant must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues

involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. Sub-Merchant shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. Sub-Merchant may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If Sub-Merchant stores any electronically captured signature of a Cardholder, Sub-Merchant may not reproduce such signature except upon Payment Facilitator's specific request.

b) Sub-Merchant acknowledges that it will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Sub-Merchant's business. Upon a bankruptcy, insolvency or failure of Sub-Merchant's business, all Card transaction information must be returned to Payment Facilitator or acceptable proof of the destruction of all Card transaction information must be provided to Payment Facilitator.

c) Sub-Merchant acknowledges that breach of the restrictions on use or disclosure of any of Payment Facilitator's confidential information would result in immediate and irreparable harm to Payment Facilitator, and money damages would be inadequate to compensate for that harm. Payment Facilitator shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

d) Sub-Merchant shall not assign to any Person, the rights to use the Marks of the Card Organizations or the Marks of Acquirer or Bank.

e) Sub-Merchant agrees that Payment Facilitator, Acquirer, or Bank may obtain relevant information from any applicable telecommunications provider utilized by Sub-Merchant, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by Sub-Merchant in connection with the Services.

**22. ASSIGNMENTS.** During the Term of this Agreement, Sub-Merchant shall not assign, sell, or exchange, the Agreement or this Addendum without the prior written consent of Payment Facilitator, Acquirer, and Bank.

### **23. EVENTS OF DEFAULT/TERMINATION.**

a) In addition to its other rights set forth in the Agreement, Payment Facilitator, Acquirer, or Bank may terminate the Agreement immediately without notice if any of the following events shall occur (each an "Event of Default"):

i. irregular Card sales by Sub-Merchant, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Payment Facilitator, any Card Organization, Acquirer, or Bank, or an actual or suspected data security breach, or any other circumstances which, in the discretion of Payment Facilitator, Acquirer, or Bank, may increase the risk exposure of such parties or otherwise present a direct or indirect financial or security risk to such parties; or

ii. a violation by Sub-Merchant of any Applicable Law or Card Organization Rule or Payment Facilitator's, Acquirer's, or Bank's reasonable belief that termination of this Addendum or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

b) Notwithstanding any other provisions of this Addendum or the Agreement, Acquirer or Bank may terminate this Addendum at any time for good cause or fraudulent or other activity, or upon request of any Card Organization. Further, this Addendum will automatically and immediately terminate upon the termination of Payment Facilitator's agreement with Acquirer and Bank, and will automatically and immediately terminate with respect to a particular Card Organization if Payment Facilitator is de-registered by such Card Organization, Bank ceases to be a member of such Card Organization, or if Acquirer fails to have a valid license to use such Card Organization's Marks.

c) Neither the expiration nor termination of this Addendum or the Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Addendum which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Addendum and the Agreement.

d) The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Addendum or the Agreement is terminated for cause, Sub-Merchant acknowledges that Payment Facilitator may be required to report Sub-Merchant's business name and the names and other information regarding its principals to the Card Organizations or to Acquirer or Bank for inclusion on such list(s). Sub-Merchant expressly agrees and consents to such reporting if it is terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard, American Express or Discover Network. Furthermore, Sub-Merchant agrees to waive and hold Payment Facilitator, Acquirer, and Bank harmless from and against any and all claims which Sub-Merchant may have as a result of such reporting.

**24. RESERVE ACCOUNT; SECURITY INTEREST.** Payment Facilitator may be entitled to establish a Reserve Account to secure Sub-Merchant's obligations to Payment Facilitator under the Agreement and pursuant to the terms as may be more fully set forth therein. In addition to any liens or security interests in the Reserve Account granted in the Agreement, to secure Payment Facilitator's obligations to Acquirer and Bank on Sub-Merchant's behalf, Sub-Merchant grants to Acquirer and Bank a lien and security interest in and to: (i) any such Reserve Account and (ii) any of Sub-Merchant's funds pertaining to the Card transactions contemplated by the Agreement now or hereafter in Acquirer's or Bank's possession, whether now or hereafter due or to become due to Sub-Merchant. Such lien granted to the Acquirer and Bank shall have a higher priority than any lien granted to Payment Facilitator in and to both (i) and (ii) above. In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, Acquirer and Bank are hereby authorized by Sub-Merchant at any time and from time to time, without notice or demand to Sub-Merchant or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all funds held in a Reserve Account established under the Agreement against and on account of obligations owed to

Acquirer or Bank by the Payment Facilitator on Sub-Merchant's behalf, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Sub-Merchant agrees to duly execute and deliver to Acquirer or Bank, as applicable, such instruments and documents as they may reasonably request to perfect and confirm the lien or security interest set forth in this Addendum.

**25. INDEMNIFICATION.** Although Acquirer and Bank may seek primary recourse from Payment Facilitator, Sub-Merchant agrees to indemnify and hold Acquirer, and Bank harmless from and against all losses, liabilities, damages and expenses arising out of or resulting from: (a) any breach of any warranty, covenant or agreement or any misrepresentation by Sub-Merchant under this Addendum; (b) Sub-Merchant's or its employees' or agents' acts, omissions, negligence or willful misconduct, in connection with Card transactions or otherwise arising from Sub-Merchant's provision of goods and services to Cardholders; (c) Sub-Merchant's use of the Services or Sub-Merchant's failure to supply accurate information regarding the Services; (d) Cardholder disputes and other Cardholder customer service issues relating to transactions submitted on behalf of Sub-Merchant; or (e) arising out of any third party indemnifications Acquirer or Bank are obligated to make as a result of Sub-Merchant's actions (including indemnification of any Card Organization or Issuer).

