

CARIBEPAY MERCHANT SERVICES, LEASING AND OPERATING AGREEMENT

Last updated November 21, 2017

This Agreement is between the user (Company, Business or Individual) of the CaribePay Merchant Services (the “Business”) and CaribePay (Nevis) Limited having offices at P. O. Box 831, Morning Star, St. John’s Parish, Nevis (“CaribePay (Nevis) Limited”). In this Agreement, the words: “CaribePay Card” means a stored-value account bearing a logo of a CaribePay (Nevis) Limited partner(s) or CaribePay (Nevis) Limited or of CaribePay (Nevis) Limited and a CaribePay (Nevis) Limited partner(s); “Cardmember” means a person to whom a CaribePay Card has been issued and/or any authorized user of a CaribePay Card; “Sales Data” means records of CaribePay Card transactions at Business’ location(s) that is received by CaribePay (Nevis) Limited from Business in the form and format specified by CaribePay (Nevis) Limited;

This agreement governs the acceptance of CaribePay Cards by Business and the lease or purchase of transaction processing equipment from CaribePay (Nevis) Limited or its subcontractor (“Processing Equipment”) to Business. The acceptance of any CaribePay Card and the submission of Sales Data by Business will indicate the acceptance by Business of the terms of this Agreement. This Agreement supersedes any other agreements concerning the CaribePay Card. Please read it carefully. Business must, and must cause its employees to, follow all its terms.

1. **Acceptance of CaribePay Cards.** Business agrees to accept CaribePay Cards at its location(s), as payment for purchases of goods and services from all Cardmembers who want to use CaribePay Cards at Business’ establishment. Business will not discriminate against any Cardmember in its acceptance of CaribePay Cards. Business agrees to follow the procedures in this Agreement concerning its acceptance of CaribePay Cards and the processing of sales, including following CaribePay Card Program Policies or such additional policies as may be made available to Business from time to time in writing by CaribePay (Nevis) Limited. CaribePay Program Policies include:

- Business may not permit any Cardmember to obtain cash advances or cash refunds through their CaribePay Cards.
- Business may not permit any Cardmember to purchase illegal items, or stored-value gift cards (or other materials identified in writing by CaribePay (Nevis) Limited from time to time) with a CaribePay Card, unless otherwise instructed by CaribePay (Nevis) Limited in writing.
- Business may not impose any surcharge, levy or fee of any kind for any transaction in which a Cardmember desires to use a CaribePay Card for a purchase of goods or services.
- Business may establish its own policies concerning refunds on CaribePay Card purchases, but Business must notify Cardmembers of the policy in advance and in writing. Once a transaction has been processed by Business’ Processing Equipment, CaribePay (Nevis) Limited will not be responsible for providing refunds on such transaction.
- Business’ breach of this clause can result in the termination of this Agreement.

2. **Processing Equipment.** In order to process transactions, Business may purchase or lease Processing Equipment. Processing Equipment purchased or leased under this Agreement will remain the property of CaribePay (Nevis) Limited until such time as the Business has paid for the Processing Equipment in full. In addition, Processing Equipment purchased or leased from CaribePay (Nevis) Limited hereunder will include a standard manufacturer's warranty and will be supported and serviced directly by CaribePay (Nevis) Limited or its subcontractor. Business should contact CaribePay (Nevis) Limited with any problems with the purchased or leased Processing Equipment by contacting the telephone number provided with the installation materials. For purchased Processing Equipment, CaribePay (Nevis) Limited will make commercially reasonable efforts to provide Business with backup Processing Equipment in case of failure. Business understands that until Business concludes a buyout of the leased Processing Equipment, the Equipment shall remain the property of CaribePay (Nevis) Limited and may not be pledged, sold or transferred by the Business. If CaribePay (Nevis) Limited requests, Business will assist CaribePay (Nevis) Limited in filing any required lien documents to protect CaribePay (Nevis) Limited's interest in the leased Equipment, including, but not limited to, filings under the Uniform Commercial Code. Business bears the risk of loss, theft, disappearance or damage of the leased Processing Equipment. Business accepts the leased Processing Equipment "As Is" and agrees to maintain the Equipment in clean and good working condition for the full term of this Lease. Business understands and accepts that no warranty including warranty for merchantability or fitness of purpose is provided for the leased Processing Equipment, except as may be extended by the Processing Equipment manufacturer. For leased Processing Equipment, CaribePay (Nevis) Limited, in its discretion, may repair or replace the Processing Equipment if it fails to operate. Business agrees that if the leased Processing Equipment is damaged due to the negligent use of it by Business and is beyond repair, Business shall be liable to CaribePay (Nevis) Limited for the replacement value (at full retail value) of the Processing Equipment. Upon termination of this Agreement, Business will be responsible for returning the leased Processing Equipment to CaribePay (Nevis) Limited in clean and good working condition. At all times, the Business shall keep the Processing Equipment fully insured for the full replacement value and name CaribePay (Nevis) Limited as loss-insured. Monthly Equipment Lease Fee payments may continue to be charged by CaribePay (Nevis) Limited to Business until the leased Processing Equipment is received by CaribePay (Nevis) Limited plus all reasonable collection and enforcement costs. Business is responsible for packing the leased Processing Equipment and for all shipping costs associated with the return of the Processing Equipment to CaribePay (Nevis) Limited. CaribePay (Nevis) Limited must receive the Processing Equipment within five (5) days of the termination of this Agreement. Business will be responsible for the replacement value (at full retail value) of any leased Equipment which is not timely returned by Business to CaribePay (Nevis) Limited in good working condition pursuant to this Section 2.

3. **Fees.** Subject to the terms of this Agreement and any Chargebacks (as defined in Section 9 herein), Business agrees to submit valid Sales Data to CaribePay (Nevis) Limited during the term of this Agreement and CaribePay (Nevis) Limited agrees to pay Business an amount ("Payment") equal to the total transaction amount represented by such Sales Data less any discount, transaction and/or monthly fees provided by CaribePay (Nevis) Limited at the time this agreement is executed.

All Payments made by CaribePay (Nevis) Limited to Business shall be subject to subsequent review and verification by CaribePay (Nevis) Limited of the underlying Sales Data and may be subject to Chargeback if the circumstances described in Section 9 exist. Fees will be evaluated periodically and are subject to change by CaribePay (Nevis) Limited. Fees will not be changed unless written notification of such change has been provided to Business by an authorized employee of CaribePay (Nevis) Limited as provided for by Section 13. The acceptance of any CaribePay Card or the submission of Sales Data by Business after the date of such notice will indicate the acceptance by Business of the changes. Business may elect to purchase additional services and/or equipment offered by CaribePay (Nevis) Limited and Business hereby agrees and authorizes CaribePay (Nevis) Limited or its subcontractors to offset any amounts due CaribePay (Nevis) Limited for such additional services, or any amounts otherwise owed under this Agreement, against Payments from CaribePay (Nevis) Limited. If Business leased Processing Equipment from CaribePay (Nevis) Limited, then Business will pay CaribePay (Nevis) Limited the Monthly Equipment Lease Fee set forth on the CaribePay Fee Schedule, to be collected by CaribePay (Nevis) Limited on or about the last business day of each month for each month (or partial month) during which such Processing Equipment is installed at the Business Premises commencing on the last day of the month following Processing Equipment installation. Business shall also pay any use, sales, personal property, occupation or other taxes, license fees, fines and penalties (collectively, "Taxes") levied by federal, state or local governments covering the lease, possession, use or misuse of such Processing Equipment.

In the event Business fails to make any payment of Fees or Taxes when due and CaribePay (Nevis) Limited is unable to collect such payments, the Lease shall terminate and Business shall return the leased Processing Equipment to CaribePay (Nevis) Limited or its designee immediately upon request.

4. **Marketing Materials and Promotions.** CaribePay (Nevis) Limited may produce marketing materials to promote the CaribePay Card program (the "Marketing Materials"). Some Marketing Materials may be included at no cost to Business and some Marketing Materials may be made available to Business for additional cost, as disclosed to Business by CaribePay (Nevis) Limited in writing from time to time. Participation in any Marketing Materials is at the discretion of Business. Business authorizes the use of its name, logo, trademark and/or other similar business marks in Marketing Materials to promote usage and awareness of the CaribePay Card program and Business agrees to submit promotion-related materials according to deadlines set forth, from time to time, by CaribePay (Nevis) Limited. Business' election not to participate in Marketing Materials or the lack of any Marketing Materials will not result in a refund of any Fees paid or payable to CaribePay (Nevis) Limited hereunder. Business agrees to display permanent signage indicating acceptance of the CaribePay Card in a manner consistent with its display policies regarding other forms of non-cash payment. Any Marketing Materials offered hereunder are subject to change at CaribePay (Nevis) Limited's discretion without notice. In the event Business elects to provide a discount or other promotion to Cardmembers (each, a "Discount"), Business agrees that it will honor such Discount for the duration of the offer as publicized by Business and that Business shall be responsible for the accurate processing of such Discount prior to submission of the Sales Data to CaribePay (Nevis) Limited under this Agreement.

5. **Authorization.** For each individual CaribePay Card sale it processes, Business must obtain authorization prior to making the CaribePay Card sale. Approved Processing Equipment must be used to

transmit Sales Data unless otherwise directed by CaribePay (Nevis) Limited. If the CaribePay Cardmember has insufficient funds in his/her account, Business will be unable to process the sale and must decline the transaction. In the event Business receives information regarding funds insufficiency or other facts constituting a “decline,” it agrees to politely inform the Cardmember that he/she must deposit additional funds into his/her CaribePay account in order to continue using the CaribePay Card program. If agreed upon by CaribePay (Nevis) Limited in writing, delivery locations may engage in manual identification.

6. **Down Time Procedures.** If Business is unable to submit Sales Data via the Processing Equipment, Business must notify CaribePay (Nevis) Limited immediately by contacting the telephone number and email address provided on the Contact Us section of <https://CaribePay.com>.

7. **Cardmember Verification.** Business agrees not to accept payment for a purchase under the CaribePay Card program unless the customer presents a valid CaribePay Card and the Business verifies that the customer is, in fact, a Cardmember and that the CaribePay Card presented belongs to such customer. Business agrees to handle each CaribePay Card transaction as follows:

- Confirm the picture embedded into the CaribePay Card matches the identity of the person using the CaribePay Card.
- Notify CaribePay cardholder that Business reserves the right to request photo identification at the time of each transaction. For transactions that are carried out when the CaribePay Card owner is not present when the transaction is initiated.

If Business accepts a CaribePay Card for a transaction without confirming that the identity of the person using the CaribePay card matches the identity displayed on the CaribePay Processing Equipment, CaribePay (Nevis) Limited will not be required to reimburse Business for the transaction, and if CaribePay (Nevis) Limited has already made a Payment to Business on account of the transaction, CaribePay (Nevis) Limited can process a Chargeback as described in Section 9 below. CaribePay (Nevis) Limited reserves the right to adopt different verification policies for delivery and other businesses but such policies must be provided in writing by an authorized employee of CaribePay (Nevis) Limited.

8. **Settlement of Transactions.** As used in this Agreement, the term “Settlement” means the procedure by which CaribePay (Nevis) Limited or its subcontractor(s) will reimburse Business for the transactions represented by the Sales Data, less an amount equal to the sum of any Chargebacks, any credits to Cardmembers that Business submits to CaribePay (Nevis) Limited and Fees owed CaribePay (Nevis) Limited hereunder, plus or minus any applicable adjustments that CaribePay (Nevis) Limited makes to reconcile or correct errors in the Sales Data submitted by Business. To properly effect Settlement, Business must comply with each of the terms and conditions set forth in this Agreement. Settlement will be performed on a schedule agreed to by CaribePay (Nevis) Limited and Business. Business will receive monthly detailed electronic statements of all CaribePay Card transactions.

9. **Chargeback Rights.** A CaribePay Card sale which is the subject of a dispute or was processed despite insufficient funds may be returned to Business unpaid, or CaribePay (Nevis) Limited may return a previously paid CaribePay Card sale to Business for repayment to the Cardholder. The returned sales

shall be defined as “Chargebacks.” In such cases, CaribePay (Nevis) Limited may request that Business supply CaribePay (Nevis) Limited with other information and documentation reasonably requested within a specified number of days of the receipt by Business of the Chargeback notification. The exact number of days will be as set forth in the notice of such Chargeback. Business agrees to pay a \$25 processing fee for each Chargeback.

CaribePay (Nevis) Limited shall also have the right to audit the Business’s records for the CaribePay Card program, including but not limited to Chargebacks, during business hours with reasonable advance notice to Business.

10. **Settlement at Financial Institutions.** If Business requests CaribePay (Nevis) Limited to deposit Settlement funds directly into Business’ account at a financial institution, Business hereby authorizes CaribePay (Nevis) Limited or its authorized subcontractor to initiate credit and debit entries to the account held at the financial institution named on the CaribePay Merchant Services application, and to credit the same to such financial institution to process Settlement and Chargebacks as outlined in Sections 8 and 9. This authorization is to remain in full force and effect until CaribePay (Nevis) Limited has received written notice from Business of its termination in such time and in such manner as to afford CaribePay (Nevis) Limited and financial institution a reasonable opportunity to act on such notice. Business agrees that it will pay a fee not exceeding two times any amount charged by the financial institution for each rejected settlement transaction.

11. **Liability.** If Business fails to comply with this Agreement, CaribePay (Nevis) Limited may withhold Settlement for any CaribePay Card sales that Business accepts, or Chargeback any CaribePay Card sales for which Business has already received Payment. CaribePay (Nevis) Limited reserves the right to terminate this Agreement immediately, without notice, if it suspects fraud or other security concerns of any nature. IN NO EVENT SHALL CARIBEPAY (NEVIS) LIMITED OR ITS AFFILIATES OR PARTNERS OR AGENTS BE LIABLE TO BUSINESS CARDMEMBERS FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER TERM OR PROVISION OF THIS AGREEMENT. THE LIABILITY OF CARIBEPAY (NEVIS) LIMITED AND ITS AFFILIATES OR PARTNERS TO BUSINESS FOR ANY CAUSE WHATSOEVER, WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, ANY PAYMENTS UNDER THIS AGREEMENT.

12. **Assignment.** Business may not assign or transfer this Agreement or any rights or obligations hereunder to any other party without the prior written approval of CaribePay (Nevis) Limited. If Business sells all or a substantial part of its business or materially changes the nature of its business, or by any means causes or permits a new entity to own a substantial part of its business, Business agrees to notify CaribePay (Nevis) Limited in advance, and CaribePay (Nevis) Limited may offset any amounts CaribePay (Nevis) Limited owes Business against any outstanding obligations Business has to CaribePay (Nevis) Limited, or, at CaribePay (Nevis) Limited’s option, terminate this Agreement as provided below. CaribePay (Nevis) Limited may assign this Agreement and its rights and obligations under it. This Agreement will be binding upon and inure to the benefits of the parties and their respective successors and assigns.

13. **Changing This Agreement.** CaribePay (Nevis) Limited may change this Agreement at any time by giving Business written notice at least 30 days in advance of such change, except as otherwise stated herein. If Business does not accept such a change, Business may terminate this Agreement by notifying CaribePay (Nevis) Limited within such 30-day period. If Business makes any CaribePay Card sale(s) after the effective date of a change in terms, such sale(s) shall indicate that Business has consented to the new term(s).

14. **Term and Termination.** This Agreement will become effective when an authorized representative of CaribePay (Nevis) Limited executes it. It remains in full force and effect until terminated as provided for in this Section 14. Business may terminate this Agreement at any time by giving CaribePay (Nevis) Limited written 30-day notice sent via certified mail to: CaribePay (Nevis) Limited, P. O. Box 831, Charlestown, Nevis or via email to info@caribepay.com. Except as otherwise stated in this Agreement, CaribePay (Nevis) Limited may terminate this Agreement at any time by giving Business 30 days prior written notice. CaribePay (Nevis) Limited may immediately terminate this Agreement without notice if Business has materially breached this Agreement, or if, in CaribePay (Nevis) Limited's sole opinion and/or discretion: CaribePay Card sales made at Business' establishment are irregular; Business has had, or may have, an unusual or inappropriate number of CaribePay Cardmember inquiries, credit requests or Chargebacks during a relevant period; there are security concerns regarding CaribePay Card sales at any of Business' establishments; Business engages in conduct deemed unacceptable by CaribePay (Nevis) Limited; or Business' financial condition or other conditions warrant early termination. Business agrees to accept the CaribePay Card and follow the terms of this Agreement until the termination becomes effective. The provisions governing the processing of CaribePay Card sales and Settlement will continue to apply even after the termination, until all CaribePay Card transactions made prior to the termination are settled or resolved. Upon termination, Business agrees to immediately send CaribePay (Nevis) Limited all CaribePay Card Sales Data for the previous 180 days which have not previously been submitted for CaribePay Card sales made up to and through the date of termination. Upon the termination of the Agreement, the Business must immediately return all CaribePay (Nevis) Limited property.

15. **Indemnification.** Business agrees to indemnify and hold CaribePay (Nevis) Limited harmless, along with its affiliates, subcontractors, partners, and each entity's respective officers, directors and employees, for all costs, damages, claims or complaints arising from the wrongful acts or omissions of Business in connection with each CaribePay Card sale (including, but not limited to, costs damages, claims or complaints arising in connection with the goods or services purchased through a CaribePay Card), or from the failure of Business to perform its duties and obligations under this Agreement. CaribePay (Nevis) Limited agrees to indemnify and hold Business harmless, along with its subsidiaries and divisions that accept CaribePay Cards, and each entity's respective officers, directors and employees, for all costs, damages, claims or complaints arising directly from CaribePay (Nevis) Limited's gross negligence in connection with the acceptance by Business of CaribePay Cards. Such indemnification by CaribePay (Nevis) Limited shall extend only to personal injury and/or property damage directly caused by such gross negligence.

16. **Confidentiality.** Business agrees to keep confidential: 1) all information regarding transactions processed by it under the CaribePay Card program, including but not limited to, Cardmember personally identifying information (name, card number, address, phone number, Driver's License number, Passport Identification Number, Social Security Number, email address, school etc.) and transaction history; and, 2) any other information provided to Business by CaribePay (Nevis) Limited and identified as confidential (the "Confidential Information"). Such Confidential Information may not be sold, transferred, traded or bartered to third parties by Business and belongs to CaribePay (Nevis) Limited.

17. **Enforcement of CaribePay (Nevis) Limited's Rights.** If Business breaches this Agreement, Business agrees to reimburse CaribePay (Nevis) Limited for any costs and expenses, including reasonable attorney's fees, incurred in enforcing CaribePay (Nevis) Limited's rights under this Agreement.

18. **Notice.** Business agrees that it will send any notice to CaribePay (Nevis) Limited that is required by this Agreement to the address above, Attention: Country Manager. CaribePay (Nevis) Limited agrees that it will send any notice to Business that is required by this Agreement to its address specified in its records.

19. **Restrictions on Usage.** Business agrees that during the term of the Agreement, it will not use CaribePay (Nevis) Limited equipment to accept as payment any stored-value card issued by third party other than a CaribePay Card unless otherwise instructed by CaribePay (Nevis) Limited in writing.

20. **Governing Law.** This agreement shall be governed and interpreted under the laws of the Federation of St. Kitts and Nevis. The courts of the Federation of St. Kitts and Nevis shall have exclusive jurisdiction over all claims or disputes arising out of, or in conjunction with this Agreement.

21. **Miscellaneous.** If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable. CaribePay (Nevis) Limited has not waived any of its rights under this Agreement unless CaribePay (Nevis) Limited agrees to do so in writing. Business agrees to comply with all applicable laws and regulations in connection with the CaribePay Card program and this Agreement. Neither party shall be liable for its failure to perform under this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include, but are not limited to, acts of God, fire, wars or strikes.