

**FORTE PAYMENT SYSTEMS, INC.  
TERMS AND CONDITIONS**

These Terms and Conditions apply to payment processing services provided by Forte Payment Systems, Inc. ("Forte") to a Participant in the Illinois State Treasurer's E-PAY Program (hereinafter "Merchant"). The effective date of these terms and conditions is the date upon which the Participant Agreement is executed by all parties, including Forte and the Merchant.

The parties acknowledge that Forte has entered into an Agreement for Electronic Payment Processing for the Illinois Funds E-PAY Electronic Services with the Illinois State Treasurer effective October 22, 2013 ("Master Agreement"). To the extent any of these Terms or Conditions conflict with the Master Agreement, the Master Agreement shall control.

Under the Master Agreement, Forte and its affiliates provide payment processing services including Credit Card, Debit Card and Automated Clearing House ("ACH") processing services (the "Services") to Merchant who provides services to, or otherwise has a business relationship with, individuals and other entities ("Constituents").

**1. DEFINITIONS**

**Account:** Bank Account or Card Account.

**Account Holder:** The owner of the Card or Bank Account to which a Transaction may apply.

**Business Day:** Any day other than Saturday, Sunday or Federal Holidays.

**Card:** Credit Card or Debit Card.

**Chargeback:** The procedure by which an Account Holder attempts to reverse the funding of a Transaction by contacting the Account Issuer to which the Transaction was performed.

**Downgrade:** Any transaction that fails to qualify for the best level of Interchange qualification.

**Issuer:** The entity, often a bank, which issued the customer/cardholder the credit or debit card being used for the payment to Merchant.

**Payment Associations:** MasterCard, Visa, Discover, American Express, NACHA and any applicable debit card networks.

**Payment Processor:** An entity which processes electronic financial transactions, including but not limited to ACH, Credit Card, Debit Card, into the appropriate network for each type of payment, on behalf of merchants.

**Rule:** Operating Rules which are established by NACHA or the applicable credit card Payment Association.

**Regulation:** Any Local, State and Federal Law applicable to the services provided under this Agreement.

**Settlement Account:** The Illinois Funds Account established by a Merchant where all credit or debit transactions conducted through E-PAY will be settled. Convenience Fees shall not be settled to the Merchant Settlement Account.

**Transaction:** Electronic request submitted to Forte to affect a Constituent's Account.

**Validation Code:** The 3 or 4 digit security code printed on the signature panel of most Cards or on the top right of American Express Cards.

**2. USE LICENSE**

Subject to the terms and conditions of the Participant Agreement and all documents incorporated therein, Forte hereby grants to Merchant a non-exclusive and non-transferable license to access and use Forte's products and services in accordance with the practices and procedures established by Forte. Merchant may use the Services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its Constituents, unless otherwise notified by Forte. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of Forte's Proprietary Property, as defined in Section 3 below, in whole or in part, is granted except as expressly provided by this Agreement. Neither Merchant nor any of its affiliates shall reverse engineer, decompile or disassemble the Proprietary Property. Additionally, nothing in this Agreement

shall be construed to provide Merchant with a license of any third-party proprietary information or property.

### 3. OWNERSHIP

All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to Forte's products and services (the "Proprietary Property"), are and will remain the sole and exclusive property of Forte, whether or not specifically recognized or perfected under applicable law. Forte shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing Forte products or services and/or any new programs, upgrades, modifications or enhancements developed by Forte in connection with rendering any services to Merchant (or any of its affiliates), even when refinements and improvements result from Merchant's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in Forte by virtue of these Terms or Conditions or otherwise, Merchant hereby expressly transfers and assigns (and, if applicable, shall cause its affiliates to transfer and assign) to Forte all rights, title, and interest which Merchant or any of its affiliates may have in and to such refinements and improvements.

### 4. CONFIDENTIALITY

Merchant acknowledges that the products, services and information relating to Forte's products and services (including without limitation these Terms and Conditions) contain confidential and proprietary information developed by, acquired by, or licensed to Forte (the "Confidential Information"). Merchant will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither Merchant nor any of its affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, the Confidential Information to any individual or entity, except to those of Merchant's employees or affiliates who require access for Merchant's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information. This Section will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, or (iii) is disclosed under force of law, governmental regulation or court order. Merchant acknowledges that any unauthorized use or disclosure by it or any of its affiliates of the Confidential Information may cause irreparable damage to Forte. As such, if Forte becomes aware of Merchant's breach or threatened breach of this Section, Forte may suspend any and all rights granted to Merchant under these Terms and Conditions and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to Forte.