**26. [INTENTIONALLY DELETED]**

**27. CREDIT INFORMATION AUTHORIZATION.** By executing this Addendum, you are authorizing Payment Facilitator, Acquirer, and Bank, as applicable, to obtain financial and credit information regarding your business and the signer and guarantors of the applicable agreements until all your obligations to the providers under those agreements are satisfied.

**APPENDIX A DEFINITIONS**

As used in this Addendum, the following terms mean as follows:

**Affiliate:** An "Affiliate" of a party is a Person that, directly or indirectly, (i) owns or controls such party or

(ii) is under common ownership or control with such party.

**"Applicable Law"** means all federal, state and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to the Agreement, the transactions or other matters contemplated under the Agreement (including, without limitation, the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury), and all amendments thereto; and with respect to Bank, also guidance by its financial institution regulators.

**Card:** See either Credit Card or Debit Card.

**Cardholder:** Means the Person whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.

**Card Organization:** Any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide ("MasterCard"), Visa U.S.A., Inc. ("Visa"), DFS Services LLC ("Discover Network"), American Express, ("AXP") and any applicable debit networks.

**Card Organization Rules:** The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules), PADSS, CISP, SDP, DSOP and DISC.

**Chargeback:** A Card transaction (or disputed portion) that is returned to Acquirer by the Issuer.

**Credit:** A refund or price adjustment given for a previous purchase transaction.

**Credit Card:** A device bearing a valid Card Organization Mark and authorizing the Cardholder to buy goods or services on credit.

**Debit Card:** See either PIN Debit Card or Non-PIN Debit Card.

**Issuer:** The financial institution or Card Organization which has issued a Card to a Person.

**Merchant Provider:** means any Person engaged to provide services involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

**Marks:** names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

**Non-PIN Debit Card:** A device with a Card Organization Mark that is tied to a Cardholder's account or a prepaid account and which is processed without the use of a PIN.

**Person:** a third party individual or entity, other than the Sub-Merchant.

**PIN:** A Personal Identification Number entered by the Cardholder to submit a PIN Debit Card transaction.

**PIN Debit Card:** A device bearing the Marks of ATM networks (such as NYCE or Star) used at a Sub-Merchant location by means of a Cardholder-entered PIN in the Sub-Merchant PIN Pad.

**Reserve Account:** An account established and funded pursuant to terms set forth in the Agreement to serve as security for amounts owed by Sub-Merchant to Payment Facilitator under the Agreement.

**Retrieval Request/Transaction Documentation Request:** A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

**Sales Draft:** Evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Sub-Merchant using a Card, regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and Applicable Law.

**Services:** The authorization, processing, and settlement services provided by Payment Facilitator to Sub-Merchant pursuant to the terms and conditions set forth in the Agreement.

**Settlement Account:** An account or account(s) at a financial institution designated by Sub-Merchant as the account to be debited and credited by Payment Facilitator for Card transactions, fees, Chargebacks and other amounts due under this Addendum or in connection with the Agreement.

**Addendum**  
**American Express® Card Acceptance**

This American Express Addendum (the “**Addendum**”) is an addendum to that certain FTD Credit Card Processing Agreement (the “**Agreement**”) entered into between Shop Owner (“**Sub-Merchant**”), Florists’ Transworld Delivery (“**Payment Facilitator**”), Banc of America Merchant Services, LLC (“**Acquirer**”) and Bank of America, N.A. (“**Bank**”). All terms and conditions in this Addendum are between Sub-Merchant and Payment Facilitator, and Sub-Merchant shall have no rights hereunder against Acquirer or Bank, who shall have no obligations to Sub-Merchant hereunder. Nothing in this Addendum shall preclude any rights that Sub-Merchant or Payment Facilitator may have against each other under the Agreement or the Payment Processing Addendum (the “**Payment Processing Addendum**”), or any rights that Bank or Acquirer may have against Sub-Merchant under the Payment Processing Addendum. Capitalized terms not defined herein or in the Agreement or Payment Processing Addendum shall have the meaning given to them in the American Express Merchant Operating Guide.

1. **American Express Compliance.** Sub-Merchant agrees to comply with the American Express Merchant Operating Guide requirements, which are incorporated into this Addendum by reference as if they were fully set forth in this Addendum. The American Express Merchant Operating Guide may be viewed at: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).
2. **High Charge Volume Sponsored Merchants.** In the event that Sub-Merchant’s Estimated Annual Charge Volume becomes \$1,000,000 USD or greater, Sub-Merchant will become a direct Card-accepting merchant under the standard American Express acceptance program and cease to be a Sub-Merchant under Payment Facilitator for purposes of this Addendum only. As a direct Card-accepting merchant, Sub-Merchant will be bound by American Express Card acceptance agreement and American Express’s Discount and other fees and assessments shall apply.
3. **Third Party Beneficiary Rights.**
  - a. Sub-Merchant confers on American Express the beneficiary rights, but not obligations, to the Sub-Merchant’s Agreement and, as such, American Express has the express right to enforce the terms of the Agreement against the Sub-Merchant; provided, however, that to the extent American Express has the right to terminate the Agreement or suspend Services to Sub-Merchant, it shall have such right only with respect to this Addendum and/or the provision of Services with respect to American Express Cards.
  - a. Sub-Merchant warrants that it does not hold third party beneficiary rights to any agreements between Payment Facilitator and American Express and at no time will attempt to enforce any such agreements against American Express
4. **American Express Liability.** SUB-MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.