### 5. TERM AND TERMINATION

These Terms and Conditions shall be co-terminus with the Master Agreement and may be terminated under the terms of the Master Agreement.

### 6. TRANSACTION PROCESSING

6.1 **Accepting Transactions.** Forte shall process Credit Card, Debit Card and ACH Transactions on the Merchant's behalf on a 24-hour basis. Transactions which are received before the daily designated cut-off time will be originated for settlement through the corresponding Payment Network. Transactions which are received after the designated cut-off time will be included in the next business day's settlement processing.

6.1.1 **Sale Transactions.** All Transactions sent to Forte utilizing the "Sale" method will automatically be captured for settlement in time for the next designated cut-off time.

6.1.2 **Auth/Capture Transactions.** If Merchant opts to utilize an "Authorize" method rather than a "Sale" method for a Transaction, then it will be the responsibility of Merchant to submit a corresponding "Capture" Transaction within 48 hours of the authorization in order to complete the Transaction process for settlement. Transactions which are not captured within 48 hours of Authorization are untimely and may be rejected by Forte.

6.2 **Transaction Format.** Forte is responsible only for processing Transactions which are received

and approved by Forte in the proper format, as established by Forte.

6.2.1 **Card Not Present Transactions.** For card-based transactions in which the card is not present, Merchant must obtain and include as part of the authorization request the 3 or 4 digit Validation Code and cardholder's billing address information.

6.3 **Merchant Account.** In order to provide transaction processing services, Forte may need to establish one or more Merchant Accounts on Merchant's behalf or require Merchant to establish a Merchant Account with a provider pre-approved by Forte.

6.4 **Modifying Transactions.** Merchant shall regularly and promptly review all Transactions and shall immediately notify Forte upon discovery of any and all discrepancies between Merchant's records, Forte and Merchant's bank, or with respect to any Transaction that Merchant believes was made erroneously or without proper authorization. At Merchant's request, Forte will make reasonable efforts to reverse, modify, void or delete a Transaction after it has been submitted for settlement. All requests must be made in writing (electronic mail will be deemed as "in writing" for these purposes), signed or sent by an individual pre-authorized by Merchant to make such requests and delivered to Forte. Merchant agrees that Forte will not be held responsible for any losses, directly or indirectly, incurred by Merchant or other third parties as a result of Forte's failure to accomplish the request before the Transaction has been processed through the applicable Payment Network.

6.5 **Delay or Rejection of Transactions.** Forte may delay or reject any Transaction without prior notification to Merchant which is improperly formatted, is untimely, is missing Information, which may cause it to downgrade or if Forte has reason to believe such Transaction is fraudulent or improperly authorized or for any reason permitted or required under the Rules or Regulations. Forte shall have no liability to Merchant by reason of the rejection of any such Transaction.

6.6 **Returned Items.** Forte shall make available to Merchant details related to the receipt of any Transaction that is returned unpaid or Transaction which is charged back and shall credit or charge such returned item to Merchant's Settlement Account.

6.7 **Chargebacks.** Merchant acknowledges and agrees that it is bound by the Rules and Regulations of the Payment Associations with respect to any Chargeback. Merchant understands that obtaining an authorization for any sale shall not constitute a guarantee of payment, and such sales can be returned or charged back to Merchant like any other item hereunder. In the event a Transaction is charged back for any reason, the amount of such Transaction will be deducted from Merchant's designated settlement account or any payment due to Merchant.

6.8 **Excessive Chargebacks.** Using limits established by Associations as a standard for review, Forte reserves the right to suspend and/or terminate Merchant's access to the Services should Merchant's chargeback ratio exceed allowable limits in any given period. Forte will make reasonable efforts to provide Merchant with notice and a time to cure its excessive chargebacks prior to suspending or terminating Merchant's access to the Services. Merchant acknowledges and expressly authorizes Forte, in compliance with Payment Association Rules and Regulations, to provide to the Payment Associations and applicable regulatory bodies, Merchant's name and contact information as well as transaction details should Merchant's chargeback ratio exceed the allowable limits in any given period.

6.9 **Resubmitting Transactions.** Merchant shall not re-submit any Transaction unless it is returned as (i) Insufficient funds (R01); or (ii) Uncollected funds (R09); or (iii) unless a new authorization is obtained from Constituent.

6.10 **Settlement.** Settlement of Merchant's funds for Transactions, less any Chargebacks or Returns, to Merchant's designated settlement account will occur within two (2) business days of Origination excluding weekends and US federal banking holidays. Settlement of Transactions will occur via electronic funds transfer over the ACH Network.

6.11 **Reporting.** Forte will make daily Origination and Deposit reports available to Merchant on a 24/7 basis through the Forte Internet-based Forte platform.

6.12 **Fee Model Billing.** Under an Absorbed Fee Model Merchant will be billed monthly in arrears and will automatically be debited from Merchant's designated Settlement Account via ACH Debit or invoiced per agreement of Merchant and Forte. Under a Service Fee Model, Merchant will not be billed for Transaction processing fees. Transactions processing fees will be charged to the Constituent in the form of a non-refundable service fee which is either (i) added to; or (ii) charged as a separate Transaction to the

Constituent at the time of payment. All fees associated with this Agreement are described in Appendix G of the Master Agreement and as may be amended hereafter under the terms of that Agreement.

## 7. TRANSACTION AUTHORIZATION

7.1 **Constituent Authorization.** Merchant shall obtain authorization from Constituent prior to requesting a Transaction to Constituent's account.

7.2 **Retention.** Merchant shall retain proof of Constituent's authorization for a period of not less than two (2) years for standard transactions and for a period of five (5) years for health- related transactions from the authorization date or revocation of authorization date and shall provide such proof of authorization to Forte upon request within five (5) business days of the request.

7.3 **Revoked Authorization.** Merchant shall cease initiating Transactions to a Constituent's account immediately upon receipt of any actual or constructive notice of that Constituent's termination or revocation of authority. Merchant may re-initiate Transactions to a Constituent's account only upon receiving new authorization from Constituent.

## 8. CARD PROCESSING SERVICES

### 8.1 **Certain Merchant Responsibilities.**

8.1.1 Merchant agrees to participate, and to cause third parties acting as Merchant's agent ("Agents"), to participate and be in compliance with, and subject to, the Rules of the Payment Associations. Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, MasterCard, Discover, and/or Other Networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. For purposes of this section, Agents include, but are not limited to, Merchant's software providers and/or equipment providers.

8.1.2 If appropriately indicated on Merchant's enrollment form, Merchant may be a limited-acceptance Merchant, which means that Merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Forte and its associated credit card Acquirer, ("Acquirer") have no obligation other than those expressly provided under the Rules and Regulations as they may relate to limited acceptance. Merchant, and not Forte or Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

8.1.3 Merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Merchant to cardholders, and is expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales transactions which are produced as a result of sales made by any person or entity other than Merchant, or for purposes related to financing terrorist activities.

8.1.4 Merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Merchant is a i) department, Merchant or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 – Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

8.1.5 Merchant understands and agrees that should it process credit card Transactions in excess of \$100,000 annually, it may be required to enter a processing agreement directly with the Acquirer. The terms of this clause may be revised unilaterally by FORTE based on any changes

to requirements by the applicable Acquirer or Payment Association(s).

**8.2 Merchant Prohibitions.** Merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Merchant, v) disburse funds in the form of cash unless Merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant), or Merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the acquirer and subsequently returned to Merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debit that has been deemed uncollectable by Merchant, or ix) submit a transaction that represents collection of a dishonored check. Merchant further agrees that, under no circumstance, will Merchant store cardholder data in violation of applicable Rules or Regulations including but not limited to the storage of track-2 data. Neither Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

**8.3 Settlement.** Upon receipt of Merchant's sales data for card transactions through Forte's Services, Acquirer will process Merchant's sales data to facilitate the funds transfer between the various Associations and Merchant. After Acquirer receives credit for such sales data, Acquirer will fund Merchant, either directly to the Merchant-Owned Designated Account or through Forte to an account designated by Forte ("Forte Designated Account"), at Acquirer's sole option, for such card transactions. Merchant agrees that the deposit of funds to the Forte Designated Account shall discharge Acquirer of its settlement obligation to Merchant, and that any dispute regarding the receipt or amount of settlement shall be between Forte and Merchant. Acquirer will debit the Forte Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, unless a Merchant-owned account is otherwise designated below. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Forte or Acquirer reasonably believe a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Merchant if settled to Merchant-owned account or debited from the Forte Designated Account if settled to that account.

## **9. ACH SETTLEMENT AUTHORIZATION**

Merchant authorizes Forte to electronically debit and credit Merchant's designated bank account(s) for any amounts owed to or by Merchant in accordance to the terms of these Terms and Conditions.

## **10. CONSTITUENT DISPUTES**

All disputes between Merchant and its Constituent (s) relating to any Transaction processed under these Terms and Conditions will be settled by and between Merchant and Constituent. Merchant agrees that Forte bears no responsibility or involvement in any such dispute.

## **11. COMPLIANCE WITH RULES AND REGULATIONS**

Each party agrees to comply with all applicable Rules and Regulations as defined in Section 1 herein. Merchant agrees to cooperate and provide information requested by Forte or its processing financial institution or Payment Processor to facilitate Forte's compliance with any applicable Rule or Regulation. Additionally, Merchant shall be responsible for any fine or fee imposed by a Payment Association or regulatory entity for any violation or failure to comply with a Rule or Regulation by Merchant or for any data breach of Merchant's systems as determined by the Payment Association. Merchant shall reimburse Forte for any such fee or fine paid by Forte on behalf of Merchant. Any data breach determined to have occurred on the E-PAY platform and/or systems will be settled by and between Merchant and E-PAY.

## **12. LIMITS OF LIABILITY**

The limits of liability hereunder shall be governed by the Master Agreement.

## **13. REPRESENTATIONS AND WARRANTIES**

### **15.1 Forte's Representations and Warranties.**

15.1.1 Forte represents and warrants to Merchant that Forte's agreement to provide its products and services to Merchant and to perform the Services hereunder does not violate any agreement or obligation between Forte and any third party.

15.1.2 To the best of Forte's knowledge, no performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

15.1.3 When executed and delivered by Forte, the agreement with Merchant will constitute the legal, valid, and binding obligation of Forte, enforceable in accordance with its terms.

### **15.2 Merchant's Representations and Warranties.**

15.2.1 Merchant's agreement to license Forte's products and services and to engage Forte to perform the Services hereunder does not violate any agreement or obligation between Merchant and any third party.

15.2.2 To the best of Merchant's knowledge, neither any information delivered by Merchant to Forte in support of these Terms and Conditions nor Merchant's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

15.2.3 None of the activities for which Merchant has engaged the services of Forte shall violate any international, federal, state, or local law or regulation, including but not limited to laws relating to consumer non-public financial information.

15.2.4 When executed and delivered by Merchant, these Terms and Conditions with Forte will constitute the legal, valid, and binding obligation of Merchant, enforceable in accordance with their terms and subject to the Master Agreement.

## **14. SERVICE POLICY**

Except as otherwise specifically provided herein and in the Master Agreement, Forte's products and services are provided hereunder "As Is" without warranty of any kind. Merchant acknowledges and understands that Forte does not warrant that the Services will be uninterrupted or error free and that Forte may occasionally experience delays or outages due to disruptions that are not within Forte's control. Any such interruption shall not be considered a breach of these Terms and Conditions by Forte. Forte shall use its best efforts to remedy any such interruption in service as quickly as possible.

## **15. FORCE MAJEURE**

Neither party shall be liable for, or be considered in breach of or default under the Terms and Conditions on account of any delay or failure to perform its obligations hereunder as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

## **16. ASSIGNMENT**

The rights granted under these Terms and Conditions shall not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

## **17. CHOICE OF LAW**

These Terms and Conditions shall be governed by and construed in accordance with the internal laws of the State of Illinois.

## **18. AMENDMENT**

Except as otherwise provided for herein, the terms and conditions of these Terms and Conditions shall not

be modified or amended except in writing, signed by the parties hereto and specifically referring to these Terms and Conditions.

**19. PUBLICITY**

Neither party shall use the other party's name, logo or service marks in conjunction with a press release or advertisement without first obtaining written approval.

**20. LEGAL NOTICE**

Any legal notice required to be given by either party hereunder, shall be in writing and delivered personally to the other designated party, or sent by any commercially reasonable means of receipted delivery, addressed, to that party at the address most recently provided in writing. Either party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

**Notices to Merchant:**

---

---

---

---

---

**Copy to:**

Office of the Illinois State Treasurer  
400 West Monroe  
Suite 401  
Springfield, IL 62704  
Attn: General Counsel

**Notices to Forte:**

Forte Payment Systems  
500 W. Bethany  
Suite #200  
Allen, TX 75013  
Attn: General Counsel

**21. HEADINGS**

The headings contained in these Terms and Conditions are for convenience of reference only and shall not affect the meaning of any provision of these Terms and Conditions.

**22. SEVERABILITY**

Should any term, clause or provision herein be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the parties.

**23. WAIVER**

Either party's waiver of any breach of any provision of these Terms and Conditions shall not be deemed a waiver of any subsequent breach of same or other provision